

**THE CLEARING HOUSE  
IMAGE EXCHANGE NETWORK  
RULES OF MEMBERSHIP**

As amended through January 1, 2016

## **THE CLEARING HOUSE IMAGE EXCHANGE NETWORK RULES OF MEMBERSHIP**

*The Clearing House Image Exchange Network Rules of Membership may also be referred to from time to time as the “Membership Rules” or the “SVPCO Membership Rules.” Capitalized terms used but not defined herein shall have the meaning assigned to such terms in The Clearing House Image Exchange Network Operating Rules, as amended from time to time (also known as the “Network Rules” or the “SVPCO Network Rules,” and together with the SVPCO Membership Rules, the “SVPCO Rules”).*

### **1. Eligibility for Participation**

- (a) Any “depository institution” as defined in § 19(b) of the Federal Reserve Act, 12 U.S.C. § 461(b), may apply to become a Participant in The Clearing House Image Exchange Network.
- (b) A prospective Participant must have been assigned a valid routing number in accordance with procedures established by the American Bankers Association.

### **2. Procedures for Approval of Applicants**

- (a) A prospective Participant must:
  - (i) execute and deliver to The Clearing House the Participant Agreement and Indemnity set forth in Appendix A of these rules or such other agreement as has been approved by the Chief Executive Officer (“CEO”) of The Clearing House or his or her designee; and
  - (ii) have agreed to pay all such fees, dues, operating charges, and assessments, if any, and have paid such application fee, if any, as shall have been prescribed by The Clearing House.
- (b) A prospective Participant will be evaluated in accordance with procedures established by The Clearing House. A prospective Participant becomes a Participant upon notification from the CEO of The Clearing House or his or her designee that its application to become a Participant has been approved by The Clearing House.

### **3. Designation of Third-Party Agent**

A Participant may designate one or more banks or nonbanks as its third-party agent(s) to perform any of its functions provided for under the Image Exchange Network Operating

Rules. A Participant making a designation pursuant to this section (i) must execute and deliver to The Clearing House the form set forth in Appendix B of these Membership Rules or such other agreement as has been approved by the CEO of The Clearing House or his or her designee and (ii) shall be fully responsible for all obligations arising from the acts or omissions of its third-party agent(s).

4. **Merger or Consolidation of Participants**

In the event of the merger or consolidation of two or more Participants, the surviving or resulting institution may continue to be a Participant without the payment of any additional dues or assessments occasioned by such merger or consolidation, provided that the surviving or resulting institution continues to meet the requirements of sections 1 and 2 above.

5. **Merger or Consolidation of a Participant and a Nonparticipant**

(a) In the event of a merger or consolidation of one or more Participants and one or more nonparticipants under circumstances where a Participant is to be the surviving or resulting institution, the latter may continue to be a Participant upon the payment of such additional dues and assessments, if any, as shall have been prescribed by The Clearing House as applicable to such mergers and consolidations, and provided that the surviving or resulting institution continues to meet the requirements of sections 1 and 2 above.

(b) In the event the merger or consolidation involving one or more Participants and one or more nonparticipants under circumstances where a nonparticipant is to be the surviving or resulting institution, the latter may, if it desires to become a Participant and is eligible for such participation, take whatever action is necessary in respect thereto in accordance with the provisions of sections 1 and above. The surviving or resulting institution may continue to exchange items and electronic information through the Image Exchange for a reasonable period of time as determined by the CEO of The Clearing House or his or her designee in his or her sole discretion while the surviving or resulting institution applies to become a Participant, for a reasonable period of time as determined by the CEO of The Clearing House or his or her designee while the surviving or resulting institution makes alternative arrangements for exchanging items and electronic information.

6. **Resignation**

Any Participant may resign from the Network in accordance with Section II(J)(2) of the Network Rules. The notice shall designate the date the resignation is to become effective. Shorter notice of a resignation shall be effective if accepted by The Clearing

House. In the event of any resignation, The Clearing House shall promptly notify each of the other Participants of the resignation and its effective date.

7. **Termination or Suspension**

- (a) Any Participant that suspends payments (as defined in § 4-104 of the Uniform Commercial Code) for any reason shall thereby cease to be a Participant.
- (b) The CEO of The Clearing House or his or designee may terminate or suspend a Participant at any time if he or she determines, in his or her sole discretion, that its continued Participation would not be in the best interests of The Clearing House or the other Participants. Such determination by way of example but no by way of limiting the discretion of the CEO of The Clearing House or his or her designee, may be based on any one of the following:
  - (i) repeated or willful violations of the provisions of the Network Rules or the Membership Rules (together referred to, as amended from time to time, the “Rules”);
  - (ii) failure to pay TCH when due any fees, dues, operating charges, or assessments owing to TCH;
  - (iii) the occurrence of any act, event, or condition that leads the CEO of TCH or his or her designee to determine that a Participant is or is about to become insolvent or unable to meet its obligations under the Rules or is being operated in an unsafe or unsound manner; or
  - (iv) the commencement of any proceedings by or before any regulatory body to terminate a Participant’s deposit insurance or cause it or any of its officers or directors to desist from any alleged unsafe or unsound practice.

Any termination or suspension taken under this paragraph (b) will be effective from the time set by the CEO of The Clearing House or his or her designee and continue unless or until it is countermanded by the Board of Directors of The Clearing House (the “Board of Directors”), or such committee as The Clearing House as may be designated by the Board of Directors.

- (c) In the event of the cessation, termination, or suspension of a Participant under the provisions of this section, The Clearing House will promptly notify the Participant and each other Participant of the action and its effective date.

8. **Obligation of a Participant on Resignation, Suspension, or Other Termination of Participants**

A Participant that resigns from the Network or whose participation in the Network shall have otherwise been terminated or suspended for any reason shall be and remain liable to The Clearing House and the other Participants for or on account of any obligations that have accrued or that have arisen or may arise out of any transaction that has taken place prior to the effective date of such resignation, termination, or suspension.

9. **Nontransferability of Rights of Participation**

A Participant's rights of participation in the Network shall not be transferable or assignable, whether by sale, merger, consolidation, or otherwise, except as expressly provided herein. Notwithstanding the previous sentence, if a Participant is closed by order of an appropriate state or federal financial institution regulatory authority or a court of competent jurisdiction and some or all of its deposits are transferred to another depository institution that is not a Participant, the transferee depository institution may continue to exchange items and electronic information through the Network for a reasonable period of time as determined by the CEO of The Clearing House or his or her designee in his or her sole discretion while the transferee depository institution applies to become a Participant.

10. **Binding Agreement; Assignment**

The Rules shall inure to the benefit of The Clearing House and its successors and assigns and shall be binding on the Participants and their respective successors and assigns, except that no Participant may transfer or assign its rights or obligations thereunder except as expressly provided herein. The Clearing House may assign its rights or its obligations under the Rules and the Participant Agreement and Indemnity to any subsidiary or affiliate of The Clearing House and shall provide prompt notice of the assignment to each Participant.

## APPENDIX A

### PARTICIPANT AGREEMENT AND INDEMNITY

In consideration (a) of the undersigned being admitted as a Participant of The Clearing House Image Exchange Network of The Clearing House Payments Company L.L.C. ("The Clearing House"), (b) of The Clearing House acting as a clearing house to enable Participants to exchange items and electronic information derived from the Magnetic Ink Character Recognition lines of those items, and (c) of the mutual indemnifications of the undersigned by each other Participant of The Clearing House Image Exchange Network, the undersigned, which intends to act as a Participant of The Clearing Image Exchange Network, hereby agrees with The Clearing House and with each other Participant:

(1) to comply with and be subject to The Clearing House Image Exchange Network Rules of Membership and The Clearing House Image Exchange Network Operating Rules (together referred to, as amended from time to time, the "Rules"), including descriptive requirements, as in effect from time to time;

(2) to make all payments required by the Rules;

(3) to indemnify and hold harmless The Clearing House and each other Participant from all costs, charges, claims, demands, expenses (including costs of investigation and attorneys' fees and expenses of litigation), losses, liabilities, damages, judgments, fines, penalties, interest, and amounts paid in settlement (each referred to herein as a "cost") resulting from any failure on the part of the undersigned to exercise ordinary care or to comply with any of the provisions of the Rules, except for amounts paid in settlement of such costs unless the undersigned shall have received 10 days prior written notice of the proposed settlement thereof;

(4) to indemnify and hold harmless The Clearing House from all costs, including costs attributable to the consequences of The Clearing House's conduct, resulting from the operation of the Network during the period the undersigned is a Participant, excluding only any cost to the extent it resulted directly and immediately from (i) the gross negligence or willful misconduct of The Clearing House or (ii) any failure on the part of The Clearing House to comply with the provisions of the Rules. Pursuant to this indemnity, each Participant shall pay

The Clearing House promptly on demand that portion of The Clearing House's costs that is equal to the proportion of Network Usage (as defined in the Rules) of that Participant to the total Network Usage of all Participants during the three months preceding the date on which a cost was incurred; and

(5) to indemnify and hold harmless each Federal Reserve Bank as required by any applicable Federal Reserve Bank Operating Circular and, if the applicable Federal Reserve Bank Operating Circular provides that payment of a Federal Reserve Bank's claim for indemnity is to be provided by the settling participants and the undersigned is a settling participant at the time the Reserve Bank incurred the loss or expense, then the undersigned agrees to pay the Reserve Bank an amount that includes its own proportionate share as determined in accordance with the Rules plus the proportionate share of each non-settling participant for which it settles; if the applicable Federal Reserve Bank Operating Circular provides that payment of a Reserve Bank's claim for indemnity is provided by the settling Participants and the undersigned is a nonsettling Participant at the time the Reserve Bank incurred the loss or expense, the undersigned indemnifies and holds harmless its settling participant for any amount that the settling participant paid the Reserve Bank in respect of the undersigned and further agrees that the settling participant may recover the amount of such claim by debiting any account of the undersigned on its books.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The participant and The Clearing House submit to the exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan of the City of New York.

This Agreement shall inure to the benefit of The Clearing House and its successors and shall be binding on the undersigned and its successors and assigns, except no Participant may transfer or assign its rights or obligations hereunder except as expressly provided in the Rules. The Clearing House may assign its rights or its obligations to any subsidiary or affiliate of The Clearing House and shall provide prompt notice of the assignment to each Participant.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Routing Numbers)

\_\_\_\_\_  
(Participant)

By: \_\_\_\_\_  
(Signature and Title)

Accepted this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

The Clearing House Payments Company L.L.C.

By: \_\_\_\_\_  
Title:



## APPENDIX B

### [To be typed on Participant's Letterhead]

[Date]

The Clearing House Payments Company L.L.C.  
1114 Avenue of the Americas, 17<sup>th</sup> Floor  
New York, New York 10036  
Attention: SVPCO Product Manager

Re: [Name of Participant] - Designation of Service Provider as Third-Party Agent

Ladies and Gentlemen:

We hereby notify The Clearing House Payments Company L.L.C. (“The Clearing House”) that we have appointed [insert name of service provider] (“Service Provider”) as our third-party agent to perform certain functions on our behalf under The Clearing House Image Exchange Network Operating Rules (the “Network Rules”). Terms used herein shall have the same meaning as in the Network Rules.

The Service Provider is authorized by us to perform the following functions on our behalf as our third-party agent: (checks the authorized functions)

- To use the Network to send images and other image-related files directly to Participants.
- To use the Network to receive images and other image-related files directly from Participants.
- Only if the Service Provider is a Participant, to settle for images exchanged by us directly with other Participants using the Network.
- To use the Network to receive images directly from us for the sole purpose of reconverting those images into substitute checks, as such term is defined in Federal Reserve Regulation CC, in order to facilitate the presentment of such substitute checks to their paying banks.

We agree that, notwithstanding any act or failure to act of Service Provider, we shall remain fully responsible for all obligations arising from our participation in the Network including those actions performed by the Service Provider on our behalf as our third-party agent pursuant to this agreement.

We agree to indemnify The Clearing House and its respective directors, officers, employees, agents and representatives (“covered parties”) against and hold the parties harmless from any and all claims, liabilities, losses, damages and expenses (including, but not limited to, attorneys’ fees and expenses of litigation) arising out of or in connection with our acts or omissions or the acts or omissions of the Service Provider or of our agents of the Service Provider’s agents except, however, for claims, liabilities losses, damages, and expenses to the extent that they arise directly and immediately from the gross negligence or willful misconduct of the covered parties.

Nothing in this agreement abrogates or derogates from any obligation of ours under the Participant Agreement and Indemnity executed by us or under the Network Rules or Membership Rules.

This agreement shall insure to the benefit of The Clearing House’s successors and assigns.

Very truly yours,

Participant’s Name:

\_\_\_\_\_

Authorized Signature:

\_\_\_\_\_

Name & Title

\_\_\_\_\_

Accepted this \_\_\_\_\_ day of \_\_\_\_\_

The Clearing House Payments Company L.L.C.

By: \_\_\_\_\_

Title: