



August 3, 2020

VIA Electronic Mail (Regs.comments@occ.treas.gov)

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th St. SW
Washington, D.C. 20219
Attention: Comment Processing

Re: OCC Docket # 2020-0003
Activities and Operations of National Banks and Federal Savings Associations

Ladies and Gentlemen:

The Clearing House Association L.L.C. and The Clearing House Payments Company L.L.C. (collectively "The Clearing House")¹ appreciate the opportunity to comment on the Office of the Comptroller of the Currency's ("OCC") Notice of Proposed Rulemaking ("NPR") to revise and reorganize its regulations relating to the activities and operations of national banks and federal savings associations, titled "Activities and Operations of National Banks and Federal Savings Associations"² The Clearing House commends the OCC for undertaking the work needed to clarify and codify recent OCC interpretations, integrate certain regulations for national banks and federal savings associations and to update or eliminate outdated regulatory requirements that no longer reflect the modern financial system.

As the owner and operator of the core payments system infrastructure in the United States and as a trade association devoted to advocacy on payments-related issues, The Clearing House is particularly interested in and will be confining its comments to those aspects of the NPR that discuss payments system memberships and related issues. The OCC has long held that payment system activities (*e.g.*, electronic payments message transmission, electronic payments processing, and payments settlement among members) are clearly within the business of banking and are functionally consistent with the primary role of banks as financial intermediaries.³ Indeed, the OCC has stated that "Banks are the most important institutional

¹ The Clearing House Association L.L.C. is a nonpartisan organization that engages in research, analysis, advocacy and litigation focused on financial regulation that supports a safe, sound, and competitive banking system. The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States.

² "Activities and Operations of National Banks and Federal Savings Associations," 85 Fed. Reg. 40,794 (July 7, 2020).

³ OCC Interpretive Letter No. 993 (May 16, 1997).

participants in . . . payments systems.”⁴ The Clearing House recognizes the important role that banks, as depository institutions with access to readily available sources of liquidity and critical lending infrastructure, play in facilitating reliable and safe payments. The Clearing House also appreciates the OCC’s long-established processes for carefully considering the risks posed by the specific payments-related activities of banks as it evaluates whether certain activities should be permitted.

National banks and federal savings associations have achieved innovative and meaningful technological advancements in payments, and kept pace with rapidly-changing technological innovation outside of banking, under the current regulatory and supervisory frameworks. Indeed, bank-driven development of new payment technologies, processes, and systems that meet business and consumer needs, and respond to the digitization of commerce, demonstrate that innovation is possible under the existing regulatory and supervisory frameworks. Chief among these advances is the development and launch of the RTP® network, a real-time payment system that modernizes core payments capabilities for all U.S. financial institutions and delivers real-time final payment to end users. Participation in the RTP network was specifically approved by the OCC pursuant to the conditions outlined in OCC Interpretive Letter 1157 (Nov. 12, 2017). The immediate funds availability features of the RTP network have already provided significant benefit to workers who may be living paycheck-to-paycheck and stands ready to support use cases like the distribution of pandemic relief payments and other disaster relief scenarios where it is important to make funds available quickly.

The Clearing House notes that participation in payments systems is often conditioned upon and facilitated by a participant’s agreement to certain indemnification provisions. Indemnification may either be imposed directly by the system itself or as a condition imposed by other entities, such as the Federal Reserve Banks in exchange for the provision of account services that support the system. Imposition of indemnification provisions is done both by private sector systems (e.g., The Clearing House’s CHIPS system) and public sector systems (the Reserve Banks’ National Settlement Service).⁵ In many cases, the liabilities that may be imposed by such indemnification provisions may be uncapped (open-ended) and therefore have the potential to raise unique risks that must be addressed by payment system operators, their participants and other entities such as the Federal Reserve Banks.

The Clearing House believes that the current framework for addressing those risks, which the OCC is largely incorporating into a new section 7.1026 of 12 C.F.R. Part 7, is workable and provides an appropriate framework within which to address the risks that may be related to participation by national banks and federal savings associations in payment systems, including those that may subject participants in one form or another to potentially open-ended liability.

⁴ Conditional Approval Letter No. 220 (Dec. 2, 1996)

⁵ See, e.g., Sec. 6.4, Federal Reserve Bank Operating Circular 12 (June 30, 2016)(“Op. Cir. 12”); Federal Reserve Bank RTP Joint Account Agreement (described in OCC Interp. Letter 1157 (November 12 2017)); Rule 15, CHIPS Rules and Administrative Procedures (April 1, 2020), available at: https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/chips_rules_and_administrative_procedures_2020_effective_04-01-2020.pdf.

Nonetheless, The Clearing House believes that the framework could be improved by addressing the following:

- Incorporate into proposed § 7.1026(e) the specific components in Interpretive Letter 1140 as modified by Interpretive Letter 1157 that are intended to inform a bank's risk analysis and controls;
- Provide additional guidance as to which of the components articulated in Interpretive Letter 1140 may be the most important and under what circumstances individual components should be considered in a bank's analysis;
- Clarify that due diligence and risk management activities should be appropriately directed to the Federal Reserve Bank that is imposing an indemnity or open ended liability where the Federal Reserve Bank is acting as a service provider to the payments system participant;
- Allow additional flexibility for a national bank to conduct an appropriate, reasoned analysis concluding that its open-ended liability is limited rather than mandate that the analysis be in the form of an independent legal opinion. To the extent that an independent legal opinion were to be required, allow the requirement to be fulfilled by either outside or in-house legal counsel;
- Omit from the definition of "member" those "indirect members" that are not bound by the payment system's rules;
- Revise the definition of "open ended liability" to accurately take into account liabilities imposed directly by Federal Reserve Banks acting as service providers to payment system participants;
- Incorporate the optional examples cited in the definition of "operational loss" and further include losses due to information security breaches or cybersecurity events; and
- Provide guidance relating to the considerations that a bank should take into account when applying the definition of "payment system" internationally to derivatives clearing organizations or clearing agencies that may operate in ways that would not allow them to be registered under U.S. law.

The Clearing House further supports the removal of the word "electronic" from current section 7.5001 and the OCC moving current section 7.5001 to subpart A of part 7 as new section 7.1000 to better clarify that the criteria of new section 7.1000 may apply to any potential national bank activity and not just those that are electronic in nature.

Finally, The Clearing House requests that the OCC correct the erroneous description of its funds transfer system, CHIPS, in Banking Circular 235. Specifically, The Clearing House notes that CHIPS is a hybrid real-time netting system and not a "net settlement system" as represented in the Circular.

I. TCH Generally Supports Incorporating the Current Framework for Addressing Participation in Payments Systems into 12 C.F.R. Part 7

The current framework articulated by the OCC for evaluating and addressing the risks posed by participation in payments systems and notifying the OCC of that participation has proved largely workable for banks and has enabled the industry to not only continue the safe and sound operation of existing payments systems, such as CHIPS, EPN and SVPCO, but has also enabled the industry to develop and participate in significantly innovative new payments systems such as Zelle and the RTP Network.⁶ The current framework requires that before entering into an agreement to join a payment system a bank must notify its Examiner in Charge (EIC) of its intent to participate.⁷ Additionally, the bank must evaluate the risks posed by such participation and must ensure it can identify, measure, monitor, and control the associated risks.⁸ Once the bank has become a member of the payment system, it must monitor the risks of membership on an ongoing basis. This ongoing review should be designed to ensure the bank is able to identify, measure, monitor, and control the potential exposures stemming from its membership in the payment system, including any indemnity provided to a third party as a condition of payment system participation.⁹ To the extent a bank identifies risks through this review that raise safety and soundness concerns, the bank must: (i) notify its EIC as soon as the concern is identified; and (ii) take appropriate actions to remediate the risk, in consultation with its EIC.¹⁰

The Clearing House is generally supportive of the OCC incorporating this framework into 12 C.F.R. part 7 as a new section 7.1026. Specifically, new section 7.1026 would affirm that national banks and federal savings associations may become participants in payments systems subject to the requirements of the section.¹¹ Those requirements include (a) providing 30 days'

⁶ CHIPS is the largest private sector U.S. dollar clearing system in the world, clearing and settling \$1.5 trillion in domestic and international funds transfer payments per day. EPN is an Automated Clearing House network (ACH) that handles essentially half of the U.S. commercial ACH volume. SVPCO is an industry utility that allows financial institutions of all sizes to exchange check images in the most efficient and cost effective way. In addition to operating legacy payments systems like CHIPS, EPN and SVPCO, The Clearing House launched the RTP Network in 2017. The RTP network is the first new core payments clearing and settlement infrastructure in the U.S. in more than 40 years. The RTP Network provides consumers and businesses with the ability to conveniently send information rich payments directly from their accounts at federally insured depository institutions 24/7 and to receive and access funds sent to them over the RTP network immediately. Zelle is a payments platform operated by Early Warning Services, L.L.C. that provides a fast, safe, easy and contact-free way to send and receive money directly from or into a user's bank account in minutes. The majority of Zelle transactions currently settle over the ACH.

⁷ OCC Interp. Ltr. 1157

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ It should be noted that in addition to national banks and Federal Savings Associations the new section 7.1026 will also apply to Foreign Banking Organizations (FBOs) that are within the jurisdiction of the OCC. The OCC may either wish to incorporate references to FBOs wherever national banks and Federal savings associations are

advance notice to its appropriate OCC Supervisory Office of proposed participation in a payment system where the payment system exposes the bank or federal savings association to open-ended liability, or (b) providing after-the-fact notice to its appropriate OCC Supervisory Office within 30 days of joining a payment system that does not expose it to open-ended liability.¹² The appropriate OCC Supervisory Office is defined as the OCC office that is responsible for the supervision of a national bank or Federal savings association.¹³

In addition to notice provisions, the OCC also proposes to incorporate much of the existing framework for identifying and evaluating risks posed by the payments system into part 7. Prior to joining a payment system, a national bank or federal savings association must identify and evaluate the risks posed by participation in the payments system, taking into account whether the liability of the bank or savings association is limited, and ensure that it can measure and control the risk identified.¹⁴ After joining a payment system, a national bank or federal savings association must manage the risks of the payment system on an ongoing basis and if it identifies risks that raise safety and soundness concerns it must notify the appropriate OCC supervisory office of those concerns and take appropriate action to remediate the risk.¹⁵ Compliance with the safety and soundness review requirements must be affirmed in the notice discussed above.¹⁶

The Clearing House is generally supportive of the safety and soundness review requirements set forth in proposed §7.1026 but notes that prior OCC interpretive letters have provided significant detail as to components that the OCC expects to see in the bank's analysis of the payments system, its membership criteria and associated risks as well as ways that the bank could demonstrate that it can appropriately monitor and manage its potential risk exposures.¹⁷ Such detail is missing from the proposed rule. The Clearing House continues to believe that the components articulated by the OCC in its interpretive letters are the appropriate components for such analysis and recommends that the components set forth in OCC Interpretive Letter 1140 as modified by Interpretive Letter 1157 that are intended to inform a bank's risk analysis and controls be specifically incorporated into the proposed § 7.1026.¹⁸

referenced or otherwise incorporate a reference somewhere within part 7 that ensures that all references to national banks and Federal savings associations are read to include FBOs.

¹² Proposed §7.1026(c)(1)&(2), 85 F.R. 40,7094 at 40,822.

¹³ *Id.* at §7.1026(b)(1).

¹⁴ *Id.* at 7.1026(e)(1)

¹⁵ *Id.* §7.1026(e)(2)&(3)

¹⁶ *Id.* §7.1026(c)&(d)

¹⁷ *See, e.g.*, OCC Interp. Ltr. 1140.

¹⁸ Specifically, OCC Interpretive Letter 1140 provides helpful examples of the characteristics that may be present in a payment system that appropriately mitigates risk and notes that the characteristics are "key components" that the OCC would expect to see in a bank's analysis of the payment system and its membership criteria. The letter also sets forth criteria that should be exhibited by an effective risk management program that demonstrates the bank can appropriately monitor and manage its potential risk exposure. While OCC Interpretive Letter 1157 modified certain notice requirements and imposed ongoing risk monitoring and remediation requirements not set forth in OCC Interpretive Letter 1140, the OCC affirmed that banks should continue to consult Interpretive Letter 1140 to inform their risk analysis and controls. OCC Interp. Ltrs. 1140 & 1157.

The Clearing House notes that there may be some ambiguity, however, as to the OCC's expectations with respect to factors outlined in Interpretive Letter 1140 as Interpretive Letter 1157 indicates that "banks may continue to consult IL No. 1140 to inform the risk analyses and controls" and that the "criteria identified in IL No. 1140 for an effective risk management program for payment system activities may be instructive."¹⁹ This suggests that the full 1140 factors should not be required in all instances. While The Clearing House supports that interpretation, we note that Banks may, as a result, benefit from additional guidance from the OCC as to which factors may be the most important and under what circumstances individual factors should be considered in a bank's analysis.

II. Open-ended Liabilities That Are Imposed by Federal Reserve Banks Should be Addressed Directly

The OCC acknowledges that open-ended liabilities associated with payment system membership may be imposed directly by the payment system or may arise by virtue of the payments system leveraging, and its participants utilizing, services provided through the Federal Reserve Banks. These can entail a variety of services, such as the provision of a joint account that are used for funding purposes or utilization of the National Settlement Service to support settlement.²⁰ In such circumstances, the Federal Reserve is acting as the service provider to the payments system participant.²¹

Risks associated with these Federal Reserve Services may arise either through some action taken on behalf of the participants by their designated agent (usually the private sector payments system operator) or through the actions of the Reserve Bank itself in providing the services. It is important that OCC Rules and guidance incorporate both risk vectors in the criteria relating to payments system membership.

While proposed section 7.1026(e) indicates that the participant must "identify and evaluate the risks posed by membership in the payments system," it may be unclear whether such requirement extends to risks posed by the Federal Reserve as a service provider to banks that are utilizing the particular payments system. This is especially true where prior interpretive letters appear to focus a risk analysis on the practices of the payments system itself.²² Accordingly, the OCC should clarify that due diligence and risk management activities should be appropriately related to the entity that is actually providing the service to the bank or federal savings association for which the indemnity is being imposed.

¹⁹ OCC Interp. Ltr. 1157

²⁰ See, e.g., OCC Interp. Ltr. 1157;

²¹ Services provided by the Federal Reserve Banks are generally provided only to financial institutions and certain government entities. For example, Federal Reserve Bank Operating Circular 12, which establishes terms under which Federal Reserve Banks provide settlement services to "Settlers" in a Settlement Arrangement defines a "Settler" as an entity that has established an account with a Reserve Bank and settles its own balances, balances for the account of another participant, or both. Op. Cir. 12, §1.1 & 1.2(m). Other than certain government entities, only financial institutions may maintain account relationships with Federal Reserve Banks. Op. Cir. 1, § 1.0 & 2.2(c).

²² See, e.g., Interp. Ltr. 1140 (emphasizing that the bank must show that the payments system appropriately mitigates risk)

III. Additional Flexibility Should be Provided to Allow Banks to Show by Reasoned Analysis that a Liability is Limited.

Proposed section 7.1026(e)(4) permits a national bank or Federal savings association that believes an open-ended liability relating to its participation in a payment system is otherwise limited (such as by negotiated agreements or operation of law) to consider the liability as limited for purposes of the reviews imposed by Section 7.1026(e)(1) and (2) if, prior to joining the payments system, the bank or savings association obtains an independent legal opinion that describes how the payment system allocates liability for losses and concludes that the liability for operational losses is in fact limited to specific and appropriate limits that do not exceed the legal lending limit under 12 C.F.R. 32 or the limit set for the bank or savings association by the OCC and that there are no material changes to the liability or indemnification requirements of the bank or savings association since the issuance of the independent legal opinion.

While The Clearing House supports the ability of banks and savings associations to prove that what might otherwise appear to be open-ended liabilities are in fact otherwise limited, The Clearing House believes that additional flexibility should be provided. Specifically, The Clearing House does not believe that a formal legal opinion is appropriate or necessary in all cases considering whether a liability is open-ended. Rather, national banks and Federal Savings Associations employ a range of approaches to evaluating the operational risks of joining payment systems, and the complexity and magnitude of the underlying analysis may vary widely depending on the nature of the payment system. This flexibility is particularly important because it may be difficult to obtain such a legal opinion. Legal counsel generally maintain a high standard for offering opinions that liability may be limited and legal opinions are generally heavily qualified. For that reason, a national bank or Federal Savings Association should have the flexibility to conduct this analysis in an appropriate way, consistent with its risk management program and related policies, so long as it has a good faith, reasoned basis for concluding its open-ended liability is limited. Regardless of what level of legal diligence is required (i.e., independent opinion, good faith, reasoned basis, or some other standard), the final rule should also make clear that, once a bank has joined a payment system, it need only undertake that analysis and diligence again in cases where there is a material change to the liability or indemnification provisions applicable to the bank under that payment system.

In addition, and in the event that the OCC maintains the legal opinion as an option or requirement, it is unclear whether the word “independent” is intended to connote an opinion by outside counsel only or can include an opinion from an institution’s in-house counsel who, while an employee of the institution, nonetheless has independent ethical duties imposed by the rules of professional conduct. The Clearing House recommends that the OCC permit independent legal opinions to be authored by either in-house or outside counsel. In-house counsel in particular may be more familiar with the proposed activities

and requirements of the payment system at issue as well as the underlying facts and legal issues giving rise to the applicable limitations.

IV. Specific Questions Raised by the OCC

a. Definition of Member and Inclusion of Indirect Participants

The OCC defines “Member” in proposed section 7.1026(b)(2) as including a national bank or Federal savings association designated as a “‘member,’ or ‘participant,’ or other similar role by a payments system....” The Clearing House notes that owners of limited liability companies are also called “members” and for that reason prefers to use the word “participant” to describe the participants in its payments systems, which includes both owners and non-owners. The OCC definition appropriately accommodates this use.

The OCC has further requested comment on whether the definition of “member” should include national banks and Federal savings associations who are indirect members of a payment system. The Clearing House notes that the OCC does not provide a proposed definition of “indirect member”. The Bank for International Settlement (“BIS”) has defined an “Indirect participant” as “an entity that does not have direct access to the FMI’s [financial market infrastructure] services, and is typically not directly bound by the rules of the FMI, but whose transactions are cleared, settled, or recorded by the FMI through a direct participant.”²³ This definition is sufficiently broad to take into consideration correspondent relationships even where the correspondent is not in a tiered participation relationship with the payments system. The Clearing House believes that “indirect members” should not be included in the definition of “member” unless they are bound by the rules of the payments system and such rules, including any open-ended liabilities imposed, purport to extend to such indirect members. Only in such circumstances would “indirect members” take on the risks that may be associated with participation, including risks associated with open ended liabilities that may be associated with membership. Indirect members that are not bound the payments system’s rules have different rights and responsibilities that are typically defined in bilateral agreements with the direct participant.²⁴ As a result, it would be inefficient and unnecessary to require indirect participants that are not bound by the payments systems rules to conform to the requirements being imposed by proposed section 7.1026.

b. Definition of Open-Ended Liability

The OCC is proposing to define in section 7.1026(b)(3) “Open-ended Liability” as a liability for operational losses that is not capped under the rules of the payment system and includes indemnifications provided to “third parties” as a condition of membership in the payment system. The OCC notes that this would include “open-ended indemnifications to Federal

²³ See Definition of “Indirect Participant,” BIS Glossary (October 17, 2016), available at: <https://www.bis.org/cpmi/publ/d00b.htm?&selection=105&scope=CPMI&c=a&base=term>

²⁴ *Id.* (“An indirect participant has a bilateral agreement with a direct participant”)

Reserve Banks” that are “provided to third-parties as a condition of membership in particular payment systems.”²⁵ The Clearing House notes that this description may not fully and accurately capture the nature of the indemnification that is typically entered into between the participant and Federal Reserve Banks for services that are leveraged by participants in payment systems. Specifically, the use of the phrase “provided to the third-parties as a condition of membership” could be read to connote that the Federal Reserve Bank providing the service is a third-party beneficiary of an indemnification imposed by the payment system. In actuality, while the payment system may require as a condition of membership that the participant engage with a Federal Reserve Bank for the provision of certain services, the indemnification giving rise to an open-ended liability is imposed directly upon the participant by the Federal Reserve Bank. The Clearing House recommends that this language be modified to accurately describe the nature of the relationship that is being created.

C. Definition of Operational Loss

The OCC is proposing to define in section 7.1026(b)(4) “Operational loss” as “a charge resulting from sources other than defaults by other members of the payment system.” The OCC further notes that examples of operational losses would include losses due to “[e]mployee misconduct, fraud, misjudgment, or human error; management failure; information systems failures; disruptions from internal or external events that result in the degradation or failure of services provided by the payment system; or payment or settlement delays, constrained liquidity, contagious disruptions, and resulting litigation.”²⁶ The OCC further notes that these examples are listed in OCC Interpretive Letter 1140 and requests comment as to whether these examples should be included in the definition and if included whether the examples listed are appropriate and sufficiently comprehensive.²⁷ The Clearing House is supportive of the definition of Operational Loss set forth in proposed section 7.1026(b)(4) and further supports inclusion of the examples listed. The Clearing House further recommends adding losses due to information security breaches or cybersecurity events to the list of examples.

D. Definition of Payments System

The OCC proposes to define “Payment system” in section 7.1026(b) to mean a “financial market utility” as defined in 12 U.S.C. § 5462(6), wherever it operates. “Financial market utility” is defined in section 5462(6) as “any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the person with certain exclusions.”²⁸ The OCC further notes that derivatives clearing organizations registered under the Commodity Exchange Act and clearing agencies registered under the Securities

²⁵ 85 F.R. at 40,801.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 40,801-40,802.

Exchange Act of 1934, and the foreign organizations that would be considered a derivatives clearing organization or clearing agency were it operating in the United States are excluded. The OCC requests comment on whether to include a definition of payment system and, if so, whether this definition and the exclusions listed are appropriate. The Clearing House notes that the primary concern for financial institutions is clarity in application of the definition. The Clearing House supports the definition as being sufficiently clear in application to payments systems operating domestically, but notes that the exceptions may lead to ambiguity when applied to international systems.²⁹ For example, the definition of payments system applies to a financial market utility “wherever it operates.”³⁰ This brings international systems within the purview of the definition. The OCC further notes however that “derivatives clearing organizations registered under the Commodity Exchange Act” and “clearing agencies registered under the Securities Exchange Act” are exempt from the definition.³¹ The OCC further notes that the exemption includes “foreign organizations that would be considered a derivatives clearing organization or clearing agency were it operating in the United States.”³² Such organizations operating in other jurisdictions, however, may have somewhat different characteristics than those operating domestically and may not meet all the criteria for registering under U.S. law. As a result, there may be a lack of clarity when applying the definition internationally. It would be helpful, therefore, for the OCC to provide guidance relating to the considerations that a bank should take into account when applying the definition internationally to derivatives clearing organizations or clearing agencies that may operate in ways that would not allow them to be registered under U.S. law.

V. The Clearing House Supports the Removal of the Word “Electronic” from Current Section 7.5001 and Moving Current Section 7.5001 to Subpart A of Part 7 as New Section 7.1000

The OCC is proposing to remove the word “electronic” from current section 7.5001 and moving section 7.5001 to subpart A of part 7 as new section 7.1000 in order to confirm that the criteria listed in section 7.5001 is applicable to any potential national bank activity and not just those that are electronic in nature. The Clearing House believes that removal of the word “electronic” is appropriate and consistent with the technology neutral approach to regulation that should be the OCC’s preferred approach. Such an approach is consistent with the role that depository financial institutions have long played in payments systems whether such systems are based on the transfer of physical items such as cash or checks or encompass fully digital payments like the RTP network.

²⁹ *Id.* at 40,822

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

VI. TCH Requests that the OCC Correct the Erroneous Description of CHIPS in Banking Circular 235

The Clearing House notes that the OCC has recommended that national banks and Federal savings associations should review the standards outlined in OCC Interpretive Letter 1140 and Banking Circular 235 in order to assist them in identifying and evaluating the risks posed by membership in a payment system. Unfortunately, Banking Circular 235 contains erroneous information relating to CHIPS that could lead potential participants to improperly perform that evaluation.

The OCC describes CHIPS as a “net settlement system”:

Net settlement systems are systems in which transactions accumulate during a processing day. Transactions are posted to participant accounts on a provisional basis until final settlement. At end of the day, net debit positions pay, net credit positions settle, and all transactions become final. CHIPS is this type of system.³³

CHIPS, however, is not a “net settlement system” but rather is a hybrid real-time netting system that “combines the characteristics of RTGS [Real Time Gross Settlement] and net settlement systems.”³⁴ Since 2001 CHIPS has been providing instantaneous finality for CHIPS payments in real time upon release by the CHIPS system using a netting algorithm.³⁵ CHIPS therefore provides prompt final settlement throughout the day. The Clearing House respectfully requests that the OCC amend BC-235 to ensure that accurate information regarding CHIPS is provided to potential participants.

VII. Conclusion

The Clearing House appreciates the opportunity to comment on the proposed addition of section 7.1026 to part 7 and other issues relating to national bank participation in payments systems. The OCC has a long history of recognizing the important role that banks play in payments systems and has developed a framework that has generally been workable and appropriate for banks to manage the risks that may be associated with payment system participation. That framework has enabled banks to lead significant efforts to modernize the United States’ payment system with the introduction of the RTP Network and Zelle and to continue to innovate in ways that are important to serving consumer needs in a digital, real-time, information rich environment while

³³ Banking Circular 235, Appendix at p. 2.

³⁴ See definition of “hybrid system” in BIS Glossary, available at: <https://www.bis.org/cpmi/publ/d00b.htm?&selection=103&scope=CPMI&c=a&base=term>

³⁵ CHIPS Public Disclosure of Legal, Governance, Risk Management, and Operating Framework (June 2020) at p. 36, available at: https://www.theclearinghouse.org/-/media/new/tch/documents/payment-systems/chips_public_disclosure_june_2020.pdf

at the same time doing so safely and soundly. The Clearing House appreciates the important work that the OCC is doing to ensure that a regulatory framework that supports bank innovation and customer needs will continue to exist.

Respectfully submitted,

/s/

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The Clearing House Payments Company
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