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A Client Alert from Paul Hastings

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The Dodd-Frank Act: Remittance Transfers

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Introduction

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act” or the “Act”) is landmark legislation that represents the most profound restructuring of financial regulation since the Great Depression. With the primary goal to “restore responsibility and accountability in our financial system to give Americans confidence that there is a system in place that works for and protects them,” the Dodd-Frank Act will have broad impact on the financial services industry for years to come.

Born out of the financial crisis that erupted in early 2008, the Dodd-Frank Act, composed of a series of new laws, is, in the aggregate, breathtaking in its scope. Highlights of the law include: 1) creation of the Bureau of Consumer Financial Protection, a new independent consumer watchdog agency housed with the Federal Reserve Board (“Board”), 2) the U.S. Department of Treasury, FDIC and the Board are granted broad new powers to seize, close and wind down “too big to fail” financial (including non-bank) institutions in an orderly fashion, 3) establishes a new Financial Stability Oversight Council, charged with identifying and responding to emerging risks throughout the financial system, composed primarily of federal financial services regulators and chaired by the Treasury Department, 4) restructures the federal regulatory jurisdiction over banks and their parent companies, and abolishes the Office of Thrift Supervision, 5) adopts new federal oversight of the insurance industry, 6) adopts new standards and rules for the mortgage business, 7) adopts new bank, thrift and holding company regulation, 8) adopts new federal regulation of the derivatives market, 9) adopts the so-called Volcker rule, substantially restricting proprietary trading by depository institutions, 10) imposes requirements for “funeral plans” by large, complex financial companies, 11) establishes new regulation of the securitization market through “skin in the game” and enhanced disclosure requirements, 12) establishes new regulation of interchange fees, 13) establishes new and enhanced compensation and corporate governance oversight for the financial services industry, 14) enhanced oversight of municipal securities, 15) provides a specific framework for payment, clearing and settlement regulation, 16) new federal hedge fund regulation, 17) new fiduciary duties and regulation of broker dealers, investment companies and investment advisors, 18) tasks the federal banking agencies with adopting new and enhanced capital standards for all depository institutions, 19) significantly narrows the scope of federal preemption for national banks and federal thrifts, and 20) places a moratorium on ownership of industrial loan banks by non-financial companies.

Furthermore, the Dodd-Frank Act provides broad and substantial delegations to various federal agencies to implement its many provisions through regulation. Hundreds of new federal regulations

addressing all of the major areas of the new law will be required, ensuring that federal rules and policies in this area will be further developing for years to come.

The Dodd-Frank Act profoundly impacts all major segments of the financial services industry, including 1) banks, 2) thrifts, 3) bank, financial savings with loan holding companies, 4) mortgage lenders, 5) insurance companies, 6) industrial loan companies and their parent companies, 7) investment mortgage and broker-dealer and investment advisor firms, and 8) hedge funds and private equity funds.

This *StayCurrent* bulletin addresses the impacts on financial institutions and money transmitters of the Dodd-Frank Act's provisions for regulation of consumer remittance transfers.

Coverage

Section 1073 of the Dodd-Frank Act amends the Electronic Fund Transfer Act¹ by adding a new Section 919, entitled "Remittance Transfers." It applies to consumer money remittance transactions "whether or not they are electronic funds transfers within the meaning of the EFTA.² It applies to consumer remittances initiated in the USA and sent to recipients located outside the USA.³ It applies to all money transmitters whether or not the consumer maintains an account with the money transmitter (called "remittance transfer providers").⁴ However the remittance transfer rules do not apply to "small-value transfers" of less than \$15.⁵

Remittance transfers within the Dodd-Frank Act that do not meet the definition of electronic funds transfers under EFTA §903 are not subject to EFTA sections 905 through 913⁶, while those remittance transfers that are within the definition of electronic funds transfers in EFTA §903 will be subject to all EFTA provisions except section 908, regarding error resolution. Error resolution for all remittance transfers will be governed by new EFTA Section 919(d). Remittance transfers that are currently subject to the EFTA and Regulation E will continue to be subject to existing rules as well as the new remittance transfer requirements of Section 919, e.g., additional disclosures, (except error resolution, which will be governed by section 919(d)).

Disclosures, Receipts, Notices

The Board is required to prescribe rules requiring that remittance providers must disclose to the sender -

Prior to the sender's paying any money, in a form that the sender may keep -

- the amount the recipient will receive denominated in the currency that the recipient will receive
- the amount of all fees charged by the remittance transfer provider in connection with the remittance transfer
- the exchange rate to be used (to the nearest 1/100th point)⁷

When the sender makes payment, the remittance provider must also provide a receipt showing the information above plus -

- the promised date of delivery to the recipient
- the name and either telephone number or address of the recipient (if provided by the sender)
- error resolution rights (as prescribed by the Act)
- contact information for the remittance provider and for the provider's state regulator as well as the Board's toll free number for consumer complaints⁸

For remittance transactions conducted electronically, the remittance provider must comply with the requirements of the E-Sign Act.⁹ The Board may by rule permit the remittance provider to—

- for transactions conducted entirely by telephone, provide the first group of disclosures orally and deliver the receipt and error resolution rights statement by mail 1 business day after the date of the transaction or, if the transaction is conducted through an asset account with the remittance provider, with the next periodic statement
- for transactions conducted electronically, provide notices required by the E-Sign Act by posting notices electronically in a manner that the sender can keep.¹⁰

Regarding disclosures of foreign currency amounts, insured depository institutions and insured credit unions may provide a reasonably accurate estimate of the amount of foreign currency to be delivered when the transfer is made through an asset account held by the sender with the remittance provider and if the exact amount cannot be determined at the time of the transaction "for reasons beyond its control."¹¹ Apparently non-depository licensed money transmitters must disclose the exact foreign currency amounts to be delivered unless the Board (the Bureau after functions are transferred) determines that the destination country does not allow or the method in which transactions are made in the country does not permit the remittance provider to know the exact foreign currency amount to be delivered. In that case, the Board may prescribe rules providing for disclosure of estimated amounts.¹²

The Board may adopt rules requiring remittance providers to post notices showing a model transfer showing the amount of the currency that will be received by the recipient of a transfer as prescribed by regulations. The Board may require that the notices be posted at every physical storefront location owned or controlled by the remittance provider. Online, the Board may require that the same notices be posted on the home page or landing page controlled by the remittance provider.¹³

All required disclosures must be made in English and in each foreign language principally used by the remittance provider or its agents at that office to market (orally or in writing) the remittance transfer service.¹⁴

Error Resolution

The Remittance Transfer provisions of Dodd-Frank replace the EFTA's error resolution process applicable to other electronic funds transfers with special procedures and remedies applicable to remittance transactions. The deadline for notice of an error from a consumer is 180 days from the promised delivery date of the transfer in question, as indicated on the receipt.¹⁵ The notice may be oral or written and must contain the amount of the transfer shown in the foreign currency amount as

shown on the receipt. There is no requirement in the statute for written confirmation of a notice given orally.¹⁶

Within 90 days after receipt of the error notice, the remittance provider must either provide to the sender written notice that there was no error with an explanation responding specifically to the sender's complaint or: i) refund to the sender the amount tendered; (ii) make available to the recipient or the sender at no additional charge the amount "appropriate" to resolve the error; or iii) provide another appropriate remedy, which the Board's regulations may establish "for the protection of senders."¹⁷ The Board must promulgate rules for appropriate procedures and remedies within 18 months from enactment. The rules must also provide for record-keeping, including documentation of the sender's complaint, the remittance provider's response and the provider's findings provided to the sender. The Board must also provide rules regarding appropriate cancellation and refund policies.¹⁸

Responsibility of Remittance Transfer Providers for Agents

Remittance transfer providers are held responsible for violations of their agents or delegates when they are acting for the remittance transfer provider.¹⁹ The Board is required to adopt regulations to implement appropriate standards for remittance transfer provider's liability for an agent's or delegate's conduct. Enforcement agencies are permitted to consider in any enforcement action the extent to which a remittance transfer provider maintains policies and oversight procedures for ensuring compliance by agents and delegates.²⁰

Expansion of Remittance Transfer Services to Foreign Destinations

The Act charges the Federal Reserve Board with expanding the use of the ACH system and other payment mechanisms for remittance to foreign countries that receive significant transfers from the U.S., based on several factors including the number of foreign residents receiving U.S. government payments and the ability of the Federal Reserve to establish gateways abroad to receive transmissions abroad and route them through payment systems located in the destination countries.²¹ Prudential regulators are required to provide guidelines to financial institutions for providing low-cost remittance transfers and no-cost basic accounts, as well as agency services to support remittance transfer providers.²² The Act also explicitly authorizes federal credit unions to sell to "persons in the field of membership" money transfer instruments including international and domestic remittance transfers.²³

Effective Date

The Dodd-Frank Act became effective July 22, 2010, unless a specific provision states a different effective date. There is not a different effective date for the Remittance Transfer section, although the substantive provisions are stated as "subject to rules to be adopted by the Board." It therefore appears that the substantive requirements of the Dodd-Frank Act will take effect when the Federal Reserve Board or the Bureau of Consumer Financial Protection adopts final rules. The Board is directed to adopt rules implementing disclosure and receipt requirements, clarifying requirements for providing estimates of foreign currency amounts at the time of the transaction, standards for error resolution procedures, cancellation and refund policies and obligations of financial institutions. Rules are to be adopted within 18 months of enactment of the Dodd-Frank Act, which would be January 21, 2012.

The Director's Reports

The Director of the Bureau of Consumer Financial Protection is required to report to the President and Congress within one year of enactment on the feasibility for using a consumer's remittance transaction history to enhance the consumer's credit score and ways to enhance accuracy of disclosures of the foreign currency amounts that will be received by recipients of funds transmissions.²⁴

Action Plan for Remittance Transfer Providers

- Review current disclosures and disclosure practices and plan for implementation of updated disclosures, pending clarification of various disclosure requirements.
- Review and if necessary revise procedures for determining exactly or, if permitted by the Act, estimating the foreign currency amounts to be delivered to transmission recipients, including accurate determination of the exchange rates to be used to support compliance with disclosure requirements.
- Plan for implementation of compliant notices to be displayed at physical locations and on internet sites showing costs and proceeds of sample remittance transfer transactions, pending adoption of such requirements by the Board.
- Review and where necessary plan to implement updated error resolution procedures and to meet associated record-keeping requirements, pending rules to be adopted by the Board.
- Review or adopt written policies and procedures for ensuring and monitoring compliance with the Act and regulations pursuant to the Act by agents and delegates.
- Consider participating in rulemaking procedures, including possible input on practical and operating issues raised by the form and content of disclosures required by the Act, particularly disclosure of amounts to be delivered in foreign currencies, and measures or clarifications consistent with the Act's requirements that could be adopted to accommodate practical constraints.
- Consider participating in rulemaking procedures related to exemptions that may be available under the Act that could ameliorate disclosure requirements.

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¹ 15 U.S.C 1693 et seq.

² Section 903(6) of the Electronic Funds Transfer Act, 15 U.S.C. 1693a(6), defines electronic funds transfer as:

⁶ The term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include--

- (A) any check guarantee or authorization service which does not directly result in a debit or credit to a customer's account;
- (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;
- (C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;
- (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or
- (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Board

³ EFTA §919(g)(2)(A). References are to EFTA Sections as they are re-numbered pursuant to the Dodd-Frank Act.

⁴ EFTA §919(g)(3)

⁵ EFTA §919(g)(2)(B); Comment 11-A, 72 FR 36589 (July 5, 2007)

⁶ The provisions of the EFTA that are not applicable to remittance transfers that are not electronic funds transfers cover:

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- §907 – Pre-authorized Transfers
- §908 – Error Resolution
- §909 – Liability for Unauthorized Transfers
- §910 – Liability of Financial Institutions
- §911 – Issuance of Cards
- §912 – Suspension of Obligations
- §913 – Compulsory Use of Electronic Funds Transfers

⁷ EFTA §919(a)(2)(A)

⁸ EFTA §919(a)(2)(B). The reference to the Board in this section will be changed to the Bureau and the toll free number is the consumer complaint hotline required by Dodd-Frank Act §1013(b)(3)(A).

⁹ Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 et seq. The so-called E-Sign legislation requires the consumer's affirmative consent and also requires additional disclosures and provides substantive rights to consumers.

¹⁰ EFTA §919(a)(5).

¹¹ EFTA §919(a)(4). This exception applies for 5 years unless the Bureau extends it for another 5 years. Ibid

¹² EFTA §919(c)

¹³ EFTA §919(a)(6)

¹⁴ EFTA §919(b)

¹⁵ EFTA §919(d)(1)(A)

¹⁶ Ibid

¹⁷ EFTA §919(d)(1)(B)

¹⁸ EFTA §919(d)(2), (3)

¹⁹ EFTA §919(f)(1)

²⁰ EFTA §919(f)(2)

²¹ Dodd-Frank Act, §1073(b)

²² Dodd-Frank Act, §1073(c)

²³ Dodd-Frank Act, §1073(d) It's not clear whether these tasks will remain with the prudential regulators or move to the Bureau of Consumer Financial Protection, but the latter is probable given their consumer orientation.

²⁴ Dodd-Frank Act, §1073(e)