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Via Electronic Submission

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Potential Modifications to the Federal Reserve Policy on Payment System Risk To Expand Access to Collateralized Intraday Credit, Clarify Access to Uncollateralized Credit, and Support the Deployment of the FedNow Service (**FRB Docket No. OP-1749**)

Dear Ms. Misback:

The Clearing House Payments Company L.L.C.¹ (“TCH”) appreciates the opportunity to provide comments to the Board of Governors of the Federal Reserve System (“Board”) in response to its proposed modifications to Part II of the Federal Reserve Policy on Payment System Risk (the “PSR Policy”).² TCH fully supports the Board’s efforts to expand access to collateralized intraday credit from the Reserve Banks and to clarify the eligibility standards for accessing uncollateralized intraday credit from Reserve Banks. TCH also believes that it is appropriate to incorporate the Federal Reserve Policy on Overnight Overdrafts into the PSR Policy. As discussed more fully below, however, TCH believes that

¹ Since its founding in 1853, The Clearing House has delivered safe and reliable payments systems, facilitated bank-led payments innovation, and provided thought leadership on strategic payments issues. Today, The Clearing House is the only private-sector ACH and wire operator in the United States, clearing and settling nearly \$2 trillion in U.S. dollar payments each day, representing half of all commercial ACH and wire volume. It continues to leverage its unique capabilities to support bank-led innovation, including launching the RTP[®] System, a real-time payment system that modernizes core payments capabilities for all U.S. financial institutions. As the country’s oldest banking trade association, The Clearing House also provides informed advocacy and thought leadership on critical payments-related issues facing financial institutions today.

² FRB, Potential Modifications to the Federal Reserve Policy on Payment System Risk To Expand Access to Collateralized Intraday Credit, Clarify Access to Uncollateralized Credit, and Support the Deployment of the FedNow Service, 86 Fed. Reg. 29776 (June 3, 2021).

additional consideration is necessary with respect to the proposed modification to the PSR Policy related to the FedNowsm service (“FedNow”) and the Board’s competitive impact analysis.

Business Day

The Board is proposing to revise section II.A of the PSR policy to define the “business day” as the 24-hour duration beginning immediately after the previous day’s regularly-scheduled close of the Fedwire Funds Service and FedNow, and ending with the regularly-scheduled close of the Fedwire Funds Service and FedNow. While TCH understands the need to change the PSR policy to accommodate FedNow, more analysis is needed as to the impact of choosing the 24 hour period beginning after the close of the Fedwire Funds Service rather than a calendar day. Today the PSR Policy does not actually include a definition of business day. Instead the current PSR Policy sets forth posting times. Currently, even though there is at least one Reserve Bank service with a 24 hour operating day, none of the Reserve Bank services post transactions outside of the Fedwire Funds Service operating hours.³ FedNow will be the first Reserve Bank service that has transactions posting outside of the Fedwire Funds Service day. Other 24/7 services like FedNow that currently operate in the US, including the RTP network, use the 24 hour eastern time calendar day as their business day. It is not clear from the Federal Register notice whether the Board’s decision to define business day for PSR policy purposes as beginning with the close of the Fedwire Funds Service will mean that the business day for the FedNow service (and the accounting day for the service) will also be based on the Fedwire Funds Service close. If this is the implication, then additional consideration should be given to the impact of that decision on Reserve Bank customers that currently participate in 24/7 payment networks that use the eastern time calendar day as the business day and that may also wish to use FedNow. The need to complete such analysis is particularly important given the increasing evolution towards 24/7 payment operations globally.⁴

Settlement Correspondents

The proposed modifications to the PSR Policy may not sufficiently account for the use of settlement correspondents in connection with FedNow, especially where such settlement correspondents are not also FedNow participants. The Federal Register notice appears to assume that only a FedNow participant has an opportunity to cure an overnight overdraft over the weekend:

However, institutions that are not FedNow Service participants and incur an overnight overdraft before a weekend or holiday will not have the opportunity to achieve a positive balance before the end of the weekend or holiday. Accordingly, these institutions would automatically incur a multiday charge for an overnight overdraft before a weekend or holiday.

³ Federal Reserve Operating Circular 4, available at <https://www.frbservices.org/binaries/content/assets/crsocms/resources/rules-regulations/031921-operating-circular-4.pdf> (“BANKING DAY The Reserve Banks’ banking day for receipt of ACH items is from 3:00 a.m. ET to 2:59 a.m., ET on the next calendar day.”). FedACH payments settle at defined times throughout each banking day, all of which are during the Fedwire Funds Service processing day.

⁴ If the decision to use the Fedwire Funds Service close in the PSR Policy is related to the way in which the Board measures reserves, we would note that TCH currently provides the Board with information about RTP network positions at the close of the Fedwire Funds Service and that the Reserve Banks could do the same. This does not require the business day to be defined based on the close of the Fedwire Funds Service.

This is not always true. If an institution serves as a settlement correspondent for a FedNow participant, its account could be debited and credited over the weekend to support its respondent's FedNow activities. In this way, such an institution could cure an overnight overdraft on the weekend and holidays to the same extent as a FedNow participant. While the language of the new overnight overdraft policy does not appear to dictate the above outcome, because the Board included the above language in the Federal Register notice the Board should confirm that no such "automatic" charge will be applied.

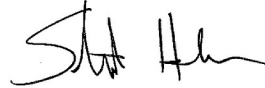
Competitive Impact Analysis

TCH respectfully suggests that the competitive impact analysis is incomplete because it fails to discuss the potential competitive impact on private sector competitors of FedNow. This more complete competitive analysis is essential because it implicates the Federal Reserve's own position as a competitor, including with respect to an already-existing private sector service. The Board indicates that there are no competitive issues essentially because the liquidity provided by Reserve Banks through the use of FedNow may be used to support other payment systems. This ignores the fact that in order to have access to such liquidity, participants in a system that competes directly with FedNow would have to become a participant in FedNow, the competing system. Given this reality,⁵ TCH believes it is very important that the Board consider all aspects of the proposed policy change including whether the proposed changes penalize Reserve Bank customers that may not wish to become a FedNow customer. For example, given the competitive implications is it appropriate to calculate all overdrafts based on a 24 hour operating day for all customers even if a customer is not using the FedNow service (or serving as a settlement correspondent). This decision penalizes customers that do not want to join FedNow by raising their daylight overdraft and penalty fees despite the fact that such customers are not in any way changing their risk profile with the Reserve Banks. It also may be appropriate to consider whether the choice to permit a FedNow customer to extinguish an overnight overdraft on the weekend (or to continue to charge all other customers overnight overdraft fees over the weekend) creates a unique competitive advantage. These concerns, when coupled with the decision to eliminate the escalation fees on overnight overdrafts at the same time that the Reserve Banks are expanding their service offerings in a manner that could result in increased incidents of overnight overdrafts, raise questions about the competitive impact of the proposed modifications that do not appear to have been considered in the Federal Register notice.

⁵ TCH has previously requested that the Reserve Banks extend the operating hours of the Fedwire Funds Service to support weekend and holiday liquidity in the RTP network. The RTP network was designed to use the Fedwire Funds Service, the Reserve Banks systemically important wholesale service, to provide liquidity. To enable the use of FedNow for these purposes would require a technology investment on the part of TCH and the RTP participants, and would make the RTP network dependent on a service that is not subject to the same standards of resiliency and oversight as the Fedwire Funds Service. TCH believes that the competitive impact of the proposed changes to the PSR Policy could be mitigated simply by offering the Fedwire Funds Service for at least part of the day on the weekends and holidays.

Thank you for your consideration of these comments. If you have any questions or wish to discuss this letter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. H.', is positioned below the closing text.

Executive Vice President and
General Counsel