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Comment Intake
Consumer Financial Protection Bureau
1700 G St. NW
Washington, DC 20552

Re: Request for Information Regarding Potential Regulatory Changes to the Remittance Rule

Dear Sir or Madam:

The U.S. Chamber of Commerce's ("Chamber") Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to comment on the request for information of the Consumer Financial Protection Bureau ("Bureau") regarding potential changes to the regulatory framework governing international remittances (the "Remittance Rule" or the "Rule") for insured institutions. Enormous consumer demand for these services, measuring in the hundreds of billions of dollars each year, makes them a critical part of many consumers' financial lives. It is thus very important that the Bureau regulate this marketplace in a manner that ensures access to safe remittance services for consumers.

To that end, we have been grateful for the Bureau's ongoing engagement with industry stakeholders on the Remittance Rule. As currently in effect, the Rule incorporates important revisions made by the Bureau to make it more workable for relevant businesses.[1] For example, it provides that fee disclosure is, in certain circumstances, optional, and that banks are not automatically responsible for errors that resulted from a consumer providing an incorrect account number.[2] We appreciated the Bureau's collaboration with industry stakeholders to ensure that such necessary changes were made to the Remittance Rule to limit unintended negative

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[1] *See generally* Final Rule, Electronic Funds Transfers (Regulation E), 78 Fed. Reg. 30662, 30663-30666 (May 22, 2013) ("2013 Rule") (describing drafting process for the Remittance Rule).
[2] *See* 12 C.F.R. § 1005.31 (providing rules regarding fee disclosure); 12 C.F.R. § 1005.33(a)(1)(iv)(D) (providing rules regarding errors and incorrect account number provided by consumer).

consequences. We anticipate that further engagement with stakeholders will be important in the future, particularly as legal frameworks that interact with the Rule change over time.[3]

We are currently concerned, however, about the potential for significant disruption to the remittances market – and loss of access to remittances for consumers who rely upon banks for these important services – upon the anticipated expiration of the so-called "temporary exception," which currently allows insured institutions to estimate fees in certain specific circumstances. We accordingly write to emphasize three points:

1. Financial institutions will not be able to precisely determine all third-party fees and exchange rates when the temporary exception expires;

2. The Bureau should take every available step within its authority to preserve consumers' access to remittance services offered by financial institutions; and

3. The Bureau has ample authority to address uncertainty over fees and exchange rate estimates.

Background on International Remittances Offered By Financial Institutions

Banks and other financial institutions play an important role in the remittance transfer market. Although they do not complete as many remittances as money service businesses, they provide consumers with a valued—and often preferred—option, particularly for higher value transfers. This is unsurprising. Many consumers have long-standing relationships with their financial institutions and trust them with numerous aspects of their financial lives from their mortgages to their savings accounts, and from online bill pay to their credit cards. Many consumers simply feel more comfortable relying upon their banks for assistance sending substantial amounts of money outside the United States, including because banks offer a broader range of services than dedicated money service businesses. Moreover, banks' participation in the remittance transfer market provides systemic benefits, both because of the competition banks bring to the marketplace and because of banks' commitment to compliance with a broad range of regulatory schemes, including those that guard against fraud and money laundering.

[3] For example, we have heard concerns from our members about the need to comply with fee disclosure requirements with respect to countries that are being removed from U.S. sanctions lists. In that event, it would be important to grant remittance transfer providers sufficient time to learn about the relevant fee structures in such countries.

The Bureau's recent assessment of the Remittance Rule (the "Assessment") confirms the important role that banks play in the remittance transfer market. As explained by the Bureau:

- Banks conducted 13.9 million transfers in 2017, which accounted for 4.2% of total transfers.[4]

- The average transfer size using a money service business was $381 in 2017.[5] In the same time frame, the average transfer size using a bank was approximately $6,800.[6]

- Because of the much-higher average dollar value of remittances conducted by banks, banks accounted for 43.2% of the dollar volume of remittances – or $95 billion.[7]

- 3,538 banks offered remittances in 2017.[8] However, "[r]emittance transfer volumes are highly concentrated among banks."[9] "The top 10 providers accounted for 90% of remittance transfers [by banks] in 2017."[10]

- Bank remittance services are typically offered as wire transfers. In 2017, 3,576 banks reported using international wires, 516 reported using international ACH, 73 reported using other proprietary services by institution, and 119 reported using proprietary services by another party (banks were able to select more than one method in answering this question).[11]

- While we believe that this is an under-estimation for the reasons discussed below, bank call report data indicates that 6.4% of all bank transfers relied upon the "temporary exception" provided by the Dodd-

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[4] Bureau of Consumer Financial Protection, Remittance Rule Assessment Report 64, 73 (rev. April 2019).
[5] *Id.* at 68.
[6] *Id.* at 63-64. 73 (43.2% of $220B total volume across 13.9 million remittances).
[7] *Id.* at 63-64. The Bureau describes a total of $220B in remittance transfers in 2017.
[8] *Id.* at 70.
[9] *Id.* at 77.
[10] *Id.*
[11] *Id.* at 71 n.190.

> Frank Act; equivalent to approximately $6 billion in remittances.[12] Moreover, "[t]he largest banks tend to be the ones using the temporary exception."[13] Because of the concentration in the market as discussed above, the reliance of the largest banks on the temporary exception should guide the Bureau's policy judgment—particularly as it evaluates potential impact on consumers—more than the actions of institutions with much smaller market shares.

In short, banks play an important role in the remittance market. It is vitally important for the Bureau to allow banks to continue to play this role and to serve their customers. Some of the largest banks currently rely upon the temporary exception and they are likely to substantially reduce the number of remittances provided to consumers absent action by the Bureau. Failure to act thus could have very harmful consequences for consumers who are forced to work with suppliers with whom they are not familiar or comfortable, particular for sending large amounts of their money abroad. The reduction in banks providing remittance transfers also could hurt competition in the market over the long term and reduce the benefits associated with banks' anti-fraud practices and their close supervision by the Bureau and other regulatory agencies.

Discussion

1. Financial Institutions Will Not Be Able To Precisely Determine All Third-Party Fees And Exchange Rates When The Temporary Exception Expires

As reflected in the Bureau's Assessment, banks primarily use international wire transfers to provide remittance transfers to their customers. The vast majority of such international wire transfers rely upon the correspondent bank system.[14] The Bureau's Assessment summarizes one hypothetical example of how "First Main Street Bank" might conduct a wire transfer through the correspondent bank system to "Sparrow

[12] *Id.* at 6. This figure is not provided in the Assessment, but is calculated on the assumption that the relevant 6.4% of transactions had approximately the same average dollar value as the average transaction across the full 13.9 million transfers.
[13] *Id.* at 139.
[14] Bilateral relationships between sending and recipient banks can reduce or eliminate uncertainty as to exchange rates or fees. Correspondent relationships far outnumber bilateral relationships; however, it is impractical for each individual bank to maintain a vast web of direct relationships with foreign banks.

Bank" in the United Kingdom.[15] As described in that example, the two banks lack a direct relationship with each other, so rely upon a chain of transfers through other banks in the United States and the United Kingdom. As the Bureau explains, "[t]he correspondent banking network is notable for its decentralization. In the example, not only did First Main Street and Sparrow lack a direct relationship, but there was no single intermediary between them—instead, the transfer followed a chain, from a 'respondent' bank through two 'correspondent' banks to a final 'respondent' bank."[16]

Moreover, as the Bureau clarifies, "many transfers processed through the correspondent banking network are substantially more complex than this [simple example], and funds may pass through an even-greater number institutions before arriving at a final destination."[17] This system has substantial advantages: "The correspondent banking network has historically offered flexibility and resilience to banks and credit unions that want to offer cross-border payments services to their customers."[18] However, as the Bureau itself has made clear, "a sending bank relying on the correspondent banking network has not always been able to offer its customers full certainty regarding the terms and costs of transfers. Furthermore, a sending bank may not always able to track the transfer once it has been passed to the correspondent bank."[19] Whether this is the case can vary by individual remittance transfer, rather than being categorically the case for individual remittance transfer corridors. Thus, the Bureau explains:

> [T]he manner by which the payment is routed and the correspondent relationships needed to reach the beneficiary bank, rather than the country in which the beneficiary bank is located, could also play a role in the use of the temporary exception to estimate fees, such that a bank could provide actual fee information for certain transfers, but only estimated fee information for other transfers, even though the transfers are sent to the same country.[20]

Challenges associated with precisely determining fees and exchange rates are commonly experienced by the banks that perform the largest number of remittance transfers. We understand that call report answers regarding reliance upon the temporary exception may vary, however, based on banks' internal analyses of which

[15] *Id.* at 52.
[16] *Id.*
[17] *Id.* at 53.
[18] *Id.*
[19] *Id.*
[20] *Id.* at 140.

fees must be disclosed as part of the remittance transfer. In fact, the Bureau's Assessment recognizes that banks may have underreported their use of the temporary exception.[21] To that end, we understand that banks have different understandings about what fees charged by the recipient bank should be included in the mandatory disclosures. Banks that interpret those requirements broadly would report use of the temporary exception when they are unable to determine the precise amount of those third-party fees, while a narrower interpretation would lead to the conclusion that no such report was necessary. Reliance on the temporary exemption may also depend on the corridors to which the reporting bank sends remittances. As a result, the Bureau should be very hesitant about relying upon call report data to conclude that similarly situated banks can precisely determine fees where their peers have failed.

The Bureau's Assessment notes that "some market participants (including SWIFT) have begun introducing innovations intended to provide greater end-to-end certainty over the terms of international interbank payments."[22] The Assessment points to a later discussion for information about "services recently deployed to the market [that] purport to both" of the primary limitations identified by the Bureau: lack of certainty about terms and costs of transfers and the ability to track a transfer past the correspondent bank.[23] The referenced discussion, however, does not provide any comfort that these issues will be addressed in the near future. Specifically, it discusses "innovation coming from a well-established entity" in the form of "SWIFT's global payments innovation ('gpi') product."[24] The Bureau's discussion makes clear, however, that the gpi product only holds the *promise* of partially solving the identified issues. It is not a short-term solution. Thus, the Bureau notes that "SWIFT gpi purports to offer users a substantial upgrade in their ability to track payments and offers senders the potential for certainty regarding the terms and timings of payments."[25] The Bureau does not indicate that this promise has been realized (or that it soon will be).

While we share the Bureau's belief that private-sector innovation may help alleviate these issues over time, the Bureau's Assessment makes clear that the issues it has correctly identified have not yet been addressed. Indeed, this is consistent with the experience of financial institutions. Our conversations have made clear that they do

[21] *Id.* at 141 n.313 ("Given this confusion, it is possible that these institutions may not have understood the question [about use of the temporary exception]. It is also possible that some banks and credit unions are relying on the exception and do not realize it.").
[22] *Id.*
[23] *Id.* (referring to Section 3.2.7 of the Assessment).
[24] *Id.* at 103.
[25] *Id.* at 103 n.223.

not view SWIFT gpi, for example, as a candidate to solve the broad issues identified by the Bureau in the near term. SWIFT plays an extremely important role in the international payments system, as the Bureau itself describes,[26] but we are aware of no evidence that it is prepared to fill information gaps that follow from the decentralized nature of the correspondent banking system. Moreover, an important distinction is that, while SWIFT gpi is designed to make international wires trackable, it does not enable participating banks to provide disclosures *at the time of the transaction*. While other banks in the chain can enter information about the payment – such as covered third-party fees and the foreign exchange rate – they cannot do so until *after* they have received the payment. Moreover, we note that other instructions options when making a SWIFT international transfer – such as a the option to use the "Charge OUR" payment methodology – also have substantial limitations,[27] and that other options that may provide benefits in some circumstances, such as the use of SWIFT's Relationship Management Application ("RMA"), are not scalable.[28]

To be clear, the aspects of the correspondent bank system that make it difficult to precisely determine fees and exchange rates in some cases are the very same aspects that make it flexible and resilient. Given its advantages, there should be no expectation that banks will or should move away from their historical emphasis on correspondent relationships. Moreover, the Bureau has recognized that alternative approaches to providing remittance services, such as international ACH and proprietary closed-network solutions, also would not allow banks to conclusively determine fees and exchange rates in every instance. Thus, in 2014, the Bureau noted that its understanding was "largely in accord" with industry explanations of the "drawbacks to wire transfer alternatives such as international ACH and closed-network remittance transfer products."[29] "[C]onsistent with the Bureau's understanding of current market conditions," industry participants explained that such

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[26] *Id.* at 53, 55-56.
[27] For example, for an "OUR" instruction to be available, there must be an RMA relationship between the originating bank and the bank receiving the instruction, and the beneficiary bank to honor the instruction (notably, many countries, including Canada, Japan, Chile, El Salvador, Ecuador, and the Philippines do not honor "OUR" and, even in countries that generally honor the instruction, individual banks may not).
[28] Use of RMAs allows banks to send messages to each other on the SWIFT network and also permits the originating bank to instruct the beneficiary bank to charge back any lifting fees to the sending bank through the use of an "OUR" code. While there are benefits to such relationships where there are sufficient anticipated volumes, it is not feasible for banks to establish RMA relationships with every bank on the SWIFT network.
[29] Bureau of Consumer Financial Protection, Electronic Funds Transfers (Regulation E), 79 Fed. Reg. 55970, 55981 (Sept. 18, 2014).

alternative products "provide a solution only for remittance transfers to a limited set of destination countries" and "providers would have difficulty sending remittance transfers to some destinations without reliance on the temporary exception."[30] That remains true today. International ACH and closed-network solutions still do not offer a solution to the challenge of precisely determining fees and exchange rates for the reasons discussed above.[31]

2. The Bureau Should Take Every Available Step Within Its Authority To Preserve Consumers' Access To Remittance Services Offered By Financial Institutions

Inaction by the Bureau will hurt consumers. As discussed above, banks simply will be unable to precisely determine relevant fees and the governing exchange rate in every transaction. Banks consequently will be required to forgo a substantial number of remittance transfers, forcing consumers to use an alternative provider if they wish to proceed with the transaction. This would be a very unfortunate result. There are good reasons why consumers choose to use banks to conduct remittance transfers. Regulatory quirks should not override those decisions by consumers. The Bureau instead should ensure that its regulatory frameworks do not distort the marketplace. This is particularly true where, as here, the effect of the regulation in question may sweep well beyond the subset of transactions for which banks will be unable to precisely determine fees and exchange rates. As discussed above, uncertainty over fees and exchange rates will be a case-by-case issue for most, if not all, remittance transfers. As a result, banks may be able to accurately determine fees and exchange rates for some remittance transfers to a particular country, but not for other remittance transfers to the same country. This will put banks in a very difficult situation as they work to serve their customers: they either will have to abandon entire remittance corridors or try to explain to their customers why they can send money to certain recipients who use particular banks in a foreign country, but not to other recipients who use different banks in that country.

The Bureau has a range of tools at its disposal, including formal amendment of the Rule, providing interpretive guidance, and no-action relief. We urge the Bureau to use all appropriate tools within its authority to prevent consumers from losing access to remittance transfers presently offered by banks relying upon the temporary

[30] *Id.* We note that money-service businesses may not be able to accurately identify fees in all cases.
[31] As the Bureau notes in its Assessment, there has not been evidence of innovation in the international ACH system that would address the challenges associated with precisely determining fees and exchange rates. *See* Assessment 102 ("International transactions also utilize the ACH system, for which evidence of the effect of such innovation to date is uncertain.").

exception. In doing so, the Bureau will allow banks to continue to provide remittance transfers to a wide range of remittance corridors to serve all of their customers' needs, accompanied by disclosures based on the best available information. In this way, the Bureau will meet its statutory objective of ensuring that "consumers are provided with timely and understandable information to make responsible decisions about financial transactions."[32] In contrast, causing consumers to lose access to safe products or remittance channel choice because of an insistence that banks provide unavailable information will frustrate the statutory objectives established for the Bureau by Congress.

3. The Bureau Has Ample Authority To Help Banks Address Uncertainty Over Fees And Exchange Rates

Even assuming that the Bureau may not extend the temporary exception, it still has ample authority to help banks address the uncertainty they face with respect to fees and exchange rates in certain transactions. The temporary exception was a particular tool that Congress provided the Bureau to achieve the statutory objective of ensuring that consumers had access to information about remittances that was as accurate as reasonably possible given market realities. Expiration of that exception does not alter that statutory purpose or eliminate the authority that the Bureau has to administer the Remittance Transfer provisions of Regulation E.

The Bureau relied upon that authority, for example, when it introduced the concepts of covered and non-covered third-party fees in its May 2013 amendments to the Remittance Rule.[33] Specifically, it modified the disclosure requirements to make clear that remittance transfer providers did not need to disclose "non-covered third-party fees."[34] In turn, it required "that remittance transfer providers include, as applicable, a disclaimer on the prepayment disclosure and receipt, or combined disclosure, indicating that the recipient may receive less due to fees charged by the recipient's bank."[35]

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[32] 12 U.S.C. § 5511(b)(1).
[33] *See* 2013 Rule, 78 Fed. Reg. at 30662
[34] 12 C.F.R. § 1005.31(b)(vi) (requiring disclosure of "covered third-party fees"); 12 C.F.R. § 1005.30(h) (defining "covered third-party fees" as third-party fees other than "non-covered third-party fees").
[35] *See* 2013 Rule, 78 Fed. Reg. at 30667.

Congress did not expressly grant the Bureau a specific authority to treat non-covered third-party fees in this manner. The Bureau relied instead upon its authority under EFTA Section 904(c) to issue this provision.[36] That statutory section provides:

> Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.[37]

This statutory provision provides the Bureau the authority and flexibility it needs to make the Rule work in the real world, including by ensuring that a bank is not held responsible for fees charged by third-party banks with which it has no relationship..

The Bureau similarly should rely upon this and other appropriate authority under EFTA and the Dodd-Frank Act to ensure that consumers continue to have access to remittance transfer services through their banks. Specifically, we would urge the Bureau to:

- Allow banks to achieve compliance with the regulation if they undertake reasonable steps to identify the fees and exchange rate that will be charged, such as by:
    - Relying upon its authority under EFTA Section 904(c) to allow a sending financial institution that relies upon open network transfers to provide estimated disclosures when it cannot reasonably know the fees and/or exchange rate that will apply; and/or
    - Relying upon its authority under EFTA Section 919(c) (15 U.S.C. § 1693o-1(c)) to identify open network transfers to a broad range of recipient countries as a "method" that does not allow "a remittance transfer provider to know the amount of currency that will be received by the designated recipient" and thus allow a provider to give a "reasonably accurate estimate of the foreign currency to be received;"

[36] *See id.* at 30668.
[37] 15 U.S.C. § 1693b(c).

- Expand the definition of "non-covered third-party fees" under 12 C.F.R. § 1005.30(h)(2) so that it covers any fees imposed by a third-party that the remittance transfer provider cannot determine after reasonable inquiry;

- Amend the definition of "error" under 12 C.F.R. § 1005.33, or provide relevant interpretive guidance, to ensure that the current provision addressing "extraordinary circumstances outside the remittance transfer provider's control that could not have been reasonably anticipated" covers instances in which a third-party fee is charged that was not previously identified during the reasonable review by the remittance transfer provider;[38]

- Amend 12 C.F.R. § 1005.31 to allow a remittance transfer provider that reasonably anticipates that additional third-party fees may be charged, affecting the total amount delivered to the recipient, to include a disclosure advising the sender that additional third-party fees outside the transfer provider's control may be charged; and,

- Expand the list of countries published under 12 C.F.R. § 1005.32 to include the countries that most frequently present challenges for remittance transfer providers in determining precise fees and exchange rates – in particular Australia, Canada, Chile, Japan, and the Philippines.[39]

In taking these steps, we would urge the Bureau to focus on stating clear rules for financial institutions by developing standards that avoid ambiguity and rely upon objective compliance criteria where possible.

We of course share the Bureau's goal of ensuring that any safe harbor or other provision that the Bureau establishes to address this challenge does not undermine the Rule more broadly. We would welcome any approach that allows responsible businesses to continue to provide consumers the services they desire while meeting an appropriate compliance framework. For example, we believe that the Bureau properly could require banks or other businesses that rely upon such a provision to adopt written procedures that ensure appropriate reliance on the provision, as well as to

[38] *See* 12 C.F.R. § 1005.33(a)(iii)(B).
[39] We note that this particular step, by itself, is unlikely to provide broad relief across financial institutions that each hold relationships with different institutions globally and thus may experience challenges precisely determining fees and exchange rates in a wide and varying range of countries.

maintain records of reliance upon such a provision. Combined with the Bureau's supervisory authority, such requirements would provide ample protection against any misuse of provisions that address the challenge of precisely determining fees and exchange rates for certain transactions.

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We thank you for your consideration of these comments and would be happy to discuss these issues further.

Sincerely,

Tom Quaadman