White Paper on
Dodd Frank Section 1073 – Cross-border Remittance Transfers
(Version 3.0, September 2013)

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 banks based in the United States begin to prepare for compliance with the Dodd Frank 1073 requirements for cross border consumer remittances. 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 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 2013.

August 2013 Update: On April 30, 2013, the U.S. Consumer Financial Protection Bureau published the New Final Rule, significantly changing disclosure and error resolution requirements for cross border remittance transfers. The PMPG is incorporating these changes into this document, Version 3.0 of the White Paper, and would like to thank again The Clearing House for its effort, input and guidance on the topic.

This White Paper has been drafted by U.S. 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 is an international body and does not participate in the regulation's 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 U.S. bank partners towards obtaining further information related to Dodd Frank 1073 which 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 Association is a nonpartisan advocacy organization representing through regulatory comment letters, amicus briefs and white papers the interests of its member banks on a variety of systemically important banking issues. The Clearing House Payments Company provides payment, clearing and settlement services to its owner 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 U.S. consumers.

The intent of the regulation is to provide U.S. 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 of 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 and delivery terms. Dodd Frank 1073 creates certain disclosure requirements which obligate U.S.-based remittance transfer providers to know the certain 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 U.S. consumers to

compare between providers. The drafters also tied the disclosures to consumers error resolution rights so that almost any deviation from disclosed costs and delivery terms will result in liability to the U.S. remittance provider.

The New Final Remittance Rule was made available to the public on April 30, 2013 and published in the Federal Register, the official publication for U.S. agency actions, on May 22, 2013 with a mandatory compliance date of October 28, 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 U.S. natural persons that are for personal, household or family use. They do not apply to payments originated by U.S. 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 pre-paid 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 U.S. depository financial institutions (banks, credit unions, savings banks, etc.), broker dealers, as well as subsidiaries of foreign banks in the United States that provided international payments services to U.S. consumers. These are collectively referred to in this paper as "U.S. remittance transfer providers".

Disclosure Requirements

Dodd Frank 1073 requires that U.S. 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

[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 would be exempt from the requirements of the rule.

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 with each disclosure.

PREPAYMENT DISCLOSURE	RECEIPT DISCLOSURE
• Transfer Amount (originated amount) • Fees charged by the U.S. Remittance Transfer Provider and associated domestic taxes • Full FX Rate by which the payment will be converted (regardless of which bank converts it) • All "covered third party fees" imposed in the payment chain • Amount to be received by the beneficiary (in receipt currency)	• Restate the information included in the Prepayment Disclosure • The promised date of delivery to the recipient • The phone number or address of the recipient • Error of resolution rights • Contact information for the remittance provider, the provider's state regulator and the CFPB's toll-free number for consumer complaints

Covered and Non-Covered Third Party Fees

Understanding the difficulties U.S. remittance transfers providers have in determining or estimating all fees in the payment chain, and especially final beneficiary bank fees, in the New Final Rule the CFPB narrowed the scope of third party fee disclosures by categorizing such fees as "covered" fees or "non-covered" fees. U.S. remittance transfer providers are obligated to disclose covered third party fees, which include:

1) Intermediary fees that are deducted from the amount of the payment, more commonly referred to as "lifting fees", "beneficiary deduction fees" or "credit deduction fees"; and[2]
2) Fees the final beneficiary bank may charge if acting as an "agent" of the U.S. remittance transfer provider[3]

Non-covered third party fees, which the U.S. remittance transfer provider does not have to disclose, are limited to the fees the beneficiary bank may charge for the application of the credit to the beneficiary's account based upon its standard terms or commercial arrangements with the beneficiary.

[2] These would include fees most commonly deducted by intermediary banks, but may also include fees deducted by the beneficiary's bank if such a fee is deducted in their capacity as an intermediary clearing institution, outside of any commercial arrangement they may have with the beneficiary.

[3] Agency is not defined in the rule and the CFPB has said agency is determined by local law. Hence, in the context of the New Final Rule, agency is being interpreted by the industry to mean closed network agents or their equivalents in terms of contractual control. It is generally not interpreted to mean foreign financial institutions with whom the U.S. remittance transfer provider has established by a traditional correspondent or nostro clearing relationship.

From a practical perspective, this means that the New Final Rule narrows the third party fee disclosure requirement to any fees deducted by intermediary banks (domestic and foreign) when processing payment instructions advised by the U.S. remittance transfer provider with the BEN or SHA charging code. In addition to traditional foreign bank lifting fee deductions that may occur, they also include the following categories:

1) Fees deducted by domestic U.S. intermediaries such as would be the case if a smaller U.S. remittance transfer provider availed themselves of correspondent payment services of a larger U.S. financial institution.
2) Fees deducted by U.S. remittance transfer providers or their intermediaries based upon "credit deduction" agreements they may have with foreign beneficiary banks who utilize the U.S. institution's U.S. Dollar clearing services.

As discussed in more detail in the "Exceptions and Estimates" section of this paper, U.S. remittance transfer providers are allowed to estimate covered third party fees in certain situations.

Foreign Currency Rate Disclosures

Under certain circumstances the U.S. remittance transfer provider may not need to disclose the foreign exchange rate applicable to a payment. A U.S. remittance transfer provider needs to disclose the rate **if they have specific knowledge that a foreign exchange conversion will take place.** According to the regulation, if the U.S. remittance provider does not have specific knowledge of the currency that the beneficiary needs to receive, **the provider may rely on a U.S. consumer's representation regarding the currency in which the funds will be received by the beneficiary.** If the U.S. consumer states 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 U.S. consumer does not know if the recipient's account is denominated in a different currency than the funding 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 U.S. remittance providers are reevaluating 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 U.S. Dollars. More commonly, many U.S. remittance providers may opt to specifically ask U.S. 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 U.S. consumer's response indicates that the currency the beneficiary needs to receive is different than the funding currency the U.S. remittance transfer provider will know that a foreign exchange conversion will occur:

1) If the U.S. consumer states that the currency the beneficiary needs to receive is U.S. Dollar, the U.S. remittance provider may decide to execute the transfer in USD, without converting it. In the event the U.S. consumer was incorrect and foreign exchange conversion was conducted by another bank, the U.S. remittance provider can claim that they determined the currency of the transfer based upon the representation of the U.S. consumer and as such would not need to remedy any foreign exchange rate

related errors.

2) If the U.S. 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 U.S. remittance transfer provider will most likely opt to perform the foreign exchange conversion themselves, executing the transfer in the foreign currency. If the provider executes in the foreign currency, it will have the enhanced ability to disclose an accurate foreign exchange rate.

3) Finally, if the U.S. 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 U.S. consumer cannot make currency representations, the payment will be executed in U.S. Dollars, since most U.S. financial institutions only offer U.S. 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 U.S. 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*** – U.S. consumer will have 30 minutes from the time of making payment or authorizing the transfer to cancel the payment. The U.S. remittance provider must refund to the consumer within 3 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 U.S. remittance providers will hold a transfer for 30 minutes before releasing it. Hence, if a U.S. consumer cancels the transfer, the held transfer will be cancelled and no funds will be deducted from the U.S. consumer's account so that a refund is unnecessary.

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

    - For amount errors, a U.S. consumer can choose for the U.S. 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 U.S. consumer.

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

Dodd Frank 1073 amends the Electronic Funds Transfers 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.[4] This change of legal governance creates new liabilities for U.S. remittance transfers providers related to payment party 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.

Previous versions of the rule overrode the number over name rule by holding U.S. remittance transfer providers strictly liable in the event funds were deposited into an unintended account due to a U.S. consumer's incorrect account number instruction. The New Final Rule effectively reverses this strict liability for sender errors related to the beneficiary's account number and beneficiary bank identification. Specifically, providers will not be liable for deposits into unintended accounts that result from incorrect beneficiary account number or beneficiary bank identification information provided by the sender, if certain preconditions are met.[5] In the event the U.S. remittance transfer provider does not fulfill these preconditions, the provider may be liable for any losses that would occur if the funds are paid to the wrong beneficiary or beneficiary's bank.

Exceptions and Estimations

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

The Temporary Exception for ***U.S. 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 FX rate, covered third party fees and any other disclosed amounts that are dependent upon estimated exchange rate or covered third party fees. **However, estimates are not allowed for FX rates or covered third party fees, if the U.S. remittance provider has a correspondent relationship with the foreign bank that sets the rate or fee.** The regulation does not define a "correspondent relationship," but the official interpretation of the regulation indicates a regulator expectation that U.S. remittance transfer providers can adjust contractual

[4] Wires that are not remittance transfers, i.e., commercial wires and domestic consumer wires remain governed by UCC4A.

[5] The preconditions include advising the U.S. consumer before they pay for their transfer that an incorrect account or institution identifier instruction may result in loss of funds and using reasonably available means to confirm that an institution identifier matches the named beneficiary institution. These preconditions are generally considered to be reasonable and feasible by U.S. banks.

arrangements with foreign banks with which they have correspondent relationships so that accurate FX rate and fee information are provided to the U.S. remittance transfer provider.

The Temporary Exception is set to expire on July 21, 2015 after which U.S. depository institutions that are remittance providers will no longer be able to avail themselves of this exception. However, the CFPB can extend the exception for up to five more years, if it finds the exception is still needed.

The two permanent exceptions permit U.S. remittance providers to estimate foreign exchange rate and amounts dependent upon the foreign exchange rate (such as the transfer amount in the receipt currency) in limited circumstances.

The first exception applies to transfers to countries that have foreign currency control laws that prevent a U.S. 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 the currency control laws that prevent a U.S. 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 U.S. 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.

This and other PMPG information is available on their website: www.pmpg.info. The PMPG can be contacted through the PMPG Secretariat: info@pmpg.info.

Possible Changes US Remittance Transfer Providers may make in their Payment Practices based on US Community Dialogue

Based upon the requirements of the New Final Rule, US remittance transfer providers may make changes to their payment practices in order to allow them to better comply with the requirements of the Rule. The PMPG does not define these practices as new Market Practice Guidelines and only provides them in this document as an inventory of potential or expected changes.

1) Use of codeword /CCT/ - When bilaterally agreed with a foreign bank or banks, a US remittance transfer provider may select to utilize the code CCT to identify payments that require compliance with Dodd Frank Section 1073. The foreign bank may bilaterally agree to recognize CCT; field 26T is recommended. Bilateral agreements to honor the identification of consumer payments with such a codeword may include any of the following provisions:

    a. Special lifting fee pricing for consumer payments (in the event the bilateral agreement is between the US remittance transfer provider and an intermediary).
    b. Exchange into foreign currency by the intermediary or beneficiary's bank at a pre-determined static daily rate or spread.
    c. Special handling of returns, unable to apply or other investigation cases

2) Use of "cover payments" – Certain US remittance transfer providers may select to execute their consumer originated foreign payments using the cover payment method. This means that the US remittance transfer provider would send a direct MT103 to the final beneficiary's bank while only sending a Bank to Bank cover payment through intermediary banks (either as a CHIPS or Fedwire Bank Transfer – BTR COV, or a SWIFT MT202 COV). Since foreign correspondents would not deduct lifting fees from bank to bank transfers, the US remittance transfer provider would effectively eliminate the possibility of covered fees from even occurring.

3) Use of OUR charge code instruction – In the event the US remittance transfer provider cannot execute the payment as a cover payment, they may opt to execute the payment advising the OUR charge code. This too would effectively eliminate the possibility of a covered fee from even occurring. OUR charge code instruction may especially be more common on payments executed from the US in a foreign currency since they are typically settled through SWIFT enabled foreign nostro correspondent banks.[6]

4) Conversion of the payment in the US – In order to be able to disclose the FX exchange rate at which a payment will be converted, the US remittance transfer provider may consider converting the payment into the currency of the beneficiary's account in the US and executing the payment in foreign currency. It is, therefore, possible that more US Remittance Providers will be originating payments in foreign currencies.

Foreign correspondents should 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.

[6] The use of OUR charge code instructions is fairly limited in US Dollar clearing between US financial institutions since CHIPS and Fedwire cannot carry a full OUR code.