RESEARCH PROJECT REGARDING PAYMENT SERVICES, BANK GROUP REGULATIONS AND OTHERS

FOR

JAPAN FINANCIAL SERVICES AGENCY

FINAL REPORT - U.S.A.

30 MARCH 2015

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INTRODUCTION

The purpose of this report is to provide an overview of the payment-related laws and systems in the United States for use by the Japan Financial Services Agency. Pursuant to the request set forth in the Guidance for Research on Payment Services-Related Matters (U.S.A.), dated as of December 9, 2014 (the "Guidance Memorandum"), this report proceeds in three research parts: Research 1: Payment Schemes in the United States; Research 2: Restrictions on the Scope of Business that Banks, Bank Groups, Bank Holding Company Groups and Financial Holding Company Groups May Perform in the United States; and Research 3: Cash Management Services and Bank Fronting Services.

This report is given only with respect to the payment schemes, scope of banking business and federal and state laws and regulations as of the date hereof.

RESEARCH 1: PAYMENT SCHEMES IN THE UNITED STATES

The first part of this report summarizes the current landscape of payment schemes in the United States. This part is further divided in two sub-parts: Section I provides an overview of the most common and important payment schemes used in the United States, including, where applicable, (i) a comparison against the corollary scheme in Japan and (ii) statistics on the prevalence of each scheme.

Section II sets forth the legal framework that applies to the schemes discussed in Section I. Section II separately addresses federal and state laws and regulations currently in force. As requested in the Guidance Memorandum, we have focused our review of state-specific laws on California and New York.

I. Overview of Payment Schemes in the United States

This section groups the major payment schemes available in the United States into the following categories: (i) debit and credit cards, (ii) prepaid card services, (iii) mobile payment solutions, (iv) collection agencies/electronic bill presentment and payment, (v) escrow services (vi) collect on delivery and (vii) loyalty programs.

Please note that we are not aware of any payment schemes available in only certain states (e.g., we know of no payment schemes available in California but not in New York). As such, this section is not divided further into "federal" and "state" sub-sections, and remains generally applicable throughout the United States.

A. *Debit Cards and Credit Cards*

1. Description / Background

Credit Cards: A credit card is a card issued by a financial company giving the holder an option to borrow funds, usually at the point of sale. Participants in a credit card transaction include (i) the bank that issues the card to the cardholder (the "issuing bank"), (ii) the bank at which the merchant maintains its account (the "acquiring bank") and (iii) the network association[1]. Most

[1] Adam J. Levitin, *Priceless? The Economic Costs of Credit Card Merchant Restraints*, 55 UCLA L. Rev. 1321, 1327 (2008).

credit cards in the United States use one of four networks: MasterCard, Visa, American Express and Discover[2]. The network association performs the authorization, clearing and settlement services.

When a cardholder makes a purchase with a card, the merchant's account at the acquiring bank is credited with the purchase amount, less the merchant discount fee. The merchant discount fee is a fee charged to the merchant for the credit card services. The merchant pays a merchant discount fee on a per-use basis, and it usually consists of a flat rate amount and a percentage of the total purchase price. The total merchant discount fee varies, but often amounts to 2-3% of the total purchase price[3]. The merchant discount fee is partially retained by the acquiring bank and partially paid to the network association[4]. The network association keeps a portion of this fee as a cost for performing its clearing function, and remits the remainder of the fee to the issuing bank; such remittance is known as the "interchange fee"[5]. The issuing bank bills the cardholder for repayment of the full purchase amount on a periodic basis, typically per month. The issuing bank charges interest and fees to the cardholder if the cardholder fails to pay the stated amount by a predetermined date[6]. Based on our understanding of the post-paid E-money in Japan, as described in the Exhibit to the Guidance Memorandum, such post-paid E-money system would appear to bear a relationship to the US credit card mechanism.

Debit Cards: Debit cards are linked to a consumer's bank account, and as such, do not involve the extension of credit. Debit cards come in two forms: signature-based and PIN-based. Most cards contain both capabilities. Signature-based debit transactions (also known as "offline debit") are routed through a network (e.g., MasterCard or Visa) much like a credit card transaction, and are debited from the consumer's checking account after the transaction (usually within a few days at most). Consumers do not usually pay a fee for a signature-based transaction. PIN-based debit (also known as "online debit") requires the consumer to enter a personal identification number (a "PIN") at the point of sale. The PIN-based transaction is then routed through an electronic fund transfer ("EFT") network and the consumer's checking account is debited immediately, similar to an ATM withdrawal. A cardholder typically incurs a fee (imposed by the issuing bank) in a PIN-based transaction, but not in a signature-based transaction. The issuing bank charges the merchant a fee in both signature- and PIN-based transactions. Although the fee is usually higher in a signature-based transaction[7], the Board of Governors of the Federal Reserve System (the "FRB") approved limitations on the amount of interchange fee that a bank may impose[8].

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[2] *The Economic Costs of Credit Card Merchant Restraints*, at 1327.
[3] Id., at 1329.
[4] Id., at 1329.
[5] Id., at 1331.
[6] Id., at 1331.
[7] First Data, *Payments 101: Credits and Debit Card Payments*, page 6 (Oct. 2010).
[8] The rule limits the maximum permissible interchange fee that an issuer may receive for an electronic debit transaction to 21 cents per transaction and 5 basis points multiplied by the value of the transaction. See FRB Press Release (June 29, 2011).

Common interbank networks used in PIN-based transactions include STAR, Pulse and NYCE. The financial institutions issuing debit cards are members of these interbank networks, which are computer networks that facilitate the point of sale use of debit cards. Interbank networks are largely based along geographic lines.

2. Statistics

In 2010, 21.4 billion credit card transactions were processed, valued at two trillion dollars[9]. Debit card usage has grown more in the past decade than credit card usage, and has surpassed checks as the most common non-cash payment instrument in the United States[10]. In 2010, 43.8 billion debit card transaction were processed, valued at 1.6 trillion dollars[11]. By comparison, only 26 billion debit card transactions, valued at one trillion dollars, were processed in 2006[12].

B. *Prepaid Card Services*

1. Description / Background

In the United States, prepaid card services (also known as "stored value cards") operate on one of three systems: (i) open loop, (ii) closed loop or (iii) semi-open loop, as set forth in further detail below[13].

A prepaid card stores data, including the fixed amount of stored value, on a card. The card is usually equipped with a magnetic strip or a computer chip which stores the data, which data is maintained by the card issuer and can be accessed by the cardholder through radio-frequency identification or the use of a code number. A prepaid card embedded with a chip (i.e., microprocessor) in the card is also known as a "smart card." The memory of a smart card is typically updated every time the card is used, and can be applied in an open or closed system[14]. Smart cards have been in use in the United States since the early 1990s, particularly in transportation systems, on military bases and in universities[15]. Although less common, in certain cases, prepaid cards can be issued as a paper-based certificate in which the value is printed directly on the instrument.

Open Loop: According to the Consumer Financial Protection Bureau ("CFPB"), an open loop prepaid card is a card with a network logo that can be used at any location that accepts that brand[16]. These locations include automated teller machines ("ATMs") and/or point of sale transactions (i.e., merchants). Users can replenish the stored value via EFT or via a terminal at a

[9] *Payment, Clearing and Settlement Systems in the United States*, CPSS - Redbook (2012), at 485.
[10] Id., at 485.
[11] Id.
[12] Id., at 486.
[13] The open loop system is also referred to as "multi-purpose" and the closed loop system as "single purpose."
[14] Carl Felsenfeld & Genci Bilali, *The Check Clearing for the 21st Century Act - A Wrong Turn in the Road to Improvement of the U.S. Payments System*, 85 Neb. L. Rev. 52, 72 (2006).
[15] *The Check Clearing for the 21st Century Act*, at 72.
[16] Consumer Finance Protection Bureau, *What is an open-loop prepaid card?* (May 5, 2013).

retail location that is part of a reload network[17]. Common examples of network brands are Visa, American Express, Discover and MasterCard. These cards are often embossed with the cardholder's name.

A distinction must be made between "prepaid debit cards" and "debit cards"[18]. As used herein, the term "prepaid debit cards" is used to include a card that is not linked to bank account. Instead, the user pays the issuer in advance to load funds onto a prepaid card, and is then able to use the money loaded onto the card. In most cases, it is not possible for the user to spend more money than has been loaded onto the prepaid debit card. In contrast, a traditional "debit card" is linked to the user's bank account. In this case, the issuer deducts from the user's bank account the cost of a purchase. However, if a user opts into a bank's overdraft service, then the bank may loan a user the cost of a purchase that exceeds the account's available amount. In addition to being charged the cost of the overdraft, the user may be charged an additional fee. As set forth in Research 1 Section II below, traditional debit cards in the United States are subject to more consumer protection laws in the event of loss or a disputed charge than are prepaid debit cards.

In addition to prepaid debit cards, payroll cards and health benefit cards also constitute open loop prepaid cards. In the case of payroll cards, an employer contracts with a bank to issue the card, which is loaded with funds directly from the employee's paycheck. The payroll card can be used at any ATM or merchant that accepts debit cards. Similarly, health benefit cards allow users to pay for qualified medical expenses with a prepaid debit card under a flexible spending account or health reimbursement account plan (i.e., voluntary accounts established with an employee's employer whereby the employer pays certain of the employee's wages or salary into such accounts). Health benefit cards are usually reloadable and can be used in a similar manner to prepaid debit cards generally, with the exception that users can only use these cards to pay for qualified medical expenses.

Closed Loop: A prepaid card part of a closed loop system can only be used at the location of one merchant. These cards are generally purchased directly from a retailer and are typically not embossed with a cardholder's name and do not include a network logo.

Gift cards are one common example of a closed loop prepaid card (although gift cards can be open loop). A gift card issued directly by a merchant may or may not be reloadable. These cards are settled by the merchant directly and do not go through the banking system. Card-based programs developed to replace paper-based gift certificates which were inefficient and more susceptible to fraud. Card-based programs allow merchants more easily to keep track of the number of cards issued and the amounts sold, redeemed and

[17] Stephanie M. Wilshusen, Robert M. Hunt and James van Opstal, *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis*, Discussion Paper, Payment Cards Center, page 3, August 2012.
[18] See Consumer Finance Protection Bureau, *What is the difference between a debit card and a prepaid debit card?* (May 22, 2013).

held in accounts and offer more convenience for users[19]. While paper-based gift certificates are still issued in the United States (primarily by smaller merchants that do not have the capacity or experience to issue cards), paper-based gift certificates are declining in usage and, as mentioned above, are being replaced by gift cards.

In most cases, transit fare cards issued by municipal transit agencies to pay for public transportation are also closed loop. However, some transit agencies are shifting towards network branded (i.e., American Express, Discover, MasterCard or Visa) transit cards that can be reloaded by the user or through direct deposit via the user's employer. Such network branded transit cards are settled through a bank and are more properly categorized as open loop prepaid cards.

Closed loop prepaid cards are less regulated than open loop cards. No regulations require a merchant to provide refunds for lost or stolen prepaid cards in a closed loop system (whether a refund is available depends on the issuer's cardholder agreement). As such, the discussion that follows in Research 1 Section II below in connection with prepaid card services primarily focuses on the open loop system.

Semi-Open Loop: Semi-open loop prepaid cards are a hybrid between pure open and closed loop cards. Although similar to closed loop cards, semi-open loop cards are accepted at multiple unrelated retailers and are issued by an unrelated third party, as opposed to being issued directly by the merchant. For example, a semi-open loop prepaid card may be issued by a network brand for use at any participating merchant within a prescribed geographic area (e.g., Visa may issue such a card that can be used at any merchant within a mall).

Based on the information provided in the Exhibit to the Guidance Memorandum, we understand that prepaid payment instruments in Japan are either self-provided or third party-provided. Self-provided prepaid payment instruments, issued directly by merchants and available for use only with such merchant, would appear to be generally analogous to closed loop prepaid cards in the United States. Third-party prepayment instruments, issued by a third party, would appear to be analogous to open loop or semi-open loop prepaid cards.

2. Participants in the Prepaid Card Industry

The system of network-branded prepaid cards (i.e., open loop cards, generally) includes the following participants: issuer, program manager, payment brand, processor and load network[20].

The issuer approves parameters of the program and is accountable for compliance with applicable laws and regulations and the payment brand's rules.

[19] *A Guide to Prepaid Cards for Transit Agencies*, A Smart Card Alliance Transportation Council White Paper (February, 2011), page 14.
[20] Id., at 8-9.

The program manager develops a business and marketing plan (including a distribution strategy and a network of distributors) and develops strategic business partners. The program manager sets the pricing and fees for the product.

The payment brand (e.g. American Express, Discover, MasterCard or Visa) is responsible for the authorization, clearing and settlement.

The processor is a provider registered by the issuer to perform processing services, including the development of a platform for configuring and supporting the card program, performing cardholder customer service and acting as a system of record. Often, the processor and program manager are the same entity.

The load network facilitates the ability of users to add cash to reload the prepaid card, often charging a fee (in some cases set by the merchant) for reloading.

3. Statistics

Prepaid card usage, particularly open loop prepaid cards, continues to grow in the United States. As such, usage estimates are necessarily inexact. The Mercator Group, which publishes an annual benchmark, reported that in 2009, loads for open loop and closed loop programs totaled $330 billion, a 22.7% increase from 2008[21]. In that year, six billion prepaid card transactions were made[22]. Prepaid card usage is growing substantially faster than credit card and debit card usage[23]. Purchases at grocery stores, service stations and fast food restaurants are the most represented merchants, accounting for over half of all prepaid card transactions[24].

While the typical number of value loads over the lifespan of a prepaid card varies by type of card, the median ranges from one to five loads per card. More than 70% of prepaid cards distributed by retailers have three or fewer loads; 50% of those cards have at most one value load[25].

Over the lifespan of a prepaid card, the median cardholder fees range from $4 to $42, depending on the type of card[26]. The majority of those fees are charged to the cardholder as a fee for point of sale purchases and ATM withdrawals, which account for 80% of the total fees charged[27]. Other fees charged to the cardholder include balance inquiry, ATM declines and account maintenance fees[28].

C. *Mobile Payment Solutions*

[21] Id., at 13.
[22] *Payment, Clearing and Settlement Systems*, at 486.
[23] Stephanie M. Wilshusen, Robert M. Hunt and James van Opstal, *Consumers' Use of Prepaid Cards: A Transaction-Based Analysis*, Discussion Paper, Payment Cards Center (August 2012) page 3.
[24] Id., at 22.
[25] Id., at 23-24.
[26] Id., at 28.
[27] Id., at 32.
[28] Id., at 32.

1. Description / Background

Mobile payment solutions are quickly becoming a common method of payment in the United States. Mobile devices function as a conduit for the other payment mechanisms discussed in this report, for example:

- a retailer creating a mobile pay application for use only within its own infrastructure (e.g., Starbucks) resembles a closed-loop prepaid card service;
- consumers charging digital purchases directly to a cellphone bill resembles traditional electronic bill presentment and payment ("EBPP") (as discussed below); and
- merchants using a mobile device to process credit card transactions (e.g., Square) resembles a traditional credit card transaction.

While the above examples are accurately categorized as mobile payment solutions, we do not have any reason to believe the regulation of such mechanisms varies when a mobile device is involved in the transaction (instead of a merchant's computer at the point of sale, for example). As used in this report, "mobile payment solutions" refers to one of the two other emerging mechanisms in connection with mobile devices:

- *mobile as the point of sale:* This refers to a mobile device using near-field communications ("NFC") or the "tap and go" method to transact purchases at a retail location (a "mobile wallet"). NFC uses radio frequencies to allow mobile devices and other NFC-enabled devices to communicate with one another. Merchants can obtain a NFC reader from the mobile wallet of their choice. Examples of mobile wallets include Google Wallet and Apple Pay; MasterCard and Visa also utilize this mechanism. For example, Apple Pay works as follows[29]. Users link a credit card with Apple's proprietary software iTunes. Using an NFC-enabled Apple iPhone or Watch, the user is able to make point of sale contactless payments over the existing credit card network. The issuing bank is integrated into Apple's system, and no new agreement is needed for the merchant. Merchants pay the standard credit card swipe fee. Instead of using a credit card number, a unique Device Account Number is assigned, encrypted and securely stored in the iPhone or Watch. Each transaction is authorized with a one-time unique number using the Device Account Number and instead of using the security code from the back of a credit card, Apple Pay creates a dynamic security code to validate each transaction.
- *mobile payment platforms*: Other mobile payment functions include person-to-person ("P2P") and person-to-merchant mobile-based payment applications transacted online or via text message. For example, Venmo is a service that allows users to pay other users directly from a linked bank account, credit/debit card or with cash balance stored within the application.

[29] See Alex Rolfe, *Apple Pay Explained*, Mobile Payments World (December 11, 2014).

2. Statistics

Accurate mobile payment usage statistics are difficult to obtain. However, the mobile payment market is rapidly expanding, in part due to the ubiquity of mobile devices. According to a 2013 Pew survey, 56% of American adults own a smartphone[30]. Four out of five smartphone owners use their smartphone to shop.[31] Currently, 220,000 locations have contactless payments enabled[32], which enables point of sale mobile device payments. With the increased capabilities, mobile transactions in 2014 nearly doubled over 2013[33]. In 2014, mobile transactions accounted for 17% of all transactions in North America[34]. Overall, P2P payment is likely increasing as well: Venmo processed $700 million in payments during the third quarter of 2014, up from $141 million a year earlier[35].

D. *Collection Agencies / Electronic Bill Presentment and Payment ("EBPP")*

We understand that in Japan, a collection agency, or payment receiving agency, refers to an agent that collects a payment from a payer on behalf of a third party recipient. For example, in Japan consumers commonly make utility (e.g., gas/electric) payments or telephone service payments at corner stores or kiosks. Such services in the United States are available, but do not occur with the frequency that we understand occurs in Japan. Western Union and Money Gram are the two largest networks of money transfer services in the United States[36]. These companies offer cash transfer services that allow customers to send money to a designated location (for example to a utility company) for a fee.

Usage of EBPP, however, is a more common method of receiving and paying bills in the United States. EBPP, in contrast to physical collection agencies, refers to the online mechanisms that allows customers to receive bills online instead of physically in the mail, then order their banks to make payments automatically[37]. EBPP effectively provides customers the same functionality as physical collection agencies with limited or no fees.

Three EBPP models exist to effect electronic bill payment transactions: biller-direct, consolidator and lockbox[38]. In the biller-direct model, the billing firm makes the bill available to the consumer on its website where the consumer can access and pay the bill. In the consolidator model, an additional third-party collects bills from multiple billing firms and makes them available on the third-party's own website or sends the bills to the consumer via email. The consumer is then able to visit the third-party consolidator's website and pay the

[30] Aaron Smith, *Smartphone Ownership 2013*, Pew Research Internet Project (June 6, 2013).
[31] Leena Rao, *comScore: 4 Out of 5 Smartphone Owners Use Device To Shop; Amazon is The Most Popular Mobile Retailer*, Tech Crunch (September 19, 2012).
[32] Rolfe, *Apple Pay Explained*.
[33] Emma Thompson, *Worldwide use of Mobile Payments 2014*, Omlis.
[34] *Worldwide use of Mobile Payments 2014*
[35] Felix Gillette, *Cash is for Losers!*, BusinessWeek (November 20, 2014).
[36] Western Union has over 58,600 agent locations in the United States and Canada region.
[37] *The Check Clearing for the 21st Century Act*, at 77.
[38] See *The Check Clearing for the 21st Century Act*, at 78-79.

bills. The lockbox model allows consumers to receive bills electronically by enrolling with, and rerouting their bills to, a lockbox provider. Upon receipt of the bills in the physical lockbox, the bills are then scanned and converted to electronic statements, and paid in a similar manner as in the consolidator model.

Examples of bill payment schemes include MasterCard's Remote Payment Presentment Service and ePay by Visa, PayTrust and MyCheckFree. Increasingly, banks and other financial institutions are facilitating online banking transactions that can be completed by consumer's on the internet or mobile-based applications.

E. *Escrow Services*

An escrow service is a third party company that collects, holds and sends a buyer's money to a seller according to instructions agreed upon by both buyer and seller. Such a service is particularly useful in connection with internet auction transactions (e.g., eBay) in order to prevent fraud and other cybercrimes. In return for use of the escrow service, internet auction participants usually pay a percent of the total transaction value as a fee.

For example, Escrow.com, eBay's approved escrow site, purports to reduce the risk of online fraud for buyers and sellers by functioning as a trusted third party that holds and releases funds online for vehicles, websites, domain names, general merchandise, milestone transaction, intellectual property and commodities[39]. Escrow.com prearranges the escrow instructions, which govern all aspects of the escrow transaction, such as disbursement of funds, shipping and tracking of the item, deposit of funds into escrow, buyer rejection process and dispute resolution[40].

In the United States, the use of escrow services are more common for internet auction transactions as the purchase price increases, especially for transactions exceeding five hundred dollars ($500) in value. According to the description set forth in the Exhibit to the Guidance Memorandum, services like Escrow.com and PayPal (a wholly-owned subsidiary of eBay) provide a similar function as Japan's escrow services and settlement agencies. However, the use of escrow services for transactions outside of the internet auction sphere are not common in the United States.

We note that the sale of real estate in the United States often involves an escrow service, i.e., a third-party escrow agent receiving and disbursing money and/or documents, but a discussion of such services does not bear relation to e-commerce transactions and would therefore not appear to be relevant for the purposes of this report.

F. *Collect On Delivery*

[39] www.escrow.com.
[40] https://www.escrow.com/escrow-101/general-escrow-instructions.aspx.

A Collect on delivery (or cash-on-delivery, "COD") service is the sale of goods by mail order which are paid for by the customer upon physical delivery. COD service is offered by major couriers in the United States (UPS, FedEx and United States Postal Service (the "USPS")) and appears to be similar to our understanding of cash-on-delivery payment services available in Japan. Due to availability and popularity of alternative payment methods that are more convenient for buyers and sellers (e.g., credit card and paper check payments) COD service (i.e., payment by cash rather than by other methods) does not appear to be a popular payment service in United States, and we have not identified any federal or state laws and regulations applicable specifically regulating COD services in the United States (payment by methods other than cash (e.g., credit card) are subject to the same laws and regulations as otherwise applicable when payment is made by such method). As such, COD services are subject only to the contractual terms of service by major couriers in the United States. For example, the UPS COD terms of service provide that the maximum amount is $50,000 per shipment and that currency in any amount is not acceptable (i.e., UPS no longer accepts cash as a method of payment). In contrast, the USPS COD basic standards provide that the maximum amount collectible from the recipient on one article is $1,000 and payments can be accepted in cash (if payment is made by cash, the USPS includes a money order fee as it does not make payments in cash to senders).

G. *Loyalty Programs*

1. Description/Background

Loyalty programs (also known as discount cards, club cards or rewards cards) are marketing programs that reward loyal behavior of customers by entitling such customers to a discount on current or future purchases or an allotment of points that can be redeemed on future purchases. Loyalty programs are used in various sectors, including retail (e.g., book stores) and travel and hospitality (e.g., major airlines and hotel chains), but are most common in the financial services industry through credit and debit card rewards programs.

Many credit cards have loyalty programs whereby the cardholder earns points that can be converted to travel rewards, gift cards or cash rebates. These reward programs often feature a tie-in arrangement with the associated reward provider. Rewards usually accumulate based on a percentage of total purchases made using the card. The exact amount and type of rewards offered depends on the card issuer and the type of debit or credit card used.

Loyalty programs offered through retailers (including airlines and hotels) appear similar to the credit and debit card programs, but often operate as a form of identification for such retailers to track the loyalty of consumers buying their goods and services. By presenting the loyalty card at the point of sale, the consumer is usually entitled to a discount on the current purchase and/or points that accumulate for future purchases, and the retailer is provided market data about the purchasing habits of its customer base. Some retailers (including popular chain drug stores and supermarkets) require customers to present the loyalty card at the point of sale in order to receive the advertised

price. These types of loyalty programs, and the regulation thereof, bears relation to closed loop gifts cards, as discussed in Section I.B.1. above.

As discussed in Section II below, loyalty programs offered through financial institutions (i.e., credit and debit card loyalty programs) are often subject to more regulation than those loyalty programs offered by retailers.

2. Statistics

According to a 2011 study, $48 billion of consumer loyalty cards were dispensed in 2010[41]. The financial services sector (i.e., credit and debit cards) provides the most rewards ($180 billion per year), followed by the travel and hospitality sector ($17 billion per year)[42]. Although the retail sector accounts for the plurality of membership programs (40%), the value of rewards lagged the aforementioned sectors at $12 billion. On average, a household in the United States has 18.2 memberships to loyalty programs[43].

II. Regulatory Framework for Payment Schemes in the United States

This section sets forth the regulatory framework for the payment schemes discussed in Section I above. The federal laws and regulations discussed below comprise a broad spectrum of the types of licensure, disclosures and activities that are regulated in this field; however, it is not possible to provide an exhaustive list of every applicable regulation or detail thereof. Examples of laws that may have tangential application to, but do not represent the core regulations of, the payment schemes within the scope of this report include:

- *The Federal Trade Commission Act.* This act established the Federal Trade Commission, and oversees unfair or deceptive acts or practices in or affecting commerce.

- *Escheat and Abandoned Property Laws*. These are state laws that require parties in possession of unclaimed property to surrender property to the state after trying unsuccessfully to locate the owner. These laws may be applicable to unused stored value cards or other payment mechanisms discussed herein.

- *Association or Network Rules and Standards*. Credit card issuers, network brands, financial institutions and other private institutions develop internal rules regulating transactions. For example, merchant liability for unauthorized credit card transactions is often determined by such rules or separate agreement with credit card issuers and financial institutions.

Federal regulations are issued by federal agencies, boards or commissions and as a general matter explain how the agency intends to carry out or implement a law. The regulations discussed below relate to corresponding laws, which were once bills passed by the United States Congress and signed into law by the President. Federal laws apply to people living in the United States, whereas state laws only apply to people living in that particular state.

[41] Tanya Gazkik, *Study: One-Third of Loyalty Rewards Uncashed*, Marketing Daily (Apr. 19, 2011).
[42] Id.
[43] Id.

Federal regulations are enforceable like, but remain subordinate to, federal laws. Similarly, state laws are subordinate to Federal laws. A detailed analysis of preemption rules in the United States is beyond the scope of this report, but please note that unless a conflict arises between federal law, federal regulation and/or state law, all such laws and regulations will be mutually enforceable and applicable. As a general matter, in the event of a conflict, federal law preempts state law, but only to the extent of the inconsistency.

A. *Federal*

1. Electronic Funds Transfer Act ("EFTA") of 1978; Regulation E

The EFTA is a consumer protection statute governing consumer rights, liabilities and responsibilities among participants in EFT systems. Regulation E was promulgated by the FRB to implement the EFTA[44]. The FRB previously had administrative authority to carry out the purposes of the EFTA pursuant to Regulation E[45]; however, rulemaking and enforcement was transferred to the Consumer Financial Protection Bureau ("CFPB") in 2011 under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("DFA")[46]. In order to provide continuous guidance to consumers and financial institutions on the rights and obligations under Regulation E, the CFPB issues, and periodically updates, Official Staff Interpretations (the "Official Staff Commentary").

Scope: The EFTA applies to accounts for which there is an agreement for EFT services to or from the account between (i) the consumer and the financial institution or (ii) the consumer and a third party, when the account-holding financial institution has received notice of the agreement and the funds transfers have begun[47]. The terms "consumer" and "financial institution", are broadly construed under the EFTA. "Consumer" is defined as "a natural person", whether or not such consumer is a customer of a financial institution, although an EFT must be made out of or into a consumer asset account[48]. A consumer's waiver of its rights under the EFTA is strictly prohibited[49].

The term EFT generally refers to any transaction initiated through an electronic terminal, telephone, computer or magnetic tape that instructs a financial institution either to credit or to debit a consumer's asset account[50]. Specifically, EFT includes, but is not limited to:

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[44] 12 CFR §205.
[45] 1-6 The law of Electronic Funds Transfers, §6.03.
[46] If the CFPB and another federal agency have been granted overlapping authority to issue rules under a provision of one of the federal consumer protection laws, such as EFTA, DFA gives the CFPB exclusive rulemaking authority and requires courts to give deference to the CFPB's interpretation of the law as if it were the only agency authorized to apply, enforce, interpret or administer that law. Dodd-Frank Act, §1022(d); §904(a)(1) and (e); 15 USC §1693b(a)(1) and (e).
[47] Official Commentary, 12 CFR §205.3(a)-1.
[48] 15 USC §1601.
[49] 15 USC §1693: "No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action."
[50] 12 CFR §205.3(a).

(i) Point-of-sale transfers;

(ii) Automated teller machine transfers;

(iii) Direct deposits or withdrawals of funds;

(iv) Transfers initiated by telephone; and

(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal[51].

As used herein, the regulations promulgated by the FRB to implement the EFTA (i) define "access device" as "a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers"[52], and (ii) provide that an access device becomes an "accepted access device" when the consumer:

- Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

- Requests validation of the access device even if it was issued on an unsolicited bases; or

- Receives an access device as a renewal or substitute for an accepted access device from either the financial institution that initially issued the device or a successor[53].

Notably, the EFTA does not govern (i) credit card transactions or (ii) commercial transactions [54] (i.e., the EFTA only applies to consumer transactions, including personal, family and household transactions). Additionally, Regulation E expressly excludes the following from the scope of the EFTA: (i) checks, (ii) check guarantee or authorizations, (iii) wire or similar transfers, (iv) certain securities and commodities transfers, (v) certain automatic transfers by account-holding institutions, (vi) telephone-initiated transfers and (vii) small institutions[55]. Transfers involving so-called "small institutions" are defined as follows:

"EFTA - TITLE 12, PART 205. COVERAGE

(a)~(b) (omitted)

(c) (1)~(6) (omitted)

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[51] Id.
[52] 12 CFR §205.2(a)(1).
[53] 12 CFR §205.2(a)(2).
[54] Commercial transactions are governed by UCC Article 4A. For more information, see Research 1 Section II.B.2 below.
[55] 12 CFR §205.3(c).

(7) Small institutions. Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to §205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability[56]*."*

The foregoing "small institution" exemption relates to the size of institution; the EFTA provides no specific exemption based on an institution transacting infrequently or under a permitted threshold amount.

The rules under Regulation E are not always applicable to prepaid card services: Regulation E is only applicable when prepaid cards constitute an "account". Section 205.2(b)(1) of Regulation E defines "account" as a "demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes". Some prepaid cards, such as payroll cards and Electronic Benefit Transfer cards (an "EBT card")[57] are subject to the rules of Regulation E[58]. Other prepaid card services, however, fall outside the scope of Regulation E, including open-loop prepaid cards[59] and certain loyalty, award, or promotional gift cards:

"EFTA - TITLE 12. REQUIREMENTS FOR GIFT CARDS AND GIFT CERTIFICATES.

(a) (omitted)
(b) Exclusions. The terms "gift certificate," "store gift card," and "general-use prepaid card", as defined in paragraph (a) of this section, do not include any card, code, or other device that is

(1) Useable solely for telephone services;

(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this exception, the term "reloadable" includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card (except that these must disclose on the card or device itself, information such as the date the funds expire, fee information and a toll-free number;

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[56] 12 CFR §205.3(c)(7).
[57] EBT is an electronic system that allows state welfare departments to issue benefits via a magnetically encoded payment card.
[58] Philip Keitel, *Conference Summary: Federal Regulation of the Prepaid Card Industry: Costs, Benefits, and Changing Industry Dynamics*, page 6, April 8-9, 2010.
[59] *Federal Regulation of the Prepaid Card Industry*, page 6.

(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the vent or venue[60]*."*

In May 1996, the FRB published proposed amendments to Regulation E that would have brought additional categories of prepaid cards under the scope of Regulation E, but the amendments were not adopted.

Based on our understanding of the Exhibit to the Guidance Memorandum, the transactions consummated by Fund Transfer Agencies and Account Transfer Agencies under the Japanese system would appear to be, if within the foregoing scope requirements and subject to the jurisdiction of the United States, subject to the EFTA.

Financial institutions engaging in EFT services within the scope of the EFTA must abide by certain disclosure, consumer liability and error resolution requirements. A financial institution, however, need not (i) be licensed separately as an EFT provider in order to provide such EFT services (ii) provide a security deposit or security bond in order to perform EFT services or (iii) maintain a specific amount of capital or net worth. Moreover, the EFTA does not impose a bankruptcy remoteness requirement or prevent EFT service providers from running other types of businesses.

Disclosures: An EFT transaction falling within the scope of the EFTA implicates certain disclosure requirements. The required disclosures are numerous and dependent upon the transaction. These disclosures may be made in a language other than English (if made available in English upon the consumer's request)[61] and may be combined with other disclosures required by law or combined into a single statement (for example, disclosures required under the EFTA may be combined with disclosures required under TILA, as described in Research 1 Section II.A.4 below)[62].

The disclosures required under the EFTA can be divided into three categories: (i) initial disclosures, (ii) change of terms disclosures and (iii) ATM disclosures.

Financial institutions must make the initial disclosures at the time a consumer contracts for an EFT service or before the first electronic fund transfer is made involving the consumer's account[63]. The financial institution must give a

[60] 12 CFR §1005.20(b).
[61] 12 CFR §205.4(a)(2).
[62] 12 CFR §205.4(b).
[63] 12 CFR §205.7(a).

summary of various consumer rights under the regulation, including the consumer's liability for unauthorized EFTs, the types of EFTs the consumer may make, limits on the frequency or dollar amount, fees charged by the financial institution and the error-resolution procedures[64]. The content of the initial disclosures must include:

- A summary of the consumers' liability for unauthorized electronic funds transfers[65]. A financial institution does not need to provide the liability disclosures if it imposes no liability. If the financial institution later decides to impose liability, it must first provide the disclosures[66].

- A specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer[67]. Except for the telephone number and address for reporting a lost or stolen access device or a possible unauthorized transfer, the disclosure may insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement."

- The financial institution's business days[68].

- All fees for EFTs or for the right to make EFTs[69]. Additionally, other fees (for example, minimum-balance fees, stop-payment fees, account overdrafts or ATM inquiry fees) may, but need not, be disclosed[70]. A per-item fee for ETFs must be disclosed even if the same fee is imposed on non-electronic transfers.

- Any limitations on the frequency and dollar amount of transfers[71]. Certain disclosures may be withheld if the confidentiality of details is essential, but the fact that limitations exist must still be disclosed. Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make[72].

- A summary of the consumer's right to receipts and periodic statements and notices regarding preauthorized transfers[73].

- A summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for placing a stop-payment order[74].

- A summary of the financial institution's liability to the consumer for failure to make or stop certain transfers[75].

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[64] 12 CFR §205.7.
[65] 12 CFR §205.7(b).
[66] Official Staff Commentary, 12 CFR §205.7(b)(1)-1.
[67] Official Staff Commentary, 12 CFR §205.7(b)(2)-2.
[68] 12 CFR §205.7(b)(3).
[69] 12 CFR §205.7(b)(5).
[70] Official Staff Commentary, 12 CFR §205. 5(b)(5)-1.
[71] 12 CFR §205.7(b)(4).
[72] Official Staff Commentary, 12 CFR §205.7(b)(4)-3.
[73] 12 CFR §205.7(b)(6).
[74] 12 CFR §205.7(b)(7).

- The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties[76]. Third parties include other subsidiaries of the same holding company[77].

- A notice describing the financial institution's error-resolution process. The error-resolution notice must be substantially similar to Model Form A-3 in Appendix A of the applicable FRB regulations (Regulation E), which is set forth as Exhibit A to this report. The error-resolution notice may deviate from the Model Form by deleting inapplicable provisions as long as the substance of the notice remains the same. The financial institution may substitute substantive state law requirements affording greater consumer protection than Regulation E[78].

If a financial institution contemplates a change in terms the financial institution must provide certain additional disclosures to the customer. At least twenty-one (21) days before the effective date of such change in terms or conditions, the financial institution must mail or deliver a written or electronic notice to the customer if the change would result in any of the following:

- Increased fees or charges;

- Increased liability for the consumer;

- Fewer types of available EFTs; or

- Stricter limitations on the frequency or dollar amounts of transfers.

The prior notice requirement is waived in the event an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account. However, if the change is permanent, the financial institution must provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within thirty (30) days, unless such disclosure would jeopardize the security of the EFT system or account.

An ATM operator that charges a fee is required to a post a notice disclosing that a fee will be imposed and disclosing the amount of the fee. The ATM notice must be posted both (i) in a prominent and conspicuous location on or at the machine, and (ii) on the screen or on a paper notice before the consumer is committed to paying a fee[79]. The content of the notice must be "clear and readily understandable"[80]. Where a network owner is not charging a fee directly to the consumer (e.g., a network owner that charges no interchange fee to financial institutions whose customers use the network), the fee disclosures are not required.

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[75] 12 CFR §205.7(b)(8).
[76] 12 CFR §205.7(b)(9).
[77] Official Staff Commentary, 12 CFR §205.7(b)(9)-1.
[78] Official Staff Commentary, 12 CFR §205.7(b)(10)-1.
[79] 12 CFR §205.16(c).
[80] Id.

Finally, in order to qualify for the exclusion for loyalty, award, or promotional gift cards, such cards must make the following disclosures (as addressed in 12 CFR §1005.20(b)(3), above)[81]:

- A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
- The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
- The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
- A toll-free telephone number and, if one is maintained, a website, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

Gift cards must comply with all other provisions of the gift card rule. Issuers must make the following disclosures on in-store signs, messages during customer service calls, websites, and general advertising:

- The funds underlying the gift card do not expire;
- Consumers have the right to receive a free replacement card, along with the packaging and materials that typically accompany the gift card; and
- The issuer will charge dormancy, inactivity, or service fees only if the fee is permitted by the gift card rule.

Consumer Liability: The EFTA also limits consumer liability for unauthorized EFTs[82]. A consumer may only be held liable for an unauthorized transaction if (i) the financial institution provided certain written disclosures to the consumer[83] and (ii) any access device used to effect the EFT was an accepted access device and the financial institution has provided a means to identify the consumer to whom the access device was issued[84].

Under the EFTA, there is no bright-line time limit in which consumers must report unauthorized EFTs; however, the extent of consumer liability is *only* determined by the consumer's promptness in notifying the financial institutions (i.e., other factors may not be used as a basis to hold consumers liable)[85]. Regulation E expressly prohibits the following factors as the basis for imposing greater liability than is permissible under Regulation E:

- The consumer was negligent (e.g., the consumer wrote his or her PIN on a debit card);

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[81] 12 CFR §1005.20(a)(4).
[82] 12 CFR §205.7(b)(10).
[83] Such written disclosures include (i) a summary of the consumer's liability for unauthorized EFTs; (ii) the telephone number and address for reporting that an unauthorized EFT has been or may be made; and (ii) the financial institution's business days. 12 CFR §205.6(b).
[84] Id.
[85] Official Staff Commentary, 12 CFR §205.6(b)-3.

- An agreement between the consumer and the financial institution provides for greater liability; or
- The consumer is liable for a greater amount under state law.[86]

The limitations for consumer liability for unauthorized EFTs, the time limits within which consumer must report unauthorized EFTs and the liability for failing to adhere to those time limits are set forth in the chart below:

Event	**Timing of Consumer Notice to Financial Institution**	**Maximum Liability**
Loss or theft of access device	Within two business days after learning of loss or theft.	Lesser of $50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft up to 60 calendar days after transmittal statement showing first unauthorized transfer made with access device.	Lesser of $500, OR the sum of: (a) $50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less, AND (b) the amount of unauthorized transfers occurring after two business days and before notice to the financial institution[87].
Loss or theft of access device	More than 60 days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of $500, OR the sum of (a) Lesser of $50 or the amount of unauthorized transfers in first two business days, AND (b) The amount of unauthorized transfers occurring after two business days. For transfers occurring after the 60-day period, unlimited

[86] Official Staff Commentaries, 12 CFR, §205.6(b)-2 and 205.6(b)-3.
[87] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

Event	Timing of Consumer Notice to Financial Institution	Maximum Liability
		liability (until the financial institution is notified)[88].
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device	More than 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the financial institution.

Error Resolution: Finally, the EFTA sets forth procedures a financial institution must follow, and steps a consumer must take, in connection with error resolution. For the purposes of the EFTA, an "error" includes any of the following:

- An unauthorized EFT;
- An incorrect EFT to or from the consumer's account;
- The omission from a periodic statement of an EFT to or from the consumer's account that should have been included;
- A computational or bookkeeping error made by the financial institution relating to an EFT;
- The consumer's receipt of an incorrect amount of money from an electronic terminal;
- An EFT not identified in accordance with the requirements of Regulation E sections 205.9 or 205.10(a); or
- A consumer's request for any documentation required by Regulation E sections 205.9 or 205.10(a) or for additional information or clarification concerning an EFT[89].

After receiving a notice of error, the financial institution must:

[88] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.
[89] 12 CFR §205.11(a)(1).

- Promptly investigate the oral or written allegation of error;
- Complete its investigation within ten (10) business days;
- Report the results of its investigation within three (3) business days after completing its investigation; and
- Correct the error within one (1) business day after determining that an error has occurred[90].

However, the financial institution may take up to forty-five (45) calendar days to complete its investigation provided it:

- Provisionally credits the funds (including interest, where applicable) to the consumer's account within the ten (10) business-day period;
- Advises the consumer within two (2) business days of the provisional crediting; and
- Gives the consumer full use of the funds during the investigation[91].

Upon completion of its investigation, the financial institution may determine that an error has occurred or that an error has not occurred. If the financial institution determines that an error has occurred, it must, within one (1) business day after such determination) correct the error, including the crediting of interest if applicable. If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial institution must provide a written explanation of its findings within three (3) business days after concluding its investigation. The explanation must include a notice of the consumer's rights to request the documents upon which the financial institution relied in making its determination[92]. If a financial institution has fully complied with the investigation requirements, it generally does not need to reinvestigate if a consumer later reasserts the same error.

Examination Procedure: Financial institutions engaged in EFT services are subject to examinations by a CFPB examiner to (i) determine the entity's compliance with Regulation E, (ii) assess the quality of the entity's compliance risk management systems and its policies and procedures for implementing Regulation E, (iii) determine the level of reliance that can be placed on the entity's internal controls and procedures for monitoring the entity's compliance with Regulation E and (iv) direct correction action when violations are identified or when internal controls are deficient.

Examination procedures are divided into three section:

- Section I: management and policy related procedures for both financial institutions and other entities that may be remittance transfer providers

[90] 12 CFR §205.11(c)(1).
[91] 12 CFR §205.11(c)(2).
[92] 12 CFR §205.11(d).

- Section II: electronic fund transfers conducted by financial institutions
- Section III: remittance transfer providers (including financial institutions).

Examinations are risk-based and may not require an examiner to complete all three sections. In general, a Section I examination includes a thorough review of all available information (e.g., board minutes, management reports, monitoring reports), discussions with management relating to the internal controls, compliance with Regulation E and related training thereto. The Section II examination tests transaction conduct through a review of forms, agreements, policies, receipts, periodic statements and consumer complaint files; and a determination of compliance with policies and procedures. Section III requires the examiner to review all available information as it relates to the entity's remittance program. A thorough examiner's checklist detailing the specific questions such examiner may seek to answer during an examination is set forth in Exhibit B to this report.

2. Federal Deposit Insurance Act ("FDIA")[93]

The FDIA governs the Federal Deposit Insurance Corporation ("FDIC"), an independent agency that provides insurance for funds that depositors place in banks or other financial institutions. The FDIC insurance covers all deposit accounts, including checking accounts, savings accounts, money market deposit accounts and certificates of deposit[94]. FDIC insurance does not cover other financial products and services that a bank may offer (e.g., stocks, bonds, mutual funds or securities). The standard insurance amount is $250,000 per depositor, per insured bank, for each account ownership category[95].

3. Bank Secrecy Act ("BSA")

The BSA imposes monitoring, recordkeeping and reporting requirements on financial institutions to prevent money laundering. Since initially enacted by Congress, the BSA has been amended several times, including the most recent revisions and supplements by the USA Patriot Act of 2001.

Scope: The BSA is applicable to all "banks." Under the regulations implementing the BSA, the term "bank" includes each agent, agency, branch or office within the United States of commercial banks, saving and loan associations, thrift associations, credit unions and foreign banks[96].

Money Transmitter Businesses: The BSA regulates the licensing of participants in the money transmitting business. Specifically, 18 U.S.C. §1960(a) prohibits persons from participating in a money transmitting business without a license: "whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both." As used in Section (a), "money transmitting" includes

[93] 12 USC §1811, *et. seq.*
[94] 12 USC §1813(l).
[95] 12 USC §1821.
[96] 31 CFR §103.11.

transferring funds on behalf of the public by any and all means including but not limited to transfers within the United States or to locations abroad by wire, check, draft, facsimile, or courier[97].

Each money services business (whether or not licensed as a money services business by any state) must also register with the Financial Crimes Enforcement Network ("FinCEN"), a division of the United States Department of the Treasury[98]. In doing so, each participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants (a "provider of prepaid access")[99] must identify each prepaid program for which it is the provider of prepaid access; and, each money services business must maintain a list of its agents.

Each foreign-located person doing business, whether or not on a regular basis or as an organized or licensed business concern, in the United States as a money services business must designate the name and address of a person who resides in the United States and is authorized to be an agent to accept service of legal process for such foreign-located person[100].

FinCEN's money services business registration requirements includes filing the applicable FinCEN form with the Internal Revenue Service, including information for branch location or offices[101]. The money services business must retain a copy of any registration form filed. The money services business must be registered for the initial registration period and each renewal period[102]. The initial registration period and each subsequent renewal period is each two (2) years. The initial registration form must be filed within 180 days following the date the business is established[103]. The money services business must re-register if any of the following occur:

- A money services business registered as such under the laws of any state experiences a change in ownership or control that requires the business to be re-registered under state law;
- There is a transfer of more than ten percent (10%) of the voting power or equity interests of a money services business;
- A money services business experiences a more than fifty percent (50%) increase in the number of its agents during any registration period; or
- The registration form must be filed not later than 180 days after such change in ownership, transfer of voting power or equity interests, or increase in agents. The calendar year in which the change, transfer, or

[97] 18 USC §1960(b)(2).
[98] 31 CFR §1022.380(a)(1).
[99] 31 CFR §1010.100(ff)(4).
[100] 31 CFR §1022.380(a)(2).
[101] 31 CFR §1022.380(b)(1).
[102] 31 CFR §1022.380(b)(2).
[103] 31 CFR §1022.380(b)(3).

increase occurs is treated as the first year of a new two-year registration period[104].

States have also adopted laws that regulate the business of money transmitters (see Research 1 Section II.B.1 below).

Anti-Money Laundering: The BSA requires that banks and financial institutions implement internal controls, testing and training programs in order to prevent money laundering[105].

Financial institutions must have appropriate internal control procedures to allow detection of money laundering. These procedures must provide, among other things, a financial institution with the ability to identify and report (i) currency transactions in excess of $10,000 and (ii) transactions suspicious in nature[106].

Financial institutions (either the internal audit department, outside auditors or a consultant) must test compliance with the BSA at least annually. The audit program must be able to (i) attest to the effectiveness of internal procedures for monitoring compliance with the BSA, (ii) assess employees' knowledge of regulations and procedures and (iii) assess adequacy of training program.

Senior management must ensure that appropriate personnel are trained in all aspects of the regulatory requirements of the BSA and the financial institution's internal policies to ensure compliance.

Know Your Customer: Section 326 of the USA Patriot Act sets forth minimum standards for financial institutions regarding the identification and verification of the identity of any customer who opens an account at such financial institution. The written customer identification program must be part of the financial institution's comprehensive anti-money laundering program, and must be tailored to the financial institution's size, location and type of business. The identification program should provide for obtainment of basic identifying information, verification of the identity of each customer to the extent reasonable and practicable, maintenance of records and determination of whether the customer appears on a terrorist list provided by the Federal government.

Reports / Recordkeeping: Pursuant to the BSA, financial institutions must file periodic reports, including, without limitation, a Suspicious Activity Report, Currency Transaction Report and Designation of Exempt Persons. Additionally, financial institutions must maintain diligent records such that transactions can be reconstructed.

[104] 31 CFR §1022.380(b)(4).
[105] 31 CFR §103.64.
[106] 31 CFR §103.185.

Liability: Non-compliant financial institutions are subject to civil penalties up to the greater of the amount of the transaction (up to $100,000) or $25,000 and criminal penalties of up to $500,000 and ten (10) years in prison[107].

4. Truth in Lending Act ("TILA")[108] / Regulation Z[109]

The TILA was enacted as Title I of the Consumer Credit Protection Act and implemented by Regulation Z as promulgated by the FRB. The TILA is intended to ensure that credit terms are disclosed in a meaningful way so consumers can compare credit terms more readily and knowledgably. As applicable to payment schemes in the United States, the TILA primarily addresses risk and liability between the card issuer and the consumer[110]. Pursuant to the TILA and Regulation Z, all creditors must use similar credit terminology and expressions of rates. The TILA and Regulation Z, however, do not limit or regulate the interest rate that financial institutions may charge.

Scope: The requirements under the TILA and Regulation Z only apply to the extension of credit for consumer purposes, i.e., personal, family or household use[111]. As such, the disclosures, liabilities and limitations discussed in this section are applicable to the credit card transactions described Research 1 Section I.A above (and accordingly we believe would apply to the post-paid E-money payment mechanism in Japan if such mechanism were to be regulated under the laws of the United States). The following transactions are exempt from the TILA disclosures and Regulation Z[112]:

- Credit extended primarily for a business, commercial, or agricultural purpose;
- Credit extended to other than a natural person (including credit to government agencies or instrumentalities);
- Credit in excess of twenty-five thousand dollars ($25,000) (unless secured by real or personal property used as the principal dwelling of the consumer);
- Public utility credit;
- Credit extended by a broker-dealer, involving securities or commodities accounts;
- Home fuel budget plans; and
- Certain student loan programs.

[107] 31 CFR §103.59.
[108] 15 USC §1601 *et. seq.*
[109] 12 CFR §§226.1-226.59.
[110] Merchant liability is generally covered in the trader's agreement with the card associations or with its financial institution.
[111] One exception, however, is that the rules of issuance of and unauthorized use liability for credit cards does apply for non-personal, family or household extension of credit. Truth in Lending Examination Procedures, at 6 (2003).
[112] 12 CFR §226.3.

Although the TILA regulates both open-end (e.g., credit cards) and close-end (e.g., mortgages) credit, this report focuses on the regulations applicable to open-end credit only.

Disclosures: As regards the extension of open-end credit, creditors must make the following types of disclosures to consumers:

- Finance Charges. Pursuant to §226.6(a) of Regulation Z, in the extension of open-end credit, the creditor must individually itemize each finance charge, although the aggregate total amount of the finance charge need not be disclosed. A non-exhaustive list of finance charges that must be disclosed in the initial disclosure statement is (i) when the finance charge accrues, (ii) if a grace period exists, (iii) an explanation of how the finance charge would be determined, and (iv) the method of determining the balance on which the finance charge may be computed. As regards the solicitation or application for a credit card, the creditor must also identify (i) a fee for issuance of the cards, (ii) the minimum finance charge, (iii) transaction fees and (iv) the balance computation method[113].

- Annual Percentage Rate ("APR"). The APR is a measure of the cost of credit, expressed as a nominal yearly rate. It relates the amount and timing of value received by the consumer to the amount and timing of the payments made. Under §226.14 of Regulation Z, the APR must be disclosed and be accurate within one-eighth of one percentage point, and the disclosures must set forth the acceptable methods for determining the APR. In connection with the initial disclosure statement, the creditor must state the periodic rates used and the corresponding APR [114]. In connection with the solicitation or application for a credit card, the creditor must disclose the APR for purchases, cash advances, and balance transfers, including penalty rates that may apply. If the interest rate is variable, the index or formula, and margin applicable thereto must also be identified[115].

The application/solicitation disclosures must be clear and conspicuous and in a prominent location in the form of a table[116]. Initial disclosures must be made before the first transaction is made under the plan[117], and the change of terms requires fifteen (15) days' notice prior to the effective change date[118].

Risk (Unauthorized Charges): The TILA imposes different rules for credit and debit cards with respect to the amount of a consumer's liability for unauthorized transactions:

[113] 12 CFR §226.5(a).
[114] 12 CFR §226.6(a).
[115] 12 CFR §226.5(a).
[116] Staff comment 5a(a)(2)-1.
[117] 12 CFR §226.5(b)(1).
[118] 12 CFR §226.9(c).

- A consumer is usually only liable for up to $50 in unauthorized charges on a credit card made before the consumer gives notice in a timely manner of the possible loss, theft or unauthorized use of the card[119].

- A consumer potentially has more liability for the unauthorized use of a debit card. A consumer's liability is limited to $50 if he or she gives notice of unauthorized use within two days of learning of the unauthorized use. However, after the two-day period, this amount rises to $500, and there is potential for unlimited liability if the consumer does not report the unauthorized use within 60 days, and unauthorized use continues after this date (the unlimited liability relates to losses incurred after the 60-day reporting period has expired)[120].

Liability: Creditors failing to comply with any requirements of the TILA are subject to potential civil and criminal liability. A creditor may be held civilly liable to the consumer for actual damage and the cost of any legal action and attorney's fees in a successful action[121]. If a creditor violates certain other TILA requirements, it may also be held liable for either: (i) in an individual action, twice the amount of the finance charges involved (but not less than $100 or more than $1000) or (ii) in an class action, such amount as the court may allow[122].

Criminally, creditors that willingly and knowingly fail to comply with any requirement of the TILA will be fined up to $5,000 or imprisoned up to one year, or both[123].

Additionally, the TILA authorizes federal regulatory agencies to require financial institutions to make monetary and other adjustments to the consumers' accounts when the true finance charge or APR exceeds the disclosed finance charge or APR by more than a specified accuracy tolerance [124]. The authorization extends to unintentional errors, including isolated violations. Under circumstances involving (i) patterns or practices of violations, (ii) gross negligence or (iii) willful noncompliance intended to mislead the person to whom the credit was extended, the TILA requires federal regulatory agencies to order financial institutions to reimburse consumers when there is an understatement of the APR or finance charge.

5. Credit Card Accountability Responsibility and Disclosure Act of 2009 (the "CARD Act")[125]

The CARD Act serves as a consumer protection device by amending certain provisions of the TILA (Titles I and III) and the EFTA (Title IV), as well as creating new consumer protections. The CFPB has responsibility for

[119] 15 USC §1643(a).
[120] 12 CFR §205.6.
[121] 15 USC §1640.
[122] 15 USC §1640.
[123] 12 CFR §226.
[124] Id.
[125] Pub. L. No. 111-205 Stat. 1734 (2009) (codified in scattered sections of 5, 11, 15, 20 and 31 USC).

administering the CARD Act. Certain of the substantive provisions of the CARD Act are set forth in the following titles of the CARD Act:

Title I. Title I of the CARD Act amends the TILA with respect to credit card accounts under an open-end consumer credit plan. In general, the amendments restricts the ability of creditors to change the terms of, or increase the charges in relation to such credit cards[126]. Further limitations are set forth with respect to (i) increases in rates following promotional rates, (ii) changes in indices used to calculate finance charges or APR and (iii) changes in the due date of payments and timing of grace periods[127].

Title II. Title II of the CARD Act revises and expands the requirements for mandatory minimum payment disclosures a creditor must furnish to consumers. Title II restricts creditors' ability to revise late payment deadlines and requires creditors to post on an internet site the written agreement between creditor and consumer for open-end consumer credit plans[128].

Title III. Title III of the CARD Act amends the TILA to prohibit extensions of credit to consumers under age 21, unless the consumer has submitted a written application that meets specified requirements[129]. Further requirements aim to protect young consumers of open-end credit.

Title IV. Title IV of the CARD Act, the so-called "gift card rule", applies to "any person" and, consequently, may apply to any of the parties involved in distributing a covered certificate or card, including the issuer, program manager or merchant that sells the card. As defined by the CARD Act, the rule applies to gift certificates, store gift cards and general-use prepaid cards, but excludes (i) loyalty, award and promotional gift cards, (ii) paper certificates, (iii) cards not marketed to the general public, and (iv) cards redeemable only for admission to events/venues. Under the rule, service fees are prohibited unless (1) there has been no activity for the previous year, (2) no more than one such fee is assessed per month and (3) certain disclosures are provided[130]. Funds loaded onto a card eligible under the gift card rule may not expire for at least five years from the date of the last funds load[131].

According to a CFPB consumer survey conducted in 2011, the industry practices had changed in the following four ways one year after implementation of the CARD Act:

- The practice of increasing the interest rate on existing cardholder accounts had been curtailed.
- The amount of late fees consumers pay had been reduced.

[126] See 15 USC §1637.
[127] Id.
[128] See 15 USC §1637; 15 USC §1632; 15 USC §1681(j).
[129] See 15 USC §1637(c); 15 USC §1681(c)(1)(B); 15 USC §1637; 15 USC §1650.
[130] 15 USC §1693 *et. seq*.
[131] Id.

- Overlimit fees had been significantly reduced in the credit card industry.
- Consumers reported that their credit costs were clearer (although significant confusion remained). [132]

B. *State*

This section discusses several state-level regulations in the United States applicable to the payment schemes discussed in Research 1 Section I above. Pursuant to the instructions provided in the Guidance Memorandum, the focus of this report is limited to those state laws currently in force in California and New York only.

1. Money Transmitter Laws

(a) Uniform Money Services Act ("UMSA")

The National Conference of Commissioners on Uniform State Laws drafted the UMSA in 2000 and recommended that all states enact it. The UMSA was meant to create uniformity in state licensing provisions for various types of money services businesses (also known as "nonbank financial institutions" or "non-depository providers of financial services") and the regulation of stored value cards and emerging forms of electronic payment mechanisms as an alternative to a varied and complex regulatory system for emerging payment providers. The UMSA creates a framework that connects all types of money-services businesses and sets forth clearly the relationship between a licensee and its sales outlets[133].

The UMSA regulates traditional money services businesses (also known as "money transmitters"), including entities engaged in the following types of financial activities: (i) money transmission (e.g., wire transfers), (ii) the sale of payment instruments (e.g., money orders, traveler's checks, and stored value instruments), (iii) check cashing, and (iv) foreign currency exchange. Additionally, the UMSA expanded the term "money services businesses" to include entities making internet-related payment mechanisms and cyber-payments[134]. Examples of such internet-related payment mechanisms and cyber-payments include E-money, internet scrip, internet funds transfers, online gold/precious metals transfers and payment and internet bill payment services[135].

Based on our understanding of the payment services available in Japan, Prepaid Payment Instruments, Collection Agencies, Escrow Services and EBPP potentially be subject to the UMSA if engaging in transactions within a jurisdiction that has adopted the UMSA.

[132] The CARD Act One Year Later, CARD Act Factsheet (2011), available at: http://www.consumerfinance.gov/credit-cards/credit-card-act/feb2011-factsheet/.
[133] UMSA, Prefatory Note (2004).
[134] Id.
[135] Id.

The UMSA has two separate licensing regimes for money service businesses within the scope of the Act, including one regime for money transmission and another for check cashing[136].

Money Transmitter Licensure: Money transmission includes the transmission of funds as well as the sale or issuance of payment instruments and the sale or issuance of stored value instruments[137]. Internet payment services that hold customer's funds or monetary value for their own account rather than serve simply as clearing agents should fall within the definition of money transmission[138]. Unless exempt, a money transmitter must obtain a license pursuant to Article 2 of the UMSA[139]:

"UMSA - SECTION 201. LICENSE REQUIRED.
(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:
(1) is licensed under this [article] or approved to engage in money transmission under Section 203;
(2) is an authorized delegate of a person licensed under this [article]; or
(3) is an authorized delegate of a person approved to engage in money transmission under Section 203.
(b) A license under this [article] is not transferable or assignable[140]."

An "authorized delegate" means "a person or licensee designates to provide services on behalf of the licensee[141]." Entities that serve as authorized delegates for money transmitters are allowed to engage in money transmission without obtaining a separate money transmission license so long as they do not engage in money transmission outside the scope of their contract with the principal transmitter. In other words, if the authorized delegate starts to offer money transmission on its own behalf, then it needs to obtain its own money transmission license[142]. Section 501 of the UMSA governs the relationship between the licensee and authorized delegate:

"UMSA SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED DELEGATE.
(a) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.
(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this

[136] Id.
[137] UMSA, Article 1 (2004).
[138] Id.
[139] UMSA, Prefatory Note (2004).
[140] UMSA §201.
[141] UMSA §102.
[142] UMSA §201 Official Comment 2.

[Act]. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this [Act].
(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.
(d) If a license is suspended or revoked or a licensee does not renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are in a record filed with the [superintendent] of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.
(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under [Article] 2, 3, or 4. [An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.]
(f) An authorized delegate may not use a sub-delegate to conduct money services on behalf of a licensee."[143]

The form of application used for money transmitter licensure under Article 2 of the UMSA is left to the particular state enacting the UMSA, but the state's form must state or contain:

(1) the legal name and residential business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten (10) year period prior to submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in the state;

(4) a list of the applicant's proposed authorized delegates and the locations in the state where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other states in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;

(6) information concerning any bankruptcy or receivership proceedings affecting the licensee;

[143] UMSA §501.

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the financial regulatory superintendent of the applicable states (the "superintendent") reasonably requires with respect to the applicant[144].

The superintendent may take up to 120 days to notify the applicant of approval or denial of the application. If approved, the license must be renewed thirty (30) days prior to the anniversary of issuance of the license by paying a renewal fee and submitting a renewal report containing, among others, recent audited financial statements[145].

In order to become licensed, money transmitters must provide a bond and fulfill net worth requirements as safety and soundness measures meant to protect the public[146]. The bond requirement services as a barrier to entry to financially unstable companies, and the exact amount is determined by the enacting state. Alternatives to the bond requirement, however, are cash or letters of credit. A licensee must maintain a threshold net worth, determined in accordance with generally accepted accounting principles[147].

The superintendent in each state has broad authority to suspend or revoke a money transmitter's license. Examples of acts permitting a superintendent to do so include, without limitation, if: (i) the licensee violates the act, (ii) the licensee does not cooperate with an examination or investigation, (iii) the licensee engages in fraud, intentional misrepresentation or gross negligence, (iv) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, (v) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services, (vi) the licensee engages in unsafe or unsound practices, (vii) the licensee is insolvent or (viii) the licensee dose not remove an authorized delegate after the superintendent issues a final order including a finding that the authorized delegate has violated the act[148].

[144] UMSA §202.
[145] UMSA §206.
[146] UMSA §204.
[147] UMSA §207.
[148] UMSA §801.

Check Cashing Licensure: An entity wishing to engage in check cashing must obtain a license under Article 3 of the UMSA, subject to several exceptions[149]:

"UMSA - SECTION 301. LICENSE REQUIRED.
(a) A person may not engage in check cashing or advertise, solicit, or hold itself out as providing check cashing for which the person receives at least $500 within a 30-day period unless the person:

(1) is licensed under this [article];
(2) is licensed for money transmission under [Article] 2 [or approved to engage in money transmission under Section 203];
(3) is licensed for currency exchange under [Article] 4;
(4) is an authorized delegate of a person licensed under [Article] 2; or
(5) is an authorized delegate of a person approved to engage in money transmission under Section 203."[150]

For a further discussion on the "authorized delegate" exception, see the discussion under Money Transmitter Licensure above.

The form of application used for check cashing licensure under Article 3 of the UMSA is left to the particular state enacting the UMSA, but the state's form must state or contain:

(1) the legal name and residential and business address of the applicant, or each partner, executive officer, manager and director if the applicant is not an individual;

(2) the location of the principal office of the applicant;

(3) the complete address of other locations in the state where the applicant proposes to engage in check cashing or currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange;

(5) other information the superintendent reasonably requires with respect to the applicant[151].

The applicant must provide a nonrefundable application fee and license fee with the application for licensure (the license fee must be refunded if the application is denied)[152].

Applicants for a check cashing license are exempt from bond and net worth requirements because check cashers and currency exchangers do

[149] UMSA, Prefatory Note, Article 3 (2004).
[150] UMSA §301.
[151] UMSA §302.
[152] Id.

not pose the same type of safety and soundness concerns for state regulators as other types of MSBs[153].

When an application is filed, the superintendent investigates the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The superintendent may conduct an on-site investigation of the applicant, and will issue a license upon determining that all of the necessary conditions have been fulfilled.

A check cashing licensee must renew its license biannually by submitting a renewal report and paying a renewal fee[154].

Examinations/Reports: Licensee are subject to annual examinations by the superintendent upon forty-five (45) days' notice[155]. However, the superintendent has reason to believe that the licensee or authorized delegate is engaging in "an unsafe or unsound practice or has violated or is violating [the UMSA] or a rule adopted or an order issued under [the UMSA]", then the superintendent may examine such licensee or its authorized delegate at any time, without notice [156]. The superintendent has general authority to conduct on-site examinations of licensees, and may examine the licensee's books and records in the event that it is suspected of any violation of the UMSA (e.g., money laundering)[157].

Licensees are obligated to file the following reports with the superintendent[158]:

"UMSA - SECTION 603. REPORTS.

(a) A licensee shall file with the [superintendent] within [15] business days any material changes in information provided in a licensee's application as prescribed by the [superintendent].

(b) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, responsible individuals, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A licensee shall file a report with the [superintendent] within one business day after the licensee has reason to know of the occurrence any of the following events:

[153] UMSA, Prefatory Note (2004).
[154] UMSA §304.
[155] UMSA §601(a).
[156] UMSA §601(b).
[157] UMSA §601 Official Comment 2.
[158] UMSA §603.

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code [11 U.S.C. Section 101-110 (1994 & Supp. V. 1999)] for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license in a State or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a [charge or] conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony; or

(6) a [charge or] conviction of an authorized delegate for a felony."

Additionally, licensees and authorized delegates are required to file separate money laundering reports:

"UMSA - SECTION 606. MONEY LAUNDERING REPORTS.
(a) A licensee and an authorized delegate shall file with the [attorney general] all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section. 103 (2000) and other federal and state laws pertaining to money laundering.
(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the requirements of subsection (a), unless the [superintendent] notifies the licensee that the [attorney general] has notified the [superintendent] that reports of this type are not being regularly and comprehensively transmitted by the federal agency to the [attorney general][159]."

As such, the UMSA makes explicit that licensees and authorized delegates are required to comply with federal and state anti-money laundering reporting requirements. However, licensees are permitted to comply with state and reporting requirements by making a single federal filing, and thereby avoid duplicative filings. Approximately ten (10) states require that an MSB comply with all federal and state money laundering currency transaction reporting laws. In general, states typically replicate the federal law and require that cash transactions in excess of $10,000 be reported to a state authority, as well as to the U.S. Treasury[160].

[159] UMSA §606.
[160] UMSA §606 Official Comment 3.

Permissible Investments: Money transmitters are required to maintain a certain level of investments that are equal to the value of their outstanding obligations as a means of protecting individual customers. According the Article 7 of the UMSA, a licensee must maintain at all times investments that have a market value equal to the aggregate amount of all outstanding payment instruments and stored value obligations issued or sold in all states and money transmitted from all states [161]. The list of investments that constitutes "permissible investments" under the UMSA (and CA MTA and NY TML, as discussed below) is set forth in Exhibit C to this report.

The superintendent may limit the extent to which an investment may be considered a permissible investment, except for money and certificates of deposit issued by a bank[162]. Even if commingled with other assets of the licensee, permissible assets are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee[163].

Alaska [164], Arkansas [165], Iowa [166], Texas [167], Vermont [168] and Washington[169] are the only states that have adopted all or portions of the UMSA (i.e., California and New York have not yet adopted the UMSA), and laws related to money services businesses remains varied by state. As such, certain of the provisions in the UMSA offer flexibility with respect to their regulatory and supervisory practices by giving states discretion as to the specifics of their particular law. For example, the specific reporting and security/bonding requirements are bracketed within the UMSA because individual states have a menu of options within the framework of the UMSA. While the various US states have not uniformly adopted the UMSA, forty-eight of the fifty US states regulate money transmitters under their own laws.

(b) California Money Transmission Act

In California, the Department of Business Oversight (Division of Financial Institutions) oversees the enforcement of California's Money Transmission Act (the "CA MTA"). Unless exempt, money transmitters within the scope of the CA MTA must follow certain licensing, reporting/examination, security and disclosure requirements as set forth below. The CA MTA does not specify any prohibitions on money transmitters operating legal business activities while engaging in money transmitting.

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[161] UMSA §701(a).
[162] UMSA §701(b).
[163] UMSA §701(c).
[164] Ala. Uniform Money Services Act, Ch. 06.55, *et. seq*.
[165] Ark. Uniform Money Services Act, 23-55-01, *et. seq*.
[166] Iowa Uniform Money Services Act, Ch. 533C, *et. seq*.
[167] Tex. Fin. Code Ch. 151, *et. seq*.
[168] Vermont Money Services Act, §2500, *et. seq*.
[169] Wash. Uniform Money Services Act, RCW 19.230, *et. seq*.

Scope: The CA MTA provides that a person shall not engage in the business of money transmission in California, or advertise, solicit, or hold itself out as providing money transmission in California, unless the person is licensed or exempt from licensure under the CA MTA or is an agent of a person licensed or exempt from licensure under the CA MTA[170]. The CA MTA defines "money transmission" to mean any of the following: selling or issuing payment instruments, selling or issuing stored value instruments, or receiving money for transmission[171]. Venmo and PayPal, Inc., for example, are licensed money transmitters in California[172]. Among others, a commercial bank or industrial bank, the deposits of which are insured by the FDIC, or any foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in California, is exempt from the regulations of the CA MTA[173].

There are no exemptions under the CA MTA that remove from regulation money transmitters for infrequent transfers or transfers that to not meet a particular dollar threshold. However, California recently passed new legislation that formally exempts licensure for entities that process payment transactions solely as agents of the intended recipient of the payment (the "'agent of a payee" exemption"). Under the exemption, an entity that receives money from a person for payment for goods or services to a third party does not need to obtain a money transmitter license if certain conditions are met:

Financial Code - FIN DIVISION 1.2. MONEY TRANSMISSION ACT 2010
This division does not apply to the following:
(a)～(k) (omitted)
(l) A transaction in which the recipient of the money or another monetary value is an agent of the payee, pursuant to a pre-existing written contract and delivery of the money or another monetary value to the agent, satisfies the payor's obligation to the payee.
(1) For purposes of this subdivision, "agent" has the same meaning, as it is defined in Section 2295 of the Civil Code.
(2) For purposes of this subdivision, "payee" means the provider of goods or services who is owed payment of money or another monetary value by the payor for the goods or services.
(3) For purposes of this subdivision, "payor" means the recipient of goods or services who owes payment of money or monetary value to the payee for goods or services[174]."

Under the payee-agent theory, these types of transactions pose fewer risks to consumers because payment to the agent is considered

[170] Cal. Fin. Code §2030(a).
[171] Cal. Fin. Code §2003(o).
[172] See https://www.paypalobjects.com/webstatic/license/us/CaliforniaMTLicenseEvergreen.pdf; https://s3.amazonaws.com/venmo/Venmo_CA.pdf.
[173] Cal. Fin. Code §2010(d).
[174] Cal. Fin. Code §2010(l).

payment to the principal, and even if the agent fails to remit the payment to the principal, the payor's payment obligation to the principal is deemed satisfied. California's embrace of the payee-agent model suggests that operators of certain third-party bill payment services may not need to obtain money transmission licenses in California.

Based on our understanding of the payment services available in Japan, Prepaid Payment Instruments, Collection Agencies, Escrow Services and EBPP potentially be subject to the CA MTA if engaging in transactions within the jurisdiction of California.

Licensure: In order to be eligible to apply for a license under the CA MTA, the applicant must either be a corporation or limited liability company organized under the laws of California or corporation or limited liability company organized outside California but qualified to transact business in California[175].

Prior to issuing a license, the commission may conduct an examination of the applicant to determine the applicant has tangible shareholders' equity to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in money transmission[176]. Once licensed, licensees must maintain at all times, tangible shareholders' equity of $250,000 to $500,000, depending on the estimated or actual transaction volume, as determined by the commissioner[177]. When making a determination, the commissioner may consider the following factors[178]:

- The nature and volume of the projected or established business.
- The number of locations at or through which money transmission is or will be conducted.
- The amount, nature, quality, and liquidity of its assets.
- The amount and nature of its liabilities.
- The history of its operations and prospects for earning and retaining income.
- The quality of its operations.
- The quality of its management.
- The nature and quality of its principals.
- The nature and quality of the persons in control.

[175] Cal. Fin. Code §2031.
[176] Cal. Fin. Code §2033(a).
[177] Cal. Fin. Code §2040(a).
[178] Cal. Fin. Code §2040(c).

- The history of its compliance with applicable state and federal law.
- Any other factor the commissioner considers relevant.

The commissioner may increase the amount of net worth required of an applicant or licensee if such commissioner determines that a higher net worth is necessary[179]. Additionally, the commissioner may require a licensee to write down any asset held by it to a valuation that represents its then fair market value[180].

The application for licensure must state or contain all of the following:

(1) The legal name and residential business address of the applicant and any fictitious or trade name used by the applicant in conducting its business.

(2) A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the 10-year period next preceding the submission of the application.

(3) A description of any money transmission services previously provided by the applicant and the money transmission services that the applicant seeks to provide in California.

(4) A list of the applicant's proposed agents and the locations in California where the applicant and its agents propose to engage in money transmission.

(5) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state.

(6) Information concerning any bankruptcy or receivership proceedings affecting the licensee.

(7) A sample form of payment instrument or instrument upon which stored value is recorded, if applicable.

(8) A sample form of receipt for transactions that involve money received for transmission.

(9) The name and address of any bank through which the applicant's payment instruments and stored value will be paid.

(10) A description of the source of money and credit to be used by the applicant to provide money transmission services.

(11) The date of the applicant's incorporation or formation and the state or country of incorporation or formation.

[179] Cal. Fin. Code §2040(b).
[180] Cal. Fin. Code §2040(d).

(12) A certificate of good standing from the state or country in which the applicant is incorporated or formed.

(13) A description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded.

(14) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the 10-year period next preceding the submission of the application, of each executive officer, manager, director, or person that has control, of the applicant, and the educational background for each person.

(15) A list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control, of the applicant has been involved in the 10-year period next preceding the submission of the application.

(16) A copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application.

(17) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next preceding the submission of the application.

(18) If the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission.

(19) If the applicant is a wholly owned subsidiary of: (A) A corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 and, if available, for the two-year period next preceding the submission of the application. (B) A corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States.

(20) The name and address of the applicant's registered agent in California.

(21) The applicant's plan for engaging in money transmission business, including without limitation three years of pro forma financial statements.

(22) Any other information the superintendent requires with respect to the applicant[181].

[181] Cal. Fin. Code §2032.

The superintendent may waive any of the above requirements or permit an applicant to submit other information instead of the required information.

In order to assess the applicant, the superintendent may conduct an examination of the applicant. If the superintendent finds all of the following with respect to the application for a license, the superintendent must approve the application:

(1) The applicant has adequate tangible shareholders' equity;

(2) The applicant, the directors and officers of the applicant, any person that controls the applicant, and the directors and officers of any person that controls the applicant are of good character and sound financial standing.

(3) The applicant is competent to engage in the business of money transmission.

(4) The applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation.

(5) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this division and of any regulation or order issued under this division[182].

The Division of Financial Institutions may suspend or revoke a license if it finds that a licensee or agent of a licensee has, among other things, violated the provisions of the CA MTA or engaged in fraud or unsound practices. Violators are additionally subject to civil penalties and criminal penalties, as are persons that engage in the business of money transmission without a license.

Permissible Investments: The CA MTA requires a licensee at all times to own eligible securities having an aggregate market value of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold and all outstanding money received for transmission in the United States[183]. If the commissioner determines that such eligible securities are insufficient, the commissioner may require the licensee to increase the amount of eligible securities or provide additional security (as discussed below). The list of investments that constitute "eligible securities" under the CA MTA (and UMSA, as discussed above, and NY TML, as discussed below) is set forth in Exhibit C to this report.

Security: As security, each licensee must deposit and maintain on deposit cash in an amount as the superintendent deems necessary to

[182] Cal. Fin. Code §2033.
[183] Cal. Fin. Code §2081.

secure the faithful performance of the obligations of the licensee[184]. A licensee that sells or issues payment instruments or stored value must maintain securities on deposit or a bond of a surety company in an amount of no less than $500,000 or fifty percent (50%) of the average daily outstanding payment instrument and stored value obligations in California, whichever is greater; provided that such amount shall not be more than $2,000,000. The money and securities deposited constitutes a trust fund for the benefit of persons in California who purchased payment instruments or stored value from the licensee of its agent. Aggrieved persons may bring a lawsuit to recover on such bonds[185].

Examination/Reporting: The commissioner may at any time examine the business and any office (within or outside California), of any licensee or any agent of al licensee[186]. The directors, officers, and employees of any licensee or agent of a licensee being examined are required to, upon request, exhibit the accounts, books, correspondences, memoranda, papers and other records in order to facilitate the examination[187]. The commissioner may jointly pursue examination with other state or federal money transmission regulators[188].

Licensees under the CA MTA are required to file a report with the commissioner within five (5) business days after such licensee has reason to know of the occurrence of any of the following events (as also set forth in the discussion of the UMSA in Section II.B.1.(a) above):

1) the filing of a petition by or against the licensee for bankruptcy or reorganization;

2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

3) the commencement of a proceeding to revoke or suspend its license in a State or country in which the licensee engages in business or is licensed;

4) the cancellation or other impairment of the licensee's bond or other security;

5) a charge or conviction of the licensee or of an executive officer, manager, director, or person in control, of the licensee for a felony; or

6) a charge or conviction of an authorized delegate for a felony.

[184] Cal. Fin. Code §2037.
[185] Cal. Fin. Code §2037(g). Unlike the NY TML (as discussed below), the CA MTA does not specify the mechanism of distribution of money held in trust for the benefit of aggrieved persons in the event of insolvency or bankruptcy of the money transmitter.
[186] Cal. Fin. Code §2120(a).
[187] Cal. Fin. Code §2120(b).
[188] Cal. Fin. Code §2121.

Receipts: Money transmitters are required to provide customers with a receipt containing, as applicable, the name of the sender, the name of the designated recipient, the date of the transaction (which is the day the customer funds the money transmission), the name of the licensee, the amount to be transferred, the currency in which the money transmission is funded, any fees and taxes imposed, the total amount of the transaction, and the exchange rate[189]. The receipt must also contain a conspicuous disclosure detailing the customer's right to refund the money to be transmitted[190].

(c) New York Transmitters of Money Law

In New York, the Department of Financial Services oversees the enforcement of New York's Transmitters of Money Law (the "NY TML"). Unless exempt, money transmitters within the scope of the NY TML must follow certain licensing, reporting/examination, security and disclosure requirements as set forth below, which are, in general, similar to those set forth under the CA MTA. The NY TML does not specify any prohibitions on money transmitters operating legal business activities while engaging in money transmitting.

Scope: The NY TML applies as follows:

N.Y. BNK. LAW §641: LICENSE.

"1. No person shall engage in the business of selling or issuing checks, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the superintendent as provided in this article, nor shall any person engage in such business as an agent, except as an agent of a licensee or as agent of a payee[191]. . . ."

For the purposes of the NY TML, an "agent" of a licensee means any person designated or appointed by the licensee pursuant to a written agency contract to engage in money transmission activities at locations other than a duly authorized office of the licensee. The term "agent" does not include any banking corporation incorporated or licensed or any casher of checks[192]. Although an "agent of a licensee" is exempt from regulation under the NY TML, licensees are not permitted to conduct the business of money transmission through a subagent at any time[193].

Other entities expressly exempt from the rules and regulations of the NY TML are banks, trust companies, private bankers, foreign banking corporations, savings banks, savings and loan associations, investment companies, national banking associations, federal reserve banks,

[189] Cal. Fin. Code §2103.
[190] Cal. Fin. Code §2103(I)(2)(A).
[191] N.Y. BNK LAW §641(1).
[192] N.Y. BNK LAW §640.
[193] N.Y. BNK LAW §648.

federal savings banks, federal savings and loan associations or state or federal credit unions[194].

Based on our understanding of the payment services available in Japan, Prepaid Payment Instruments, Collection Agencies, Escrow Services and EBPP potentially be subject to the NY TML if engaging in transactions within the jurisdiction of New York.

Licensure: For non-exempt entities required to comply with the NY TML, similar licensing and disclosure requirements are applicable as in California.

Application for a license required under the NY TML must be in writing, under oath, and in the form prescribed by the superintendent, and must contain the following:

(1) The exact name of the applicant and, if incorporated, the date of incorporation and the state where incorporated.

(2) The complete address of the principal office from which the business is to be conducted, and where the books and records of the applicant are maintained and to be maintained, showing the street and number, if any, and the municipality and county;

(3) If the applicant has one or more branches, subsidiaries or affiliates engaging in this state in the business of selling or issuing checks, or of receiving money for transmission or transmitting the same, the complete name and address of each;

(4) The name and residence address of the applicant, if an individual or, if a partnership, of its partners or, if a corporation or association, of the directors, trustees and principal officers thereof, and of any stockholder owning twenty per centum or more of any class of its stock; and

(5) Such other pertinent information as the superintendent may require[195].

Permissible Investments: The NY TML requires licensees to maintain at all times permissible investments having (i) a market value at least equal to the aggregate amount of all its outstanding payment instruments and traveler's checks or (ii) a net carrying value at least equal to the aggregate of the amount of all its outstanding payment instruments and traveler's checks so long as the market value is at least 80% of the net carrying value [196]. The list of investments that constitutes "permissible investments" under the NY TML (and UMSA and CA MTA, as discussed above) is set forth in Exhibit C to this report.

[194] N.Y. BNK LAW §641(1).
[195] Id.
[196] N.Y. BNK LAW §651.

Security: Licensees (and applicants for a license), must file bonds in favor of the superintendent in an amount no less than $500,000 (the exact amount to be determined by the superintendent); and, if the applicant intends to engage in the sale of New York traveler's checks, such applicant must file a separate bond in favor of the superintendent in an amount determined by the superintendent, but not less than $750,000[197]. The proceeds of each bond constitutes a trust fund for the exclusive benefit of the purchasers and holders of instruments and traveler's checks, as applicable. In the event of the insolvency or bankruptcy of the licensee, the proceeds of the bonds are paid to the superintendent for disposition[198]. The superintendent may require, upon thirty (30) days' notice, that such bonds be increased if determining that an increase is necessary for the sufficient protection of the purchasers and holders of instruments and traveler's checks.

Examinations: The Department of Financial Services is permitted to conduct examinations on money transmitters to determine such money transmitter's compliance with applicable state and federal laws and regulations. In conducting the assessment, money transmitters are assigned a rating based on an assessment of financial condition, internal controls and auditing, legal and regulatory compliance, management, and systems and technology (the "FILMS rating"). The ratings range from "1" (strong) to "5" (unsatisfactory). Licensees with a FILMS rating of "4" (marginal) or "5" or which have severe violations or deficiencies may be subject to regulatory actions such as monetary fines and license suspension and revocation.

The superintendent has the power to make investigations and conduct hearings as he/she deems necessary to determine whether the licensee has violated any provisions of the NY TML[199]. The superintendent has the power to compel by order or subpoena the production of the licensee's books, records, accounts, and other documents[200].

2. Uniform Commercial Code ("UCC") Article 4A

The UCC provides a set of model statutes governing certain commercial and financial activities. Articles 3 and 4 of the UCC regulate negotiable instruments (e.g., checks) and bank deposits and collections, respectively, but do not govern fund transfers. In 1989 Article 4A was promulgated in order to establish rules for new technologies, principally electronic transactions, which was a gap in governance previously left by Articles 3 and 4.

The UCC's model statutes do not have effect unless and until states opt to adopt such statutes. Article 4A of the UCC is discussed in terms of the model statute, as both California and New York have adopted the provisions thereof without any substantive differences for the purposes of this report.

[197] N.Y. BNK LAW §643.
[198] Id.
[199] N.Y. BNK LAW §646.
[200] Id.

Scope: Article 4A governs a method of payment in which the person making the payment (the "originator") directly transmits an instruction to a bank either to make payment to the person receiving the payment (the "beneficiary") or to instruct some other bank to make payment to the beneficiary[201]. Article 4A sets forth two important definitions:

- "Funds transfer" means the series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order[202].

- "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank to pay, a fixed or determinable amount of money if:

  (i) the instruction does not state a condition to payment to the beneficiary other than time of payment,

  (ii) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

  (iii) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank[203].

The effect of these definitions is to limit Article 4A to fund transfers made through the banking system. A transfer of funds made by an entity outside the banking system is excluded[204]. Applicability of Article 4A does not depend upon the means used to transmit the instruction of the sender; transmission may be electronic communication, but also may be by written or oral communication[205].

Transactions covered by Article 4A typically involve large amounts of money and several banks[206], but note that the transfer of funds described in this section may be applicable to various types of transactions outlined in Research 1 Section I (e.g., direct deposit, EBPP, stored value transactions) depending on the specific circumstances of the transaction. However, application of Article 4A is specifically excluded for funds transfer of consumer transactions governed by federal law (i.e., the EFTA, as discussed in Research 1 Section II.A.1)[207]. Article 4A and the EFTA are mutually exclusive; however, Article 4A may apply to one part of a single transaction while the EFTA applies to

[201] UCC §4A-104, Official Cmt. 1.
[202] UCC §4A-104(a).
[203] UCC §4A-103(a).
[204] UCC §4A-104, Official Cmt. 2.
[205] UCC §4A-104, Official Cmt. 6.
[206] UCC §4A-104, Official Cmt. 2.
[207] UCC §4A-108.

another part of the same transaction[208]. Finally, regulations and operating circulars of the FRB supersede any inconsistent provision of Article 4A[209].

Effect: For covered transactions, Article 4A sets forth rules governing such transactions. Part 2 of Article 4A governs the relationship between the sender of a payment order and the receiving bank that will execute the payment order, including what constitutes acceptance and rejection (both rightful and wrongful) of a payment order, and what must be done to amend a payment order[210]. Part 2 also determines which person suffers a loss if a mistake, an unauthorized payment order or an erroneous payment order occurs between a sender and receiving bank. The rules relating to unauthorized payment orders hinges on the "security procedure" that exists between the sender and receiving bank, i.e., the agreed procedure that verifies the authenticity of a payment order or other relevant communication. The security procedure allocates risk of loss in the event of an unauthorized payment order.

Part 3 of Article 4A governs the relationship between receiving banks[211]. For example, a principal obligation of a receiving bank is to execute a payment order once it has accepted the order (i.e., pass the payment order onto the next bank). Unless otherwise agreed, a bank may use any commercially reasonable method to issue a payment order. A receiving bank is generally responsible for any error it commits in issuing the payment order. Part 3 also governs incorrect payments by a receiving bank, including (i) overpayment or (ii) payment to an incorrect beneficiary.

Part 4 of Article 4A governs payment to the beneficiary, including extension of credit by each receiving bank to each sender when the sender's payment order is accepted, and the settling between participants[212].

3. Escrow Laws

State escrow laws were established to target online fraud, and have been implemented in California. California's escrow law (described below) is, in many cases, applicable to the types of persons and/or entities described as Escrow Services in Research 1 Section I.E above. New York has not adopted a comparable escrow law.

California's escrow law is contained in Division 6 of the California Financial Code, and protects members of the public who entrust their money or other assets to independent escrow agents of California. "Internet escrow agents" are defined therein to include "any person engaged in the business of receiving escrows for deposit or delivery over the internet"[213]. Persons or companies performing escrow services over the internet in California, or performing escrow services over the internet for consumers in California, are subject to

[208] UCC §4A-108, Cmt. 1.
[209] UCC §4A-107.
[210] See generally UCC §4A-201 *et seq*.
[211] See generally Id.
[212] See generally Id.
[213] Cal. Fin. Code § 17004.5.

the licensing requirements of the escrow law[214]. The California Commissioner of Business Oversight maintains compliance with the statutory requirements, including review of licensure applications and the requirements thereof. As regards internet escrow agents, please note that the following entities are exempt from the licensing requirements of the escrow law: "Any person doing business under any law of California or the United States relating to banks, trust companies, building and loan or savings and loan associations, or insurance companies"[215].

In order to become a licensed internet escrow agent in California, an entity must meet the following standards: (i) have liquid assets and tangible net worth, (ii) meet an experience requirement, and (iii) meet the bond requirements.

First, the applicant must demonstrate that it has liquid assets in excess of current liabilities of at least $25,000 and a tangible net worth of at least $50,000. The applicant must file audited financial statements which show compliance with such requirements.

The applicant must also have within the organization an individual who possesses at least five (5) years of responsible escrow experience. Responsible escrow experience has been interpreted to mean:

(1) Experience as an escrow officer on a full-time basis with an organization which is regularly engaged in processing escrows;

(2) Experience as a qualified escrow supervisor of other escrow officers on a full-time basis where there is close supervision of escrows processed by the organization; or

(3) A combination of escrow officer or escrow supervisory experience.

Experience as an escrow secretary, escrow assistant, escrow trainee, loan processor or similar position is not considered as qualifying experience. Within the organization of each internet escrow agent corporation engaged in the business of an escrow involving personal property, at least one qualified person who possesses knowledge of accounting and the escrow law and regulations must be on duty at each business location.

Finally, internet escrow agents applying for licensure must provide a minimum surety bond of $25,000. The escrow agent must also have indemnity coverage (a fidelity bond) in the amount of $125,000 providing fidelity coverage on each officer, director, trustee, employee for the purpose of indemnifying the escrow agent as a result of fraudulent or dishonest abstraction, misappropriation or embezzlement of trust obligations by an officer, director, trustee or employee of the escrow agent.

4. Credit Card Laws

[214] Cal. Dept. of Bus. Oversight Press Release No. 00-13.
[215] Cal. Dept. of Bus. Oversight, *About the Escrow Law*.

Privacy Laws: California and New York have enacted credit card privacy laws as consumer protection devices relating to credit card transactions. In California, the Song-Beverly Credit Card Act of 1971 (the "Song-Beverly Credit Card Act") prevents retailers from requesting a consumer's personal information and then matching it with their database information in order to target the consumer with direct marketing[216]. The legislature intended to model the Song-Beverly Credit Card Act after TILA:

> It is the intent of the Legislature that the provisions of this title as to which there are similar provisions in the federal Truth in Lending Act, as amended (15 U.S.C. 1601, et seq.), essentially conform, and be interpreted by anyone construing the provisions of this title to so conform, to the Truth in Lending Act and any rule, regulation, or interpretation promulgated thereunder by the Board of Governors of the Federal Reserve System, and any interpretation issued by an official or employee of the Federal Reserve System duly authorized to issue such interpretation[217].

Specifically, the Song-Beverly Credit Card Act provides that companies that accept credit cards are not allowed to "[r]equest, or require as a condition to accepting the credit card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the person . . . accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise[218]." As used therein, the term "personal identification information" is construed to include, without limitation, the cardholder's telephone number and address. The prohibition does not prevent a retailer from requesting a consumer's telephone number, address or other personal identification information if:

- the consumer pays in cash or by check;
- that information is required for a special purpose incidental but related to the individual credit card transaction, such as shipping, delivery, servicing, or installation of the purchased merchandise, or for special orders;
- the retailer is contractually obligated to provide that information to complete the credit card transaction (for instance, if the credit card issuer requires that information);
- the transaction is a cash advance transaction;
- the credit card is being used as a deposit to secure payment in the event of default, loss, damage, or other similar occurrence, or

[216] Cal. Civ. Code §§1747-1748.95.
[217] Cal. Civ. Code §1747.01.
[218] Cal. Civ. Code §1747.08.

- the consumer returns merchandise for which he or she had paid by credit card.

Importantly, California courts have excluded the Song-Beverly Credit Card Act from applying to transactions conducted over the internet. The court reasoned that "[w]hile the use of computer technology is mentioned [in the Act], the language does not suggest the Legislature considered online transactions or the perils of misappropriation of consumer credit information in an online environment where there is no ability to confirm the identity of the customer[219]."

New York does not have an analogous privacy law for credit card transactions. However, in New York, a retailer is not permitted to record a customer's social security number on a check, traveler's check, gift certificate, money order or other negotiable instrument in a transaction as a condition to accepting such instrument as payment[220].

Surcharge Prohibitions: Both California and New York have enacted prohibitions on retailers imposing a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check or similar means[221]. In California, a retailer willfully violating that prohibition is liable to the cardholder for three times the amount at which the actual damages are assessed. The California Civil Code expressly permits retailers to offer a price discount for the purpose of inducing payment by cash or check, provided that the discount is offered to all prospective buyers[222].

5. Anti-Money Laundering Laws

California: In California, the state Penal Code provides that there needs to be a "financial transaction" in order for the crime of money laundering to exist. The California Penal Code identifies the types of activities qualifying as financial transactions to include bank deposits, withdrawals, fund transfers, wire transfers, payments, and other financial activities[223]. In order to be within the scope of the California money laundering act, a person must have engaged in the transaction through a financial institution such as a bank, credit union, trust company, or other type of institution listed by state law[224]. To be found guilty of the crime of money laundering the person must have performed one transaction or a series of transactions within seven (7) days, with a total value over $5,000 or, alternatively, one transaction or a series of transactions within thirty (30) days, with a total value over $25,000[225]. Under the California Penal Code, attempts to conduct business might qualify as money laundering even if the transaction does not go through successfully[226].

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[219] *Saulic v. Symantec*, 596 F. Supp. 2d 1323 (C.D. Cal. 2009).
[220] N.Y. GBS Law §518-a.
[221] N.Y. GBS Law §518; Cal. Civ. Code §1748.1.
[222] Cal. Civ. Code §1748.1.
[223] Cal. Penal Code, § 186.9 (c).
[224] Cal. Penal Code, § 186.9 (b).
[225] Cal. Penal Code, § 186.10 (a).
[226] Id.

In general, the California Penal Code provides that a conviction for one offense of money laundering may result in a sentence of imprisonment in county jail or state prison for up to one year[227]. However, the term of imprisonment may be increased to correlate with the value of the transaction.

In addition to imprisonment, the state may request a fine or both a fine and term of imprisonment. A fine amount is up to a maximum of $250,000 or double the value amount of the financial transactions, whichever is greater (or to the greater of $500,000 or five times the value amount of the financial transactions, if the person has a prior conviction for money laundering)[228].

New York: Similar to California, the New York Penal Law identifies the types of money laundering transactions to include any deposits, wire transfers, payments, sales, purchases, loans, extensions of credit, transfers of title, and currency exchanges[229]. Additionally, any other acts made through or by a financial institution such as a bank, broker, credit union, loan company, travel agency, or another type of business may also qualify as transactions for the purpose of money laundering[230].

The punishment for money laundering depends on the degree of the offense charged by the state and includes a range of fines as well as a sentence of imprisonment or both. In general, a fine cannot exceed twice the value of the monetary transactions made to engage in money laundering[231]. The New York Penal Law establishes separate, increasingly severe degrees of violation when the value of the money laundering transaction exceeds $5,000, $50,000, $100,000, and $1 million. The violation is also increasingly severe if the proceeds come from sale of controlled substances, drug trafficking or are used to fund terrorist organizations or support terrorism[232].

6. Gift Card Laws

As discuss in this Section II above, sellers of gift cards (subject to the exemptions stated therein) are governed by the restrictions set forth CARD Act. However, the CARD Act serves as a regulatory minimum, and California and New York have enacted additional regulations beyond those set forth in the CARD Act.

California: The gift card law in California applies to gift cards (and "gift certificates") issued in California, but excludes gift cards usable with multiple sellers of goods or services (i.e., open loop gift cards) unless usable only with affiliated sellers of goods or services[233]. Gift cards within the scope of California's gift card law have the following restrictions:

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[227] Id.
[228] Id.
[229] N.Y. PEN. LAW § 470.00.
[230] Id.
[231] N.Y. PEN. LAW § 470.25.
[232] N.Y. PEN. LAW § 470.05- 470.24.
[233] Cal. Civ. Code, §1749.5(a).

- Gift cards with an expiration date must disclose such expiration date in capital letters on the front of the card;
- Subject to certain exceptions, gift cards cannot contain a service fee;
- Notwithstanding the policy of the seller, the seller of a gift card is required to provide the holder, upon request, with the cash value of such gift card when the cash value is ten dollars ($10) or less (the "Cash Value Requirement").

The Cash Value Requirement has been challenged, and upheld, in California courts. In 2009, a county district attorney's office's investigation revealed the company's failure to honor the Cash Value Requirement. Starbucks agreed to (i) pay $225,000 in civil penalties, costs, and restitution, (ii) change signage and add a button to cash registers to effect the Cash Value Requirement, and (iii) train employees on how and when they are required to redeem gift cards[234]. Similarly, a judge ordered Rite Aid to pay $800,000 for misleading customers about the benefits of its customer rewards program and gift cards. The judge stated that Rite Aid must clearly state when its +UP Rewards and Wellness Card holders are entitled to receive coupons, disclose expiration dates or limitations on rewards and train employees how to properly honor the Cash Value Requirement[235].

If the seller of a gift certificate goes into bankruptcy, the gift card may have no cash value. The holders of such gift cards may petition the court to become unsecured creditors of the bankruptcy estate. A recent California law requires sellers to continue to honor gift cards issued prior to filing of bankruptcy after such filing has been made, although no court has ruled on the effectiveness of the law[236].

New York: The gift card laws in New York are similar to those in California. In New York, the expiration date of a gift card must be conspicuously disclosed to the consumer[237]. Service fees must be conspicuously disclosed to the consumer as well, and no service fee may be assessed before the thirteenth (13th) month after issuance[238]. However, there is no equivalent to the Cash Value Requirement in New York.

[234] *People v. Starbucks*, Case No. 2009-166948 (Cal. Sup. Ct., 2009).
[235] *People v. Rite Aid*, Cash No. 27-2012-00083218 (Cal. Super. Ct., 2012).
[236] Cal. Civ. Code §1749.6(b).
[237] N.Y. Gen. Bus. Law §396-i.
[238] Id.

RESEARCH 2: RESTRICTIONS ON THE SCOPE OF BUSINESS THAT BANKS, BANK GROUPS, BANK HOLDING COMPANY GROUPS AND FINANCIAL HOLDING COMPANY GROUPS MAY PERFORM IN THE UNITED STATES

I. Introduction/Background

A. *Regulatory Framework Applicable to Banks*

1. Dual Banking System.

The United States has a dual banking system whereby banks may be chartered by either federal or state authorities.

The federal bank regulator with the power to charter banks is the Office of the Comptroller of the Currency (the "OCC"), which charters national banks[239] and thrifts, or federal savings associations[240] [241]. The OCC is part of the US Department of the Treasury.

Each state within the United States also has a banking or financial institutions regulator that may charter either banks or thrifts.

An institution must obtain a bank or thrift charter from either a federal or a state regulator in order to engage in the business of banking. As a general matter, the business of banking involves the acceptance of deposits and engaging in the business of making commercial loans.

The FDIC is also a federal bank regulatory authority. The FDIC does not charter banks. Rather, the FDIC among other things administers the federal deposit insurance program that insures certain bank deposits in case of a bank failure, supervises bank failures, and regulates certain activities and operations in order to protect the federal deposit insurance fund.

The FRB is also a federal bank regulatory authority. The FRB does not charter banks. Rather, the FRB among other things administers the US federal reserve system and regulates the members of the federal reserve system. National banks (i.e., federally-chartered banks that obtain their charter from the OCC) are required to be members of the federal reserve system. Additionally, the FRB is the regulator of bank holding companies (discussed below).

2. Bank Holding Companies

The US Bank Holding Company Act of 1956 (the "BHC Act")[242] defines a bank holding company generally as any legal entity (generically referred to as a "company") that owns or "controls" one or more US banks[243]. The BHC Act

[239] 12 USC §26.
[240] 12 USC §1464.
[241] "Thrifts", saving associations and state-licensed savings and loan associations are institutions that accept deposits but whose activities were historically limited to primarily making residential mortgages. More recently, these institutions' activities have been expanded to permit them to provide a broader range of consumer financial services and to make commercial loans.
[242] 12 USC §1841 et seq.
[243] The determination of "control" is complex and highly factually intensive. The BHC Act generally presumes the existence of "control" where an entity owns more than twenty-five percent of any class of voting shares of a bank. The precise threshold for an ownership stake triggering "control" depends in each case on whether the FRB finds the existence of a

establishes the legal framework under which bank holding companies ("BHCs") operate and provides that BHCs and their banking and nonbanking subsidiaries are regulated by the FRB[244]. The BHC Act limits the types of activities that BHCs may conduct, either directly or through nonbank subsidiaries. As a general matter, BHCs are limited to owning or controlling banks and engaging in, or owning or controlling companies that engage in, activities that are "closely related to banking". See Research 2 Section III below.

3. Financial Holding Companies

A financial holding company (an "FHC") is a specific type of BHC. The BHC Act was amended in 1999 by the Gramm-Leach-Bliley Act of 1999 (the "GLB Act") to permit BHCs to exercise certain expanded powers if such BHCs qualify for and elect to be treated as FHCs. In contrast to "ordinary" BHCs, FHCs are not limited to owning or controlling banks and engaging in, or owning or controlling companies that engage in, activities that are "closely related to banking", but may also engage in, or own or control any companies engaged in, activities that are financial in nature, incidental to a financial activity, or complementary to a financial activity[245]. The expanded powers of FHCs include securities underwriting and dealing, insurance underwriting and merchant banking. See Research 2 Section IV below.

4. Primary/Secondary Regulators

The entity that grants a banking charter to a bank is such bank's primary regulator. Primary regulators are generally responsible for conducting bank examinations. Thus, for example, the OCC is the primary regulator of a national bank. Secondary regulators share oversight responsibilities with primary regulators. Thus, for example, the FDIC acts as a secondary regulator for banks whose deposits are insured.

As mentioned above, BHCs and FHCs are regulated by the FRB. The FRB is an "umbrella" regulator that has the power to regulate the BHC or FHC and all of its subsidiaries. Additionally, nonbanking subsidiaries of FHCs are subject to functional regulation by other regulatory agencies. For example, a subsidiary of an FHC that engages in securities underwriting and dealing activities is also regulated by the US Securities and Exchange Commission, the functional regulator of US broker-dealers, and a subsidiary of an FHC that engages in insurance activities is also supervised by the relevant state insurance regulator.

5. Applicable Laws and Regulations

"controlling influence" over the subject entity. See 12 USC §1841(a)(2). Ownership of as little as ten percent of voting securities of any class often supports the finding of a "controlling influence" over a bank.

[244] Entities that own or control savings and loan associations (i.e., savings and loan holding companies) are not subject to the BHC Act; rather, the regulatory framework for savings and loan holding companies is governed by the Home Owners' Loan Act, 12 USC § 1461 et seq. Like BHCs, savings and loan holding companies are regulated by the FRB and are subject to restrictions on the activities they can conduct. A discussion of the permissible activities of savings and loan holding companies is beyond the scope of this report.

[245] 12 USC §1843(k)(1).

As a general matter, the primary US law that grants powers to and imposes restrictions on the activities of a national bank is the National Bank Act[246]; the primary US law that grants powers to and imposes restrictions on the activities of BHCs and their non-bank subsidiaries is the BHC Act[247]; and the primary US law that grants powers to and imposes restrictions on the activities of FHCs and their non-bank subsidiaries is the BHC Act as amended by the GLB Act. The primary regulators of national banks, BHCs and FHCs have issued regulations that regulate the activities of national banks, BHCs and FHCs: (i) the principal regulations applicable to national banks and their subsidiaries have been issued by the OCC and are set forth at 12 CFR §1 et seq.; (ii) the principal regulations applicable to the permissible activities of BHCs and their non-bank subsidiaries have been issued by the FRB and are set forth at 12 CFR §225 et seq. (and in particular, sections 225.21 through 225.28); and (iii) the principal regulations applicable to the permissible activities of FHCs and their non-bank subsidiaries have been issued by the FRB and are set forth at 12 CFR §225.81 et seq. (and in particular, section 225.86). Additionally, each of the applicable primary regulators has issued a large number of interpretive letters or orders pursuant to which such regulators have interpreted and applied the general criteria relating to the permissible activities of national banks, BHCs and FHCs to specific factual situations (e.g., OCC interpretive letters and FRB orders). Because of the large number of such interpretive letters and orders that have been issued over the years, it is not possible to list all such interpretive letters and orders; the significant permissible activities of national banks, BHCs and FHCs are described below in Research 2 Sections II, III and IV of this report.

B. *Separation of Banking and Commerce*

The US has a traditional policy of separating banking and commerce. Such policy is based primarily on concerns that the mixing of banking and commerce would lead to (i) conflicts of interest in decisions relating to the making or allocation of credit, (ii) potential increased risks to insured banks and the expansion of the federal deposit insurance program, and (iii) undue concentration of economic power that may lead to anticompetitive behavior. The activities that are permissible for banks, BHCs and FHCs as set forth in US laws and regulations, and in particular the BHC Act (as amended by the GLB Act), reflect this policy.

As a general matter, the US regulatory scheme applicable to banks, BHCs and FHCs starts from the narrow premise that banks may only engage in the "business of banking" and other activities "incidental [to] the business of banking"[248]; BHCs may only engage in the activities of banking, managing and controlling banks, and activities that are "so closely related to banking as to be a proper incident thereto"[249]; and FHCs may only engage in activities that are "financial" activities or activities that are "incidental" or "complementary" to financial activities[250]. In order for an activity to be a permissible activity for a bank, BHC or FHC, such activity will need to have been determined by the applicable regulator as an activity that is permissible for banks, BHCs or FHCs. Thus, the determination of activities that are allowed or

[246] 12 USC §21 et seq.
[247] 12 USC §1841 et seq.
[248] 12 USC §24 (Seventh). See the discussion below in Section II of this report.
[249] 12 USC §§1843(a), (c). See the discussion below in Section III of this report.
[250] 12 USC §1843(k)(1). See the discussion below in Section IV of this report.

permissible for banks, BHCs and FHCs is not based upon creating exceptions or "carving out" certain activities from a broad set of activities (i.e., permissible activities are not determined by a framework of "banks, BHCs or FHCs may engage in any activities except …"); rather, the determination of activities that are allowed or permissible for banks, BHCs and FHCs is based upon a framework of positive determination that an activity falls within "the business of banking" or is "incidental" thereto (for bank activities), is "closely related" to banking activities (for BHC activities), or is a "financial" activity or "incidental" or "complementary" to a financial activity (for FHC activities). Thus, the activities in which banks, BHCs and FHCs are prohibited or restricted from engaging are all activities that have not otherwise been determined by law or regulation or orders/determinations of the applicable regulators to be a permissible activity for banks, BHCs or FHCs. Consequently, as a general matter, this report refers to "permissible" activities rather than "restricted" or "prohibited" activities.

C. *Limited Scope of this Memorandum*

This report provides a general overview of the activities that are permissible for banks, BHCs and FHCs. This report and the discussion herein regarding the permissible activities of banks, BHCs and FHCs is not exhaustive and should not be viewed as such; rather, this report provides an overview of the types of activities in which banks, BHCs and FHCs are permitted to engage.

Additionally, as per our understanding with the FSA, the scope of this report is limited to the permissible activities of national banks and US federal laws applicable to the activities of national banks, BHCs and FHCs. The use of the term "bank" in the remaining sections of this Research 2 of this report refers to a national bank; the terms "bank" and "national bank" are used interchangeably throughout the remaining sections of this Research 2 of this report.

In addition to the discussion below regarding the activities that are permissible for banks, BHCs and FHCs, please also note that such entities are also subject to numerous other laws, rules and regulations that impose limitations or restrictions on such entities. For example, such entities are subject to minimum capital and liquidity requirements (based upon, but different from Basel III capital and liquidity requirements), to limitations on activities with affiliated entities[251], to limitations on the amount of loans to any one particular entity (such limitations based on a percentage of the bank's capital and surplus)[252], etc.

II. Permissible Activities of National Banks

A. *Permitted Activities*

The activities and powers of national banks emanate from the National Bank Act including, in particular, Section 24(Seventh) thereof, which provides in relevant part that

> "a national banking association [i.e. a national bank] … shall have power … to exercise … all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts,

[251] Section 23A of the Federal Reserve Act and the FRB's implementing Regulation W set forth quantitative limitations on a bank's transactions with any single affiliate and in the aggregate with all affiliates.
[252] 12 USC §84; 12 CFR §32.

bills of exchange, and other evidence of debt; by receiving deposits; by buying and selling exchange, coin, and bullion, by loaning money on personal security; and by obtaining, issuing, and circulating notes …."

As a general matter, based on the foregoing, national banks are only permitted to engage in "the business of banking" and other activities "incidental … [to] the business of banking", i.e., a national bank may not engage in any activity unless such activity is "banking" or "incidental" to the business of banking. The phrase "business of banking" is not defined; however, as noted earlier, as a general matter, banking is viewed as engaging in the business of accepting deposits and making loans. The US Congress has not definitively elaborated on the powers of banks.

As noted earlier, the OCC is the primary regulator of national banks. The OCC has previously determined that the following activities (in addition to general deposit-taking and lending activities granted by statute) are permissible for national banks[253] (the following activities of national banks have been found by the OCC to be permissible activities either by regulation or a specific order):

(i) issuing of letters of credit and standby letters of credit;

(ii) purchasing of loan participations;

(iii) engaging in lease financing;

(iv) performing a variety of activities related to credit cards, including issuing credit cards, handling credit applications for other card issuers, operating a card loss notification service, and performing credit verification services over point of sale terminals;

(v) selling, directly or through an operating subsidiary, all types of insurance from any office located in a community of 5,000 inhabitants or less (even if the bank's main office is located in a town whose population exceeds 5,000 inhabitants);

(vi) selling, underwriting or acting as agent in the sale of credit-related life, accident, disability and health insurance in connection with consumer loans; there is no geographic limitation on sales of such insurance;

(vii) securitizing and selling assets that the bank holds;

(viii) engaging in some types of securities broker-dealer activities, subject to certain conditions, including transactions for trust customers, private placements, and sales of certain asset-backed securities;

(ix) executing and clearing of securities transactions;

(x) engaging, either directly or through subsidiaries, in derivative activities (including swaps, futures, forwards and options) as a financial intermediary or to reduce risks; banks may also engage, either directly or through subsidiaries, in advising, structuring, arranging and executing transactions, as agent or principal, in connection with certain types of derivatives, including interest

[253] Such enumeration of permitted activities is intended to provide a summary of the basic activities of national banks. As noted earlier, such list of permitted activities is not an exhaustive list of activities that the OCC has determined are permissible activities for national banks. Additionally, the description of the listed permissible activity is a general description; there may be, and typically would be, certain limitations or restrictions on the listed activity.

rate and currency swaps; however, certain of these activities may be limited by the so-called Dodd-Frank "swaps push-out rule"[254]

(xi) acting as custodian, transfer agent and investment adviser to an investment company;

(xii) underwriting general obligations of the US and Canada and of the states, provinces and political subdivisions thereof, as well as the obligations of certain government-sponsored entities;

(xiii) acting in a fiduciary capacity to the same extent as state banks or trust companies are permitted to act under the laws in which the national bank is located; national banks may establish trust companies as subsidiaries;

(xiv) investing in bank service companies if the amount invested does not exceed ten percent of the bank's capital and surplus and all investments in bank service companies do not exceed five percent of the bank's assets;

(xv) investing in banker's banks in an amount of up to ten percent of the national bank's capital and surplus; a national bank may not hold more than five percent of the voting stock of a banker's bank;

(xvi) purchasing commercial paper that is rated in one of the four highest commercial paper ratings by national statistical rating organizations;

(xvii) investing in investments that promote the public welfare by benefitting primarily low- and moderate-income communities or families in an amount not to exceed five percent of the bank's capital and surplus;

(xviii) investing in corporate debt securities that meet *inter alia* the following requirements: (1) the security can be sold with reasonable promptness at its fair market value; (2) the security is of investment grade; and (3) total investments in any one issuer do not exceed ten percent of the bank's capital and surplus;

(xix) investing in securities issued or guaranteed by the US or any agency of the US, as well as general obligations of any state or political subdivision thereof;

(xx) investing in securities of non-US governments, provided that the securities are marketable debt obligations that are not predominantly speculative in nature and no more than ten percent of the bank's capital and surplus is invested in the securities of any one such government;

(xxi) purchasing, holding and conveying real estate as mortgaged to the bank or conveyed as security for or in satisfaction of debts previously contracted; a bank may not hold real estate conveyed to it to satisfy debts previously contracted for longer than 5 years unless a longer period is approved by the OCC;

[254] Section 716 of the DFA as a general matter requires that banks, with certain exceptions, split their derivative trading operations from their insured depository units, i.e., that banks "push out" swaps and other derivative instruments into subsidiaries that would not receive federal government support in the event of a failure. However, the swaps push-out rule permits interest rate swaps, foreign exchange swaps and other derivatives used for hedging purposes to remain within a depository institution.

(xxii) investing in small business investment companies in an aggregate amount not to exceed 5 percent of the bank's capital and surplus;

(xxiii) developing, marketing, delivering and maintaining stored value and related non-banking information systems for the bank itself and other entities;

(xxiv) providing data processing and data transmission services and facilities for the bank itself and for other entities, where the data is banking, financial or economic data, and other types of data if the derivative or resultant product is banking, financial or economic data;

(xxv) providing check and credit card verification services, cash management services, and software for cash management services and payment processing; and

(xxvi) engaging in financial, investment, or economic consulting, planning and advisory services for other financial institutions, and other businesses in various contexts.

B. *Specific Activities*

1. Authentication Business/Confirmation of an Individual's Identification

National banks have the power to provide notary services (i.e., verification of signatures) as part of the business of banking[255]. National banks typically provide such notary/ signature verification services with respect to their customers. Such signature verification services are typically provided in connection with the transfer of securities by banks that are participants in the Securities Transfer Agents Medallion Program (STAMP).

National banks, as part of their business of banking, may also act as a certificate authority and may issue digital certificates verifying the identity of persons associated with a particular public/private key pair[256]. National banks may issue digital certificates verifying attributes in addition to identity of persons associated with a particular public/private key pair where the attribute is one for which verification is part of or incidental to the business of banking. For example, national banks may issue digital certificates verifying certain financial attributes of a customer, such as account balance, lines of credit, past financial performance of the customer, and verification of the customer relationship with the bank, as of the current or a previous date[257].

As part of the correspondent services that national banks may offer to other banks, national banks may provide digital certification authority services[258].

2. E-Commerce

National banks and their subsidiaries can engage in a wide variety of electronic banking activities, including internet and personal computer banking, electronic payments, digital certification and electronic commerce (e-commerce). Included within e-commerce permitted activities of a national

[255] See OCC Conditional Approval No. 267 (January 12, 1998).
[256] 12 CFR §7.5005.
[257] OCC Conditional Approval No. 267 (January 12, 1998), OCC Conditional Approval No. 339 (November 16, 1999).
[258] 12 CFR §7.5007.

bank is a national bank's enabling business merchants to acquire a package of electronic services that allows the merchants to create web stores and process electronic payments for purchases made over the internet. The bank may provide authorization and payment processing services necessary for the merchants to accept on-line credit and debit card payments. The bank may also provide the merchants with reports on the activities of their web stores[259].

National banks may operate a "virtual mall", i.e., a bank-hosted set of web pages with a collection of links to third-party web sites organized as to product type and available to bank customers so that bank customers can shop for a range of financial and non-financial services via links to sites of third-party vendors and merchants can electronically confirm payment authorization before shipping goods[260].

3. Outsourcing of Administrative Business in Connection with Payment Settlement Services

National banks and their subsidiaries are permitted to engage in payment settlement services and to provide such services to third-parties as such involve the processing of banking and financial data[261]. We are not aware of any requirement in connection with a bank or its subsidiary's provision of payment settlement services that would limit or restrict the revenue that such bank or subsidiary could obtain from third-parties, i.e., we are not aware of any limitation or restriction that would require such bank or subsidiary to obtain a minimum amount of its revenues from such services from such bank's or subsidiary's parent entity or related affiliated entities.

C. *Authorization to Engage in Permitted Activities*

An entity must file an application with the OCC to become a national bank and engage in permissible banking activities[262]. Once approved, a bank may engage in any permissible activity.

Additionally, a national bank that is well capitalized and well managed may establish or acquire an operating subsidiary, or perform a new activity in an existing operating subsidiary, by providing to the applicable OCC district office written notice within ten days after acquiring or establishing the subsidiary or commencing the new activity (i.e., after-the-fact notice) if certain conditions are met, including that: (i) the activity falls within a list of specified activities[263], (ii) the bank has the ability to control the management and operations of the subsidiary, (iii) the bank holds more than 50% of the voting interests in the subsidiary, and (iv) the bank is required to consolidate its financial statements with those of the subsidiary[264]. If a national bank cannot meet the criteria to file an after-the-fact notice or if the activity does not qualify, the national bank must file an application to the OCC with respect to the establishment or acquisition of an operating subsidiary or the performance of a new activity in an existing operating subsidiary[265].

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[259] See OCC Corporate Decision No. 2001-18 (July 3, 2001) (Business First National Bank).
[260] See OCC Interpretive Letter No. 875 (October 31, 1999) (Key/Econev).
[261] See OCC Interpretive Letter No. 928 (December 24, 2001) (Southwest Bank, N.A.).
[262] 12 CFR §5.4.
[263] Such specified activities are set forth at 12 CFR §5.34(e)(5)(v).
[264] 12 CFR §5.34(e)(5)(i).
[265] 12 CFR §5.34(e)(5)(ii).

III. Permissible Activities of Bank Holding Companies

A. *Permitted Activities*

As discussed earlier, in order to give effect to the traditional policy of the US of separating banking from commerce, the BHC Act restricts the permissible activities and investments of BHCs. Section 4(a) of the BHC Act[266] provides that no BHC shall engage in any activities other than banking or managing or controlling banks[267], and that no BHC shall acquire or retain direct or indirect ownership or control of any voting shares of any company that is not a bank or a BHC[268]. Section 4(c) of the BHC Act[269], however, sets forth a number of exemptions from the general prohibition in Section 4(a) against a BHC engaging in nonbanking activities and investments in nonbanks. Included within the exemptions permitted by Section 4(c) of the BHC Act are any activities or investments which the FRB had determined, either by regulation or order, "to be so closely related to banking as to be a proper incident thereto[270]."

The FRB has promulgated Regulation Y, 12 CFR 225, to implement Section 4(c) of the BHC Act. Such Regulation Y sets forth general rules governing the permissible nonbanking activities and investments of BHCs. In particular, Section 225.28 of Regulation Y[271] provides that BHCs may engage in the following activities or investments[272]:

(i) Extending credit and servicing loans;

(ii) Engaging in activities related to extending credit, including engaging in (a) real estate and personal property appraising, (b) check guaranty services, (c) collection agency services regarding overdue accounts receivable, (d) credit bureau/credit history services, (e) asset management, servicing and collection activities of assets of a type that an insured depository institution may originate and own, (f) acquiring debt in default, and (g) real estate settlement services;

(iii) Leasing personal or real property;

(iv) Operating nonbank depository institutions, such as industrial banks and savings associations;

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[266] 12 USC §1843(a).
[267] The FRB has interpreted "managing or controlling banks" at Regulation Y, Board Interpretations, 12 CFR §225.113(f), (g).
[268] The prohibition of BHC Act Section 4(a) does not apply to shares acquired by a bank subsidiary of a BHC notwithstanding that such shares are indirectly acquired by the BHC. The FRB takes the position that the provisions of the BHC Act that limit the nonbanking activities of BHCs (BHC Act Section 4) do not apply to the nonbanking activities of bank subsidiaries of BHCs; instead, the BHC Act leaves the nonbanking activities of bank subsidiaries of BHCs to be determined by a bank's chartering authority (i.e., the OCC with respect to national banks). See *Independent Ins. Agents of America, Inc. v. Board of Governors of the Fed. Reserve Sys*., 890 F.2d 1275 (2d Cir. 1989), cert. denied, 498 U.S. 810 (1990).
[269] 12 USC §1843(c).
[270] 12 USC §1843(c)(8).
[271] 12 CFR §225.28.
[272] Such enumeration of permitted activities is intended to provide a summary of the activities in which BHCs may engage as approved by the FRB and set forth in its Regulation Y. Such list of permitted activities is not an exhaustive list of such activities in which BHCs may engage. Additionally, the description of the listed permissible activity is a general description; there may be, and typically would be, certain limitations or restrictions on the listed activity.

(v) Performing trust company functions, including activities of a fiduciary, agency or custodial nature;

(vi) Performing certain financial and investment advisory services, including (a) providing general economic information and advice, (b) providing advice with respect to mergers, acquisitions, divestitures, etc., (c) providing information and advice in respect of transactions in foreign exchange, swaps and similar transactions, and commodities;

(vii) Providing agency transactional services for customer investments, including certain (a) securities brokerage services, (b) riskless principal transactions (buying and selling securities on the order of customers), (c) private placement services, and (d) futures commission merchant activities (execution and clearance of futures contracts);

(viii) Engaging in certain investment transactions as a principal, including (a) underwriting and dealing in government obligations and (b) certain investment and trading activities in foreign exchange and swaps, forward contracts and related instruments. However, certain of these activities may be limited by the so-called "Volcker Rule"[273]. Although the Volcker Rule generally limits a banking entity from engaging in proprietary trading [274], certain proprietary trading activities are excepted from the general ban (i.e., such activities are permitted, including (i) trading in US government, state and municipal securities [275], (ii) risk-mitigating hedging activities [276], and (iii) investments in certain small business investment companies and public welfare investments [277]). Although regulations implementing the Volcker Rule became effective in 2014, the FRB extended the period by which banking entities must bring certain activities into conformance with the restrictions of the Volcker Rule (known as the "conformance period") until July 2015 for certain activities and later dates for activities related to covered funds;

(ix) Providing certain management consulting and counseling activities;

(x) Providing certain support services, including (a) courier services for checks, etc., and (b) printing and selling MICR (Magnetic Ink Character Recognition)-encoded items;

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[273] Section 619 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, popularly known as the "Volcker Rule", added a new section to the BHC Act that prohibited any "banking entity" (which is defined to include any company that controls an insured depository institution) from engaging in any proprietary trading or sponsoring or investing in a hedge fund or private equity fund, subject to certain exceptions for permitted activities and a conformance period.
[274] The term "proprietary trading" means "engaging as a principal for the trading account of the banking entity … in any transaction to purchase or sell, or otherwise acquire or dispose of, any security, any derivative, any contract of sale of a commodity for future delivery, any option on any such security, derivative, or contract, or any other security or financial instrument that the appropriate Federal banking agencies, the Securities and Exchange Commission, and the Commodities Futures Trading Commission may, by rule … determine." 12 USC §1851(h)(4).
[275] 12 USC §1851(d)(1)(A).
[276] 12 USC §1851(d)(1)(C).
[277] 12 USC §1851(d)(1)(E).

(xi) Engaging in certain insurance agency and underwriting activities, including acting as a principal, agent or broker for insurance that is directly related to an extension of credit by the BHC or its subsidiaries (including finance companies with certain limitations);

(xii) Engaging in community development activities, including (a) making equity and debt investments in corporations or projects designed primarily to promote community welfare and (b) providing advisory services for programs designed primarily to promote community welfare;

(xiii) Issuing and selling money-orders and similar consumer-type payment instruments; and

(xiv) Providing certain data processing, data storage and data transmission services if the data is financial, banking or economic in nature.

The foregoing activities are commonly referred to as the so-called BHC "laundry list" of permissible activities.

B. *Authorization to Engage in Permitted Activities*

Other than the operation of an insured depository institution, a BHC may conduct the BHC "laundry list" of permissible activities without obtaining the FRB's prior approval if the BHC meets certain criteria. In general terms, such criteria are that (i) the BHC, the lead insured depository institution of the BHC, and insured depository institutions that are controlled by the BHC and that control at least 80% of such insured depository institutions' risk-weighted assets are well-capitalized and well-managed, (ii) there are no supervisory actions outstanding against the BHC or any of its insured depository institutions, (iii) the activity is conducted in compliance with all FRB orders and regulations governing the activity, and (iv) notice of the BHC's engaging in such activity is provided to the BHC's applicable Federal Reserve Bank[278].

In addition, the FRB has previously issued a significant number of orders upon application by a particular BHC that permitted such BHC to engage in activities that did not clearly fall within one of the BHC "laundry list" activities that the FRB deemed to be "closely related to banking". Such orders typically either (i) confirm that a particular BHC's specifically proposed activities are permissible under the general guidelines set forth in the "laundry list" of permissible activities or (ii) expand the permissible activities of BHCs and their subsidiaries through the FRB's interpretation of the BHC Act.[279] However, in connection with the passage of the GLB Act in 1999 and in connection with the establishment of FHCs (discussed in Research 2 Section IV below), the FRB was prohibited from expanding, either by regulation or order, the activities deemed to be closely related to banking[280].

[278] 12 CFR §225.22(a).
[279] For example, until the 1980s there had been no general FRB ruling establishing securities activities as an activity closely related to banking within the meaning of the BHC Act. That changed with numerous orders issued by the FRB that approved applications of BHCs to engage in certain limited underwriting and dealing activities.
[280] 12 USC §1843(c)(8).

IV. Permissible Activities of Financial Holding Companies

A. *Permitted Activities*

As noted earlier, the GLB Act amended the BHC Act to create a subgroup of BHCs known as "financial holding companies" (as defined earlier, "FHCs"). A BHC whose depository institutions are well-capitalized and well-managed and have received a satisfactory rating under the Community Reinvestment Act and which files a declaration of election to be a FHC with the FRB may engage in, and may acquire and retain shares of a company engaged in, certain activities that are prohibited to BHCs that are not FHCs[281]. Such additional permitted activities must be financial activities or activities that are "incidental" or "complementary" to financial activities[282].

The BHC Act, as amended by the GLB Act, defines financial activities as any activity the FRB determines, by regulation or order, to be financial in nature[283]. The BHC Act lists certain activities that "shall be considered to be financial in nature" without FRB action[284] and also permits the FRB to specify by regulation or order other activities to be financial in nature[285]. The activities that are automatically considered to be financial in nature pursuant to the BHC Act (the so-called FHC "laundry list", which is set forth in Section 4(k) of the BHC Act and in Section 225.86 of Regulation Y) are as follows[286]:

(i) Money and securities activities, i.e., lending, exchanging, transferring, investing for others, or safeguarding money or securities;

(ii) Insurance activities, i.e., insuring, guaranteeing or indemnifying against harm, damage, etc. and acting as principal, agent or broker with respect to the foregoing;

(iii) Advisory services, i.e., providing financial, investment or economic advisory services;

(iv) Securitization of bank-eligible assets, i.e., issuing or selling instruments representing pools of assets permissible for a bank to hold directly;

(v) Securities activities, i.e., underwriting, dealing in or making a market in securities;

(vi) Merchant banking activities[287], i.e., acquiring controlling or non-controlling interests in any company that is engaged in *any* activity other than an activity that is financial in nature, incidental to a financial

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[281] 12 USC §1843(l)(1)(C).
[282] 12 USC §1843(k)(1).
[283] Id.
[284] 12 USC §1843(k)(4).
[285] 12 USC §1843(k)(5).
[286] Such enumeration of permitted activities is intended to provide a summary of the financial activities in which FHCs may engage. Such list of permitted activities is not an exhaustive list of such activities in which FHCs may engage. Additionally, the description of the listed permissible activity is a general description; there may be, and typically would be, certain limitations or restrictions on the listed activity.
[287] "Merchant banking" is not defined by the BHC Act or the GLB Act. However, as a general matter, merchant banking is viewed as comparable to investment banking, i.e., it includes an entity investing its own capital in entities.

activity, complementary to a financial activity or otherwise permitted pursuant to the BHC Act, provided that the FHC has a securities affiliate or both an insurance affiliate and an investor advisor affiliate, subject to certain limitations (however, certain of these activities may be limited by the so-called "Volcker Rule"[288]). Examples of types of activities that would be permissible as merchant banking activities would be an FHC's making an investment in a company that is engaged in a nonfinancial activity (i.e., a portfolio company), either directly or through a hedge fund or private equity fund that is owned or controlled by the FHC (such funds historically have been structured as limited partnerships, and an FHC would typically be the sponsor or advisor to a fund and have a general partnership interest in such fund). However, the FHC's investment in such entity is limited by certain conditions imposed by the BHC Act and the applicable FRB regulations, including, inter alia, that the investment is made as part of a bona fide underwriting or investment banking activity (i.e., the investment is made for purposes of resale or other disposition rather than for purposes of allowing the FHC to engage in nonfinancial activities conducted by the portfolio company), that the FHC does not routinely manage or operate the portfolio company, and that the investment is limited to a period of time to enable the sale or disposition of such investment on a reasonable basis (which the FRB has interpreted to mean that an FHC may hold a merchant banking investment generally for a maximum of ten years)[289]. As mentioned, however, merchant banking investments may be limited by the Volcker Rule; in particular, investments made through a hedge fund or private equity fund that is sponsored by an FHC or in which an FHC has an equity interest are generally subject to the Volcker Rule restrictions on investments made in or through such funds, subject to the applicable conformance period;

(vii) Insurance company portfolio investments, i.e., acquiring controlling or non-controlling interests in any company that is engaged in *any* activity other than an activity that is financial in nature, incidental to a financial activity, complementary to a financial activity or otherwise permitted pursuant to the BHC Act, provided that the activities are conducted through an insurance company affiliate, subject to certain limitations (including that the ownership interests acquired represent an investment made in the ordinary course of such insurance company and that the FHC does not routinely manage or operate the company in which the investment is made) (however, certain of these activities may be limited by the so-called "Volcker Rule"[290]);[291] and

[288] See footnote 273, supra, and the accompanying text.
[289] 12 CFR §§ 225.170 - 225.173.
[290] See footnote 273, supra, and the accompanying text.
[291] Engaging in merchant banking and insurance company portfolio investments is different in nature from other financial activities because such activities permit FHCs to invest in portfolio companies that are engaged exclusively in nonfinancial (i.e., commercial) activities or a mixture of financial and nonfinancial activities, subject to the conditions that must be met in

(viii) Activities closely related to banking, i.e., activities that the FRB had determined by order or regulation in effect on November 12, 1999 to be so closely related to banking or managing or controlling banks as to be a proper incident thereto, including activities that are set forth in the FRB's Regulation Y.

Additionally, the FRB has determined by regulation that the following activities are financial in nature when conducted pursuant to a specific determination by the FRB for a particular BHC[292]:

(i) lending, exchanging, transferring, investing for others, or safeguarding financial assets other than money or other financial assets;

(ii) providing devices or instruments for transferring money or other financial assets; and

(iii) arranging, effecting or facilitating financial transactions for the account of third parties (but only to the extent that the FRB specifies by regulation or order that such activities are financial in nature).

In addition to the FHC "laundry list" of permitted financial activities, the FRB is authorized to permit FHCs to engage in, or own or control companies engaged in, any other activity that the FRB determines by regulation or order to be financial in nature. An FHC may request the FRB to determine that an activity not listed on the FHC "laundry list", or previously determined by the FRB to be a financial activity, to be financial in nature[293].

The BHC Act defines activities that are "incidental" to a financial activity as any activity that the FRB determines, by regulation or order in accordance with certain procedures, to be incidental to a financial activity[294]. An FHC may request an advisory opinion from the FRB as to whether a proposed activity falls within the scope of activity listed in Section 225.86 of Regulation Y as an activity that is incidental to a financial activity. The FRB has determined by regulation that acting as a "finder" is incidental to financial activities[295]. A "finder" is an intermediary that brings together one or more buyers and sellers of any product or service for transactions that the parties negotiate and consummate themselves[296].

The BHC Act defines activities that are "complementary" to a financial activity as any activity that the FRB determines, by regulation or order to be both (i) complementary to a financial activity and (ii) not a substantial risk to the safety and soundness of depository institutions or the financial system generally[297]. An FHC that seeks to engage in, or acquire more than 5 percent of the outstanding shares of any class of voting securities of a company engaged in, an activity that the FHC believes to be

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order to engage in such activities (such as, for example, restrictions on routinely being involved in the management or operation of such companies and the maximum holding periods of such investments).

[292] 12 CFR §225.86(e).
[293] 12 USC §1843(k)(2)(A)(i).
[294] 12 USC §1843(k)(1).
[295] 12 CFR §225.86(d)(1).
[296] Id.
[297] 12 USC §1843(k)(1).

"complementary" to a financial activity must obtain prior approval from the FRB[298]. Through orders, the FRB has determined that certain commodities trading activities[299], energy management services[300], and energy tolling agreements[301] are complementary to the financial activity of trading in commodity futures, forwards and other contracts. Additionally, the FRB has found that certain mail-order pharmacy services are complementary to the financial activity of underwriting and selling health insurance[302].

B. *Authorization to Engage in Permitted Activities*

As discussed above, a BHC whose depository institutions are well-capitalized and well-managed and have received a satisfactory rating under the Community Reinvestment Act and which files a declaration of election to be a FHC with the FRB may engage in, and may acquire and retain shares of a company engaged in, certain activities that are prohibited to BHCs that are not FHCs[303]. An FHC and any subsidiary (other than a depository institution or subsidiary of a depository institution) of the FHC may engage in any activity listed in the FHC "laundry list" of activities, or acquire shares or control of a company engaged exclusively in activities listed in the FHC "laundry list" of activities (other than a savings institution), without providing prior notice to or obtaining prior approval from the FRB[304]. However, an FHC that commences an activity or acquires shares of a company engaged in an activity listed in the FHC "laundry list" of activities must notify the appropriate Federal Reserve Bank in writing within 30 days after commencing the activity or consummating the acquisition (i.e., after-the-fact notice)[305].

An FHC may acquire shares in or control of a company that is not engaged exclusively in activities that are financial in nature, incidental to activities that are financial in nature, or otherwise permissible for a FHC under the BHC Act if the following conditions are met: (i) the company to be acquired is substantially engaged in activities that are financial in nature, incidental to a financial activity or otherwise permissible for the FHC under the BHC Act, (ii) notice is provided by the FHC to the appropriate Federal Reserve Bank as described in the preceding paragraph, and (iii) the company conforms, terminates or divests, within two years of the date the FHC acquires shares or control of the company, all activities that are not financial in nature, incidental to a financial activity or otherwise permissible for the FHC under the BHC Act[306].

V. Current Status of Existing Banks, Bank Holding Company Groups and Financial Holding Company Groups in the US

Based on information publicly available from the FRB and the FDIC, information regarding the number of banks, BHCs and FHCs in the US is as set forth below:

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[298] 12 CFR §225.89(a).
[299] Citigroup, 89 Fed. Res. Bull. 508 (2003).
[300] Fortis SA/NV, 94 Fed. Res. Bull. C20 (2008).
[301] The Royal Bank of Scotland, 94 Fed. Res. Bull. C60 (2008).
[302] Wellpoint, Inc., 93 Fed. Res. Bull. C133 (2007).
[303] 12 USC §1843(l)(1)(C).
[304] 12 CFR §225.85(a)(1).
[305] 12 CFR §225.87(a).
[306] 12 CFR §225.85(a)(3).

As of September 30, 2014, there were 6,589 insured depository institutions in the US, of which 5,705 were commercial banks and 884 were savings institutions[307].

As of June 30, 2014, there were 1,143 BHCs in the US. The breakdown in size of such BHCs is as follows[308]:

Size (Consolidated Assets)	Number of BHCs
$10 billion and over	98
$3 billion - $5 billion	132
$1 billion - $3 billion	350
$500 million - 1 billion	492
Less than $500 million	71

As of November 24, 2014, there were 571 FHCs in the US[309].

The manner in which US banks, BHCs and FHCs are structured depends upon the specific factual situation of, and specific facts (e.g., tax, accounting, etc.) applicable to, each such bank, BHC and FHC. Some banks exist solely on their own, i.e., the banks are not owned by a BHC. Alternatively, a bank may be owned by a BHC, but such bank is the only subsidiary of such BHC, i.e., such BHC owns no other subsidiaries other than such bank. On the other end of the spectrum, the largest BHCs and FHCs may own numerous different banks and hundreds, or perhaps thousands, of other subsidiaries[310].

For example, JPMorgan Chase & Co. ("JPMC") is a FHC[311]. It has two principal banking subsidiaries, JPMorgan Chase Bank, National Association (a national bank), and Chase Bank USA, National Association, a national bank that is JPMC's credit card issuing bank. JPMC's principal non-bank subsidiary is J.P. Morgan Securities LLC, which is JPMC's US investment banking firm under which JPMC conducts securities underwriting, dealing and brokerage activities. An exhibit to the JPMC 2013 Form 10-K Annual Report lists over 275 subsidiaries for JPMC, many of which are organized under the laws of foreign countries.

As another example, Bank of America Corporation ("BofA") is a FHC[312]. It conducts its banking operations primarily through two national banks: Bank of America, National Association and FIA Card Services, National Association. BofA's principal broker-dealer subsidiary is Merrill Lynch & Co., Inc. An exhibit to the BofA 2013 Form 10-K Annual Report lists over 1,300 subsidiaries for BofA, many of which are organized under the laws of foreign countries.

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[307] FDIC - Statistics on Depository Institutions Report.
[308] FRB Bank Holding Company Peer Group Reports.
[309] FRB Financial Holding Companies List.
[310] See "A Structured View of U.S. Bank Holding Companies", *Federal Reserve Bank of New York Economic Policy Review* (July 2012), p. 65 et seq. It is stated in such publication that four BHCs have more than 2,000 subsidiaries and two BHCs have more than 3,000 subsidiaries.
[311] All information regarding JPMC and its subsidiaries set forth in this paragraph is taken from JPMC's Form 10-K Annual Report for JPMC's fiscal year ended December 31, 2013 as filed with the Securities and Exchange Commission (the "JPMC 2013 Form 10-K Annual Report").
[312] All information regarding BofA and its subsidiaries set forth in this paragraph is taken from BofA's Form 10-K Annual Report for BofA's fiscal year ended December 31, 2013 as filed with the Securities and Exchange Commission (the "BofA 2013 Form 10-K Annual Report").

As noted above in Research 2 Section IV, non-bank subsidiaries of FHCs such as JPMC and BofA that are broker-dealers or insurance companies are regulated by the appropriate functional regulator of the activities engaged in by such subsidiaries (e.g., a broker-dealer subsidiary is regulated by the US Securities and Exchange Commission and an insurance company subsidiary is regulated by the relevant state insurance regulator).

VI. Activities of Foreign Banks in the US

A. *Applicable Law and Regulations*

The US International Banking Act[313] (the "IB Act") became law in 1978 and is the principal US law that governs the activities of foreign banks in the US. One of the guiding principles behind the IB Act was "national treatment", i.e., that foreign and domestic banks would be treated similarly in like circumstances. The Foreign Bank Supervision Enhancement Act of 1991[314] (the "FBSE Act") imposed new approval and monitoring requirements on the US operations of foreign banks and substantially increased the supervisory role of the FRB such that the FRB is the principal regulator of all US forms of foreign banking entity in the US, regardless of the actual licensing authority/regulator of each such form of foreign banking entity (as discussed below). Through the provisions of the IB Act, much of the BHC Act is made applicable to foreign banks operating in the US. As a general matter, foreign banks may engage in the same permissible activities as a domestic US bank.

B. *Form of Banking Entity in the US*

The most common forms for foreign banks to engage in the banking business in the US are (i) subsidiary banks, (ii) branches, (iii) agencies, and (iv) representative offices[315].

1. Commercial Bank Subsidiary.

A US commercial bank subsidiary is a separately capitalized legal entity, the shares of which are owned or controlled by the parent foreign bank. A commercial bank subsidiary can provide the same banking services as a domestic US bank. To establish or acquire a commercial bank subsidiary in the US, a foreign bank must obtain the approval of the FRB under the BHC Act[316]. In deciding whether to grant approval, the FRB must (i) determine whether the foreign bank is subject to comprehensive consolidated supervision by its home country, (ii) determine that the proposed transaction will not substantially lessen competition, and (iii) take into consideration the financial and managerial resources and future prospects of the applicable bank and the convenience and needs of the community to be served[317]. The FRB will also assess the foreign bank's capital level to ensure that it is similar to that

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[313] 12 USC §3101 et seq.
[314] P.L. 102-242 (December 19, 1991).
[315] It is possible for foreign banks to enter the US market through other entities (e.g., commercial lending companies, so-called "Edge Act" corporations and international banking facilities). A description of such other entities is beyond the scope of this report; however, as a general matter, the activities in which such entities may engage are more limited than the activities of a subsidiary bank or branch.
[316] 12 USC §1842(a).
[317] 12 USC §1842(c).

required of a US BHC[318]. A foreign bank would also need to obtain the approval of either the OCC (if the bank to be established is a national bank) or the applicable state bank regulator (if the bank to be established is a state bank)[319], which regulator would, in addition to the FRB, be a regulator of such bank.

2. Branch.

A branch is a legal extension of its parent foreign bank rather than a separately capitalized entity. A branch may engage in a broad range of wholesale banking activities but generally cannot accept retail deposits[320]. To establish a branch in the US, the foreign bank must obtain a license from the applicable licensing authority (i.e., the OCC if the branch is to be a federally-licensed branch or the applicable state banking regulator if the branch is to be a state-licensed branch) which regulator would, in addition to the FRB, be a regulator of such branch.

3. Agency.

An agency of a foreign bank is similar to a branch except that an agency generally may not accept any deposits. Like a branch, an agency is a legal extension of its parent foreign bank rather than a separately capitalized corporate entity. To establish an agency, the approval of both the FRB and either the OCC (if the agency is to be a federally-licensed agency) or the applicable state banking regulator (if the agency is to be a state-licensed agency) would be required, and either the OCC or the applicable state regulator, as the case may be, would, in addition to the FRB, be a regulator of such agency.

4. Representative Office.

A representative office is any US office of a foreign bank that is not a branch, agency or commercial lending company[321]. A representative office may only engage in representational or administrative functions on behalf of a foreign bank, such as business solicitation, research, customer relations, and acting as a liaison between the foreign bank's offices and US correspondent banks[322]. A representative office may not engage in banking activities that may be performed at a branch, agency or subsidiary bank, and as a general matter may not exercise final decision-making authority over any banking transactions[323]. To establish a representative office, FRB approval must be obtained. Representative offices may be subject to examination by state regulators, but pursuant to the FBSE Act, the FRB is still the primary regulator of representative offices.

C. *Permissible Activities*

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[318] 12 CFR §211.24(c).
[319] See Research 2 Section I.A.1 of this report.
[320] 12 USC §3105(h); 12 CFR §28.13.
[321] 12 CFR §211.21(x).
[322] 12 CFR §211.24(d)(1).
[323] 12 CFR §211.24(d).

Section 8(a) of the IB Act[324] provides that (i) any foreign bank that maintains a branch[325] or an agency[326] in a state, (ii) any foreign bank or foreign company controlling a foreign bank that controls a commercial lending company organized under state law, and (iii) any company of which any foreign bank or company referred to in the prior two subsections is a subsidiary, is subject to the restrictions of the BHC Act on nonbanking activities in the same manner and to the same extent as if the foreign bank or other company were a BHC. Consequently, a company covered by Section 8(a) of the IB Act (or a foreign bank that operates in the US through a US banking subsidiary, which would fall under the definition of "bank holding company" under the BHC Act) may not engage in nonbanking activities and may not acquire ownership or control of any voting shares of any company that itself is not a bank, except for activities and investments permitted by the BHC Act[327].

The restrictions on activities of BHCs set forth in the BHC Act and Regulation Y may potentially affect the activities of foreign banks and foreign BHCs outside of the US that are, under non-US law, otherwise permissible activities of foreign banks and foreign BHCs. Certain provisions of the BHC Act and implementing regulations adopted by the FRB (the FRB's Regulation K[328]) are intended to alleviate the potential extraterritorial effect of the BHC Act's activities restrictions.

Certain exemptions from the BHC Act's activities restrictions are available under Regulation K for "qualifying foreign banking organizations" ("QFBOs"). To meet the criteria to be a QFBO, more than half of a foreign institution's worldwide business (excluding the portion of such business attributable to US banking operations) must be banking, and more than half of its worldwide banking business must be outside the US[329]. Thus, for example, if more than half of a foreign institution's worldwide banking business is conducted in the US, such institution would be treated as a domestic, rather than a foreign, BHC and could not qualify to be a QFBO.

As a general matter, the exemptions from the BHC Act activities restrictions available to QFBOs fall into four general categories: (i) activities (and investments in other companies engaged in activities) that are conducted wholly outside of the US; (ii) activities (and investments in other companies engaged in activities) that are conducted in the US that are "incidental" to international or foreign business; (iii) minority non-controlling investments in foreign companies doing a majority of their business outside the US and not engaged in securities underwriting or dealing; and (iv) controlling investments in foreign companies doing a majority of their business

[324] 12 USC §3106(a).
[325] A "branch" is defined in Section 1 of the IB Act (12 USC §3101) as any office or place of business of a foreign bank located in any state of the United States where deposits are received; the FRB's Regulation K (12 CFR §211 et seq.) added to the definition of "branch" in the IB Act (otherwise identical to the definition set forth in the IB Act) the words "and that is not an agency …" so as to avoid any overlap of an entity being both a "branch" and an "agency." See the following footnote for the definition of "agency".
[326] An "agency" is defined in Section 1 of the IB Act (12 USC §3101) as any office or place of business of a foreign bank located in any state of the United States where credit balances are maintained or checks are paid or money is lent, but where deposits may not be accepted from US citizens or residents.
[327] Additionally, certain activities engaged in or investments held at the time of passage of the IB Act (grandfathered activities) are permitted.
[328] 12 CFR §211 et seq.
[329] 12 CFR §211.23(f).

outside the US with any US activities being limited to those that are nonfinancial in nature and related to nonfinancial businesses conducted outside the US[330].

D. *Use of a US Bank as an Agent for a Foreign Bank*

National banks are permitted to act as agents for other banks, including foreign banks, i.e., national banks may hold deposits for other banks and perform other correspondent services for banks. Historically in the US, correspondent services provided by one bank for another bank was related to check clearing services. However, correspondent services provided by banks is not limited to check clearing services; as part of the business of banking (i.e., without the need for additional or separate licensing or permission) a national bank may provide any service that it may perform for itself to its affiliates and other banks[331]. Examples of correspondent services that may be provided include data processing services; the development, operation, management and marketing of products and processing services for transactions conducted at electronic terminal devices; item processing services; and the provision of communication support services through electronic means[332]. Other correspondent services that have been approved by order (interpretive letter) of the OCC include, without limitation, loan collection and repossession services[333]; payment and information processing services[334]; providing financial and consulting services[335]; and purchasing automatic teller machines for resale to other banks and providing services to other banks in a shared automatic teller machine network[336].

[330] Id.
[331] 12 CFR §7.5007.
[332] Id.
[333] OCC Interpretive Letter (December 14, 1983).
[334] OCC Corporate Decision No. 98-12 (February 9, 1998).
[335] OCC Interpretive Letter No. 137 (December 27, 1979).
[336] OCC Interpretive Letter (October 2, 1975); OCC No-objection Letter No. 87-11 (November 30, 1987).

RESEARCH 3: CASH MANAGEMENT SERVICES AND BANK FRONTING SERVICES

I. Regulation of Cash Management Services ("CMS")

A. *Definition of CMS*

For the purposes of this report, CMS is used as a general term to denote the service of providing primary management and transfer of funds through an informational technology system of computers and transmission hardware for companies within the same corporate group (including netting, payment agency services and cash pooling).

For the avoidance of doubt, CMS as used herein does not refer to companies engaged in the business of banking, and in particular, the performance of deposit-taking and lending activities, with third parties. Statutory law grants national banks permission to perform deposit-taking and lending activities, subject to "such terms, conditions, and limitations prescribed by the OCC and other applicable Federal laws"[337]. Please see Research 1, Section II above for a more detailed discussion of the regulations in connection with such third-party deposit-taking and lending activities.

As a general matter, in the United States depository institutions (including banks and thrifts/saving associations) are entities that both accept deposits in the ordinary course of their business and make loans. Entities that do not accept deposits but make loans are not considered to be banks or depository institutions, and if such entities make certain kinds of loans (e.g., consumer loans), then such entities are subject to licensing requirements and regulation (typically at the state level).

B. *Restrictions on Financing within Groups*

The practice of CMS to transfer funds among corporate entities is not regulated by state or federal banking laws in the United States. Often, multi-entity organizations employ a centralized cash management system of linked bank accounts that facilitate cash flow between the companies within such organization. Payments may be swept into a single concentration account. The system allows a parent company to both track income at subsidiary levels and invest excess funds held in the concentration account. The linked accounts are usually owned and controlled by a single entity for administrative convenience. This cash management system can be, and often is, effected without the participation of a bank or other depository institution (other than for the creation and use of accounts at a bank or depository institution). Intra-group lending is generally permissible in the United States[338], and while most US states have adopted laws or regulations applicable to entities that make loans (but do not accept deposits), as a general matter such laws and regulations are applicable only to entities that make loans to consumers and, consequently, such laws and regulations are not applicable to entities that make loans to affiliated entities (i.e., intra-group lending) as such loans are not loans made to consumers. As such, we are not aware of any US

[337] 12 CFR §7.4007(a).

[338] See Research 2 Section II above for a discussion of permitted activities for a national bank. As a general matter, an entity engaging in "the business of banking", which includes the acceptance of deposits and the making commercial loans, must be chartered by a federal or state regulator; however, an entity that engages only in the making of loans is not considered to be a bank.

law analogous to Japan's Money Lending Business Act, which we understand applies to entities that conduct intra-group lending.

Moreover, we understand that in Japan the following intra-group lending transactions would be prohibited activities unless such institution holds a banking license or otherwise holds the appropriate registration:

- Case A: In a group restructuring, a company sells all of its shares of one of its 100% owned subsidiaries to a third party company, and the seller lends money to the subsidiary at the post-transaction phase.

- Case B: A joint venture partner that owns more than 20% of a joint venture entity has a 100% owned subsidiary. The subsidiary plans to lend money to the joint venture with consent to such loan being obtained from all of the joint venture partners.

As a general matter, the loans to be made in each of Case A and Case B would be permissible in the United States provided that the loans are made for a commercial (non-consumer) purpose.

II. Regulation of Bank Fronting Services

A. *Definition of Bank Fronting Services*

For the purposes of this report, "bank fronting services" is defined as services provided by an entity that is not a bank or depository institution to customers to permit such customers to obtain (i) physical cash (e.g., through the customer's use of a debit card) or (ii) a broad suite of e-commerce banking functions through a partnership with a licensed bank or financial institution.

We understand that currently, under the Japanese Payment Service Act, only entities/persons registered as a "Funds Transfer Service Provider" (as defined therein) may conduct "exchange transactions", and only up to a maximum amount of JPY 100 million.[339] We further understand "exchange transactions" is defined in Japan to include remittance operations whereby an entity delivers cash to a customer upon request from such customer.

B. *Bank Fronting Services in the United States*

1. Cash Back Service.

In the United States, bank fronting services are not restricted in the manner as set forth in Japan under the Japanese Payment Service Act as described above. In the United States it is common for merchants to offer a service whereby consumers may choose a "cash back" option when paying for a purchase with a debit card. Logistically, when a consumer chooses the cash back option, the merchant increases the total purchase price of the transaction, and provides the consumer with cash in the amount of the increase. For example, a customer

[339] We further understand that previously only banks or other depository financial institutions licensed under the Japanese Banking Act were permitted to conduct "exchange transactions".

has to purchase groceries and take cash out of their bank. Rather than make two trips to the store and to an automated teller machine ("ATM"), they buy their groceries with a debit card (which totals to $45), and ask for $20 in cash back. The $20 is added to the transaction, making it total $65, and is given $20 in physical cash from the till[340].

Whether a particular merchant provides this service is left to the merchant's discretion, and when doing so, such merchant often imposes on the consumer (i) a minimum purchase price in order to be eligible to receive cashback and (ii) a maximum amount of cashback that can be received. The type of merchants most commonly providing the cash back service are grocery stores, pharmacies and post offices.

The advantage of a cash back transaction for a consumer is the convenience of eliminating a separate ATM transaction, as well as the flexibility to receive cash in various denominated bills (whereas ATMs, on the other hand, usually provide consumers with cash only in $20 bills). Moreover, a cash back transaction usually allows a consumer to avoid the fees associated with withdrawing money from an ATM[341]. Instead, the merchant pays a fixed commission fee set by the debit card issuer (and capped by federal law).

Excluding the consumer protections related to debit card transactions (see Research 1 Section I.A.1. above), security and protections for cash back transactions are left unregulated by the federal and state governments. In many cases, individual merchants require the consumers to initial the cash back receipt, which procedure has the dual purpose of (1) undermining a customer's claim that he or she never received the requested cash and (2) dissuading dishonest cashiers from stealing cash.

2. Banking Functions Through Relationships.

Certain entities in the United States, although themselves unlicensed as a bank or other financial institution, may provide traditional banking functions (including an all-inclusive suite of e-commerce banking functions). Such a bank fronting service may be made possible through a relationship with a licensed bank or financial institution. For example, we understand that "Simple" is one such entity that provides exclusively mobile and online bank services, including (i) surcharge-free debit and ATM transactions, (ii) online money transfer, (iii) check deposit and (iv) online and mobile money management tools. Simple is a subsidiary of Banco Bilbao Vizcaya Argentina and has a relationship with The Bancorp Bank to provide its banking services[342]. Simple itself is not licensed as a bank or financial institution, but The Bancorp Bank is a FDIC member, and operates its debit functions pursuant to a license from Visa U.S.A. Inc.[343]. Simple also operates through

[340] This example of a cash back service is found at http://www.investopedia.com/terms/c/cash-back.asp.
[341] The average cost to consumers in the United States for using a debit card at an ATM outside of that card issuer's ATM network was $4.13, according to a 2013 survey by Bankrate.com. Conversely, the same survey found that less than one percent (1%) of point of sale debit transactions charge a fee on the consumer. http://www.atmmarketplace.com/news/average-atm-fees-rise-in-us-but-not-by-much/?style=print.
[342] www.Simple.com.
[343] www.Simple.com.

CheckFreePay corporation and/or its subsidiaries in order to perform electronic bill payment services, and as such, is obligated to hold the applicable state licenses and make the applicable disclosures required by state money transmitter laws[344]. Among others, CheckFreePay is a licensed money transmitter in California and New York[345]. Such functions and regulations applicable thereto are further discussed generally in Research I and II.

[344] https://www.simple.com/policies/checkfree-disclosures.
[345] Id.

EXHIBIT A

EFTA Error-Resolution Notice

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] Write us at [insert address] [or E-mail us at [insert electronic mail address]] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

EXHIBIT B

EFTA Examination Checklist

This questionnaire can be used to review audit workpapers, to evaluate financial institution policies, to perform transaction testing, and to train as appropriate. Complete only those aspects of the checklist that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the workpapers.

When reviewing audits, evaluating financial institution policies, or performing transaction testing, a "No" answer indicates a possible exception/deficiency, and you should explain it in the workpapers. If a line item is not applicable within the area you are reviewing, indicate by using "NA."

Subpart A

		Yes	No	NA
Issuance of Access Devices - 12 CFR 1005.5				
1.	Do the financial institution's policies, practices, and procedures allow that validated access devices are issued only:			
	• In response to oral or written requests (12 CFR 1005.5(a)(1)) or	☐	☐	☐
	• As a renewal or substitution for an accepted access device? (12 CFR 1005.5(a)(2))	☐	☐	☐
2.	Do the financial institution's policies, practices, and procedures allow that unsolicited access devices are issued only when the devices are:			
	• Not validated? (12 CFR 1005.5(b)(1))	☐	☐	☐
	• Accompanied by a clear explanation that they are not validated and how they may be disposed of if validation is not desired? (12 CFR 1005.5(b)(2))	☐	☐	☐
	• Accompanied by the initial disclosures required by 12 CFR 1005.7? (12 CFR 1005.5(b)(3))	☐	☐	☐
	• Validated only in response to a consumer's request and after the financial institution has verified the consumer's identity by reasonable means (e.g., photograph, fingerprint, personal visit, and signature)? (12 CFR 1005.5(b)(4) and Staff Commentary)	☐	☐	☐
Consumer Liability for Unauthorized Electronic Fund Transfers (EFTs) - 12 CFR 1005.6				
3.	Does the financial institution impose liability on the consumer for unauthorized transfers only if: (12 CFR 1005.6(a))			
	• Any access device that was used was an accepted access device?	☐	☐	☐

		Yes	No	NA
	• The institution has provided a means to identify the consumer to whom it was issued?	☐	☐	☐
	• The institution has provided the disclosures required by 12 CFR 1005.7(b)(l), (2), and (3)?	☐	☐	☐
4.	Does the financial institution **not** rely on consumer negligence or the deposit agreement to impose greater consumer liability for unauthorized EFTs than is permitted under Regulation E? (12 CFR Part 1005, Supp. 1, Comments 1005.6(b)-1 and -2)	☐	☐	☐
5.	If a consumer notifies the financial institution within two business days after learning of the loss or theft of an access device, does the financial institution limit the consumer's liability for unauthorized EFTs to the lesser of $50 or actual loss? (12 CFR 1005.6(b)(1))	☐	☐	☐
6.	If a consumer does not notify the financial institution within two business days after learning of the loss or theft of an access device, does the institution limit the consumer's liability for unauthorized EFTs to the lesser of $500 or the sum of (12 CFR 1005.6(b)(2)):			
	• $50 or the amount of unauthorized EFTs that occurred within the two business days, whichever is less;	☐	☐	☐
	Plus			
	• The amount of unauthorized EFTs that occurred after the close of two business days and before notice to the financial institution (provided the financial institution establishes that these transfers would not have occurred had the consumer notified the financial institution within that two-day period)?	☐	☐	☐
7.	If a consumer notifies the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution not hold the consumer liable for the unauthorized transfers that occur after the 60-day period? (12 CFR 1005.6(b)(3))	☐	☐	☐
8.	If a consumer does not notify the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution ensure that the consumer's liability does not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the financial institution, if the financial institution establishes that the transfers would not have occurred had timely notice been given? (12 CFR 1005.6(b)(3))	☐	☐	☐

		Yes	No	NA
9.	If a consumer notifies the financial institution of an unauthorized EFT within the time frames discussed in questions 7 or 8 and the consumer's access device is involved in the unauthorized transfer, does the financial institution hold the consumer liable for amounts as set forth in 12 CFR 1005.6(b)(1) or (2) (discussed in questions 5 and 6)? (12 CFR 1005.6(b)(3)) NOTE: The first two tiers of liability (as set forth in 12 CFR 1005.6(b)(1) and (2) and discussed in questions 5 and 6) do not apply to unauthorized transfers from a consumer's account made without an access device. (Comment 1005.6(b)(3)-2)	☐	☐	☐
10.	Does the financial institution extend the 60-day time period by a reasonable amount, if the consumer's delay in notification was due to an extenuating circumstance? (12 CFR 1005.6(b)(4))	☐	☐	☐
11.	Does the financial institution consider notice to be made when the consumer takes steps reasonably necessary to provide the institution with pertinent information, whether or not a particular employee or agent of the institution actually received the information? (12 CFR 1005.6(b)(5)(i))	☐	☐	☐
12.	Does the financial institution allow the consumer to provide notice in person, by telephone, or in writing? (12 CFR 1005.6(b)(5)(ii))	☐	☐	☐
13.	Does the financial institution consider written notice to be given at the time the consumer mails or delivers the notice for transmission to the institution by any other usual means? (12 CFR 1005.6(b)(5)(iii))	☐	☐	☐
14.	Does the financial institution consider notice given when it becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made? (12 CFR 1005.6(b)(5)(iii))	☐	☐	☐
15.	Does the financial institution limit the consumer's liability to a lesser amount than provided by 12 CFR 1005.6, when state law or an agreement between the consumer and the financial institution provide for such an amount? (12 CFR 1005.6(b)(6))	☐	☐	☐
Initial Disclosures – 12 CFR 1005.7				
16.	Does the financial institution provide the initial disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account? (12 CFR 1005.7(a))	☐	☐	☐
17.	Do the financial institution's initial disclosures provide the following information, as applicable:			

	Yes	No	NA
• A summary of the consumer's liability for unauthorized transfers under 12 CFR 1005.6 or under state or other applicable law or agreement? (12 CFR 1005.7(b)(1))	☐	☐	☐
• The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made? (12 CFR 1005.7(b)(2))	☐	☐	☐
• The financial institution's business days? (12 CFR 1005.7(b)(3))	☐	☐	☐
• The type of EFTs the consumer may make and any limits on the frequency and dollar amount of transfers? (If details on the limits on frequency and dollar amount are essential to maintain the security of the system, they need not be disclosed.) (12 CFR 1005.7(b)(4))	☐	☐	☐
• Any fees imposed by the financial institution for EFTs or for the right to make transfers? (12 CFR 1005.7(b)(5))	☐	☐	☐
• A summary of the consumer's right to receive receipts and periodic statements, as provided in 12 CFR 1005.9, and notices regarding preauthorized transfers as provided in 12 CFR 1005.10(a) and 1005.10(d)? (12 CFR 1005.7(b)(6))	☐	☐	☐
• A summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for placing a stop payment order, as provided in 12 CFR 1005.10(c)? (12 CFR 1005.7(b)(7))	☐	☐	☐
• A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under the Electronic Fund Transfer Act?(12 CFR 1005.7(b)(8))	☐	☐	☐
• The circumstances under which the financial institution, in the ordinary course of business, may disclose information to third parties concerning the consumer's account? (12 CFR 1005.7(b)(9))	☐	☐	☐
• An error resolution notice that is substantially similar to the Model Form A-3 in appendix A? (12 CFR 1005.7(b)(10))	☐	☐	☐
• A notice that a fee may be imposed by an ATM operator (as defined in 12 CFR 1005.16(a)) when the consumer initiates an EFT or makes a balance inquiry and by any network used to complete the transaction? (12 CFR 1005.7(b)(11))	☐	☐	☐

		Yes	No	NA
18.	Does the financial institution provide disclosures at the time a new EFT service is added, if the terms and conditions of the service are different than those initially disclosed? (12 CFR 1005.7(c))	☐	☐	☐
Change-in-Terms Notice; Error Resolution Notice - 12 CFR 1005.8				
19.	If the financial institution made any changes in terms or conditions required to be disclosed under 12 CFR 1005.7(b) that would result in increased fees, increased liability, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of transfers, did the financial institution provide a written notice to consumers at least 21 days prior to the effective date of such change? (12 CFR 1005.8(a))	☐	☐	☐
20.	Does the financial institution provide either the long form error resolution notice at least once every calendar year or the short form error resolution notice on each periodic statement? (12 CFR 1005.8(b))	☐	☐	☐
Receipts at Electronic Terminals; Periodic Statements - 12 CFR 1005.9				
21.	Does the financial institution make receipts available to the consumer at the time the consumer initiates an EFT at an electronic terminal? The financial institution is exempt from this requirement for EFTs of $15 or less. (12 CFR 1005.9(a) and (e))	☐	☐	☐
22.	Do the receipts contain the following information, as applicable:			
	• The amount of the transfer? (12 CFR 1005.9(a)(1))	☐	☐	☐
	• The date the transfer was initiated? (12 CFR 1005.9(a)(2))	☐	☐	☐
	• The type of transfer and the type of account to or from which funds were transferred? (12 CFR 1005.9(a)(3))	☐	☐	☐
	• A number or code that identifies the consumer's account or the access device used to initiate the transfer? (12 CFR 1005.9(a)(4))	☐	☐	☐
	• The terminal location where the transfer is initiated? (12 CFR 1005.9(a)(5))	☐	☐	☐
	• The name or other identifying information of any third party to or from whom funds are transferred? (12 CFR 1005.9(a)(6))	☐	☐	☐

		Yes	No	NA
23.	Does the financial institution send a periodic statement for each monthly cycle in which an EFT has occurred? If no EFT occurred, does the financial institution send a periodic statement at least quarterly? (12 CFR 1005.9(b))	☐	☐	☐
24.	Does the periodic statement contain the following information, as applicable:			
	• Transaction information for each EFT occurring during the cycle, including the amount of transfer, date of transfer, type of transfer, terminal location, and name of any third-party transferor or transferee? (12 CFR 1005.9(b)(1))	☐	☐	☐
	• Account number? (12 CFR 1005.9(b)(2))	☐	☐	☐
	• Fees? (12 CFR 1005.9(b)(3))	☐	☐	☐
	• Account balances? (12 CFR 1005.9(b)(4))	☐	☐	☐
	• Address and telephone number for inquiries? (12 CFR 1005.9(b)(5))	☐	☐	☐
	• Telephone number to ascertain preauthorized transfers, if the financial institution provides telephone notice under 12 CFR 1005.10(a)(1)(iii)? (12 CFR 1005.9(b)(6))	☐	☐	☐
Preauthorized Transfers - 12 CFR 1005.10				
25.	If a consumer's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days (and the payor does not already provide notice to the consumer that the transfer has been initiated) (12 CFR 1005.10(a)(2)), does the financial institution do one of the following:			
	• Provide oral or written notice, within two business days, after the transfer occurs? (12 CFR 1005.10(a)(1)(i))	☐	☐	☐
	• Provide oral or written notice, within two business days after the transfer was scheduled to occur, that the transfer did or did not occur? (12 CFR 1005.10(a)(1)(ii))	☐	☐	☐
	• Provide a readily available telephone line that the consumer can call to determine if the transfer occurred and that telephone number is disclosed on the initial disclosure of account terms and on each periodic statement? (12 CFR 1005.10(a)(1)(iii))	☐	☐	☐
26.	Does the financial institution credit the amount of a preauthorized transfer as of the date the funds for the transfer are received? (12 CFR 1005.10(a)(3))	☐	☐	☐
27.	Does the financial institution ensure that an authorization is obtained for preauthorized transfers from a consumer's account	☐	☐	☐

		Yes	No	NA
	by a written, signed or similarly authenticated authorization, and is a copy of the authorization provided to the consumer? (12 CFR 1005.10(b))			
28.	Does the financial institution allow the consumer to stop payment on a preauthorized EFT by oral or written notice at least three business days before the scheduled date of the transfer? (12 CFR 1005.10(c)(1))	☐	☐	☐
29.	If the financial institution requires that the consumer give written confirmation of an oral stop-payment order within 14 days, does the financial institution inform the consumer, at the time they give oral notification, of the requirement and provide the address where they must send the written confirmation? NOTE: An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation. (12 CFR 1005.10(c)(2))	☐	☐	☐
30.	Does the financial institution inform, or ensure that third-party payees inform, the consumer of the right to receive notice of all varying transfers? **or** Does the financial institution give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or differs from the most recent transfer by an agreed-upon amount? (12 CFR 1005.10(d)(2))	☐ ☐	☐ ☐	☐ ☐
31.	If the financial institution or third-party payee is obligated to send the consumer written notice of the EFT of a varying amount, does the financial institution ensure that: • The notice contains the amount and date of transfer? • The notice is sent at least 10 days before the scheduled date of transfer? (12 CFR 1005.10(d)(1))	 ☐ ☐	 ☐ ☐	 ☐ ☐
32.	Does the financial institution not condition an extension of credit to a consumer on the repayment of loans by preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account? (12 CFR 1005.10(e)(1))	☐	☐	☐
33.	Does the financial institution not require a consumer to establish an account for EFTs with a particular institution as a condition of employment or receipt of government benefits? (12 CFR 1005.10(e)(2))	☐	☐	☐

Procedures for Resolving Errors - 12 CFR 1005.11

		Yes	No	NA
34.	Does the financial institution have procedures to investigate and resolve all oral or written notices of error received no later than 60 days after the institution sends the periodic statement or provides passbook documentation? (12 CFR 1005.11(b)(2))	☐	☐	☐
35.	If the financial institution requires written confirmation of an error within 10 business days of an oral notice, does the financial institution inform the consumer of this requirement and provide the address where the written confirmation must be sent? (12 CFR 1005.11(b)(2))	☐	☐	☐
36.	Does the financial institution have procedures to investigate and resolve alleged errors within 10 business days, except as otherwise provided in 12 CFR 1005.11(c)? (12 CFR 1005.11(c)(1)) NOTE: The time period is extended in certain circumstances. (12 CFR 1005.11(c)(3))	☐	☐	☐
37.	Does the financial institution report investigation results to the consumer within three business days after completing its investigation and correct any error within one business day after determining that an error occurred? (12 CFR 1005.11(c)(1))	☐	☐	☐
38.	If the financial institution is unable to complete its investigation within 10 business days, does the financial institution have procedures to investigate and resolve alleged errors within 45 calendar days of receipt of a notice of error; and:			
	• Does the financial institution provisionally credit the consumer's account in the amount of the alleged error (including interest, if applicable) within 10 business days of receiving the error notice (however, if the financial institution requires, but does not receive, written confirmation within 10 business days, the financial institution is not required to provisionally credit the consumer's account)?	☐	☐	☐
	• Within two business days after granting any provisional credit, does the financial institution inform the consumer of the amount and date of the provisional credit and gives the consumer full use of the funds during the investigation?	☐	☐	☐
	• Within one business day after determining that an error occurred, does the financial institution correct the error?	☐	☐	☐
	• Does the financial institution report the results to the consumer within three business days after completing its investigation including, if applicable, notice that	☐	☐	☐

		Yes	No	NA
	provisional credit has been made final? (12 CFR 1005.11(c)) NOTE: The time period is extended in certain circumstances (12 CFR 1005.11(c)(3))			
39.	If a billing error occurred, does the financial institution not impose a charge related to any aspect of the error-resolution process? (Comment 1005.11(c)-3)	☐	☐	☐
40.	If the financial institution determines that no error occurred (or that an error occurred in a manner or amount different from that described by the consumer), does the financial institution send a written explanation of its findings to the consumer and note the consumer's right to request the documents the financial institution used in making its determination? (12 CFR 1005.11(d)(1))	☐	☐	☐
41.	When the financial institution determines that no error (or a different error) occurred, does the financial institution notify the consumer of the date and amount of the debiting of the provisionally credited amount and the fact that the financial institution will continue to honor checks and drafts to third parties and preauthorized transfers for five business days (to the extent that they would have been paid if the provisionally credited funds had not been debited)? (12 CFR 1005.11(d)(2))	☐	☐	☐
Record Retention - 12 CFR 1005.13				
42.	Does the financial institution maintain evidence of compliance with the requirements of the Electronic Fund Transfer Act and Regulation E for a period of two years? (12 CFR 1005.13(b))	☐	☐	☐
Disclosures at Automated Teller Machines (ATM) - 12 CFR 1005.16				
43.	If the financial institution operates an ATM and imposes a fee on a consumer for initiating an EFT or balance inquiry, does the financial institution provide notice that a fee will be imposed and disclose the amount of the fee? (12 CFR 1005.16(b))	☐	☐	☐
44.	Does the financial institution provide the notice required by 12 CFR 1005.16(b) either by showing it on the ATM screen or by providing it on paper before the consumer is committed to paying a fee? (12 CFR 1005.16(c))	☐	☐	☐
Requirements for Overdraft Services - 12 CFR 1005.17				
45.	Does the financial institution's Overdraft Protection Program incorporate any guidance issued by its federal regulator, as applicable?	☐	☐	☐

		Yes	No	NA
46.	Does the financial institution's Overdraft Protection Program provide "overdraft services," i.e., charge fees for paying ATM and one-time debit overdrafts? (12 CFR 1005.17(a)) If no, do not complete this section.	☐	☐	☐
47.	If the financial institution assesses a fee or charge (NOTE: fees or charges may generally be assessed only on transactions paid after the confirmation has been mailed or delivered) on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the financial institutions overdraft service, does the financial institution first (12 CFR 1005.17(b)(1)):			
	• Provide the consumer with a notice in writing, or if the consumer agrees, electronically, that is segregated from all other information and describes the institution's overdraft service (12 CFR 1005.17(b)(1)(i));	☐	☐	☐
	• Provide a reasonable opportunity for the consumer to affirmatively consent, or opt-in, to the institution's payment of ATM and one-time debit card transactions (12 CFR 1005.17(b)(1)(ii));	☐	☐	☐
	• Obtain the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions (12 CFR 1005.17(b)(1)(iii)); and	☐	☐	☐
	• Provide the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent? (12 CFR 1005.17(b)(1)(iv))	☐	☐	☐
48.	Does the financial institution ensure that it does not condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's "overdraft services"? (12 CFR 1005.17(b)(2)(i))	☐	☐	☐
49.	Does the financial institution pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account regardless of whether the consumer has affirmatively consented to the institution's overdraft protection service for ATM and one-time debit card transactions? (12 CFR 1005.17(b)(2)(ii))	☐	☐	☐
50.	For consumers who have **not** opted in, and if an overdraft fee or charge is based on the amount of the outstanding negative balance, does the institution only assess fees where the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition	☐	☐	☐

		Yes	No	NA
	on assessment of overdraft fees?			
	For consumers who have **not** opted in, does the financial institution only assess daily or sustained overdraft, negative balance, or similar fees or charges where the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessment of overdraft fees?	☐	☐	☐
	Does the institution base the date on which such a daily or sustained overdraft, negative balance, or similar fee or charge is assessed on the date on which the check, ACH, or other type of transaction was paid into overdraft? (Comment 1005.17(b)-9)	☐	☐	☐
51.	Does the financial institution provide consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions? (12 CFR 1005.17(b)(3))	☐	☐	☐
52.	Is the notice required by (12 CFR 1005.17(b)(1)(i)) substantially similar to Model Form A-9 set forth in Appendix A of (12 CFR 1005.17), including applicable items from the list below, and does it not contain any additional information? (12 CFR 1005.17(d))	☐	☐	☐
	• Overdraft Service - Does the notice provide a brief description of the overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions? (12 CFR 1005.17(d)(1))	☐	☐	☐
	• Fees imposed - Does the notice contain the dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the financial institution's overdraft service, including any daily or other overdraft fees? NOTE: If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed. (12 CFR 1005.17(d)(2))	☐	☐	☐
	• Limits on Fees Charged - Does the notice disclose the maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit? (12 CFR 1005.17(d)(3))	☐	☐	☐

		Yes	No	NA
	• Disclosure of opt-in right - Does the notice explain the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service? (12 CFR 1005.17(d)(4))	☐	☐	☐
	• Alternative Plans for Covering Overdrafts - As applicable, does the institution's opt-in notice appropriately address the alternative methods for covering overdrafts?	☐	☐	☐
	• If the institution offers both a line of credit subject to Regulation Z (12 CFR Part 1026) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, does the notice state that both alternative plans are offered?	☐	☐	☐
	• If the institution offers one alternative plan, but not the other, does the notice state which alternative plan it offers? If the institution does not offer either a line of credit subject to Regulation Z (12 CFR Part 1026) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts plan, does the notice exclude information regarding either of these plans?	☐	☐	☐
	• If the financial institution offers additional alternatives for paying overdrafts, at its option the institution may (but is not required to) disclose those alternatives. Does its notice describe those alternatives?	☐	☐	☐
	• Permitted Modifications and Additional Content - If the institution modifies the notice, are the modifications permitted: to indicate that the consumer has the right to opt into, or out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply? NOTE: The institution may also disclose the consumer's right to revoke consent. The response portion of Model Form A-9 may be tailored to the methods offered for opting in, and may include reasonable methods to identify the account, such as a bar code. (12 CFR 1005.17(d)(6) and Comments 1005.17(d)-1 through -5))	☐	☐	☐
53.	Joint Accounts - When two or more consumers jointly hold an account, does the financial institution treat the affirmative	☐	☐	☐

		Yes	No	NA
	consent of any of the joint consumers as affirmative consent for that account, and treat the revocation of affirmative consent by any of the joint consumers as revocation of consent for that account? (12 CFR 1005.17(e))			
54.	Continuing Right to Opt-In or to Revoke Opt-In - Does the financial institution allow the consumer to affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required under (12 CFR 1005.17(b)(1)(i)) and allow a consumer to revoke consent at any time in the manner made available to the consumer for providing consent? (12 CFR 1005.17(f))	☐	☐	☐
55.	Does the financial institution implement a consumer's revocation of consent as soon as reasonably practicable? (12 CFR 1005.17(f))	☐	☐	☐
56.	Is the consumer's affirmative consent to the overdraft service effective until revoked by the consumer, or unless the financial institution terminates the service? (12 CFR 1005.17(g))	☐	☐	☐
Payroll Card Accounts - 12 CFR 1005.18				
57.	If the financial institution offers payroll card accounts, does the financial institution **either** provide periodic statements as required by 12 CFR 1005.9(b) **or** make available to the consumer:			
	• The account balance, through a readily available telephone line, **and**	☐	☐	☐
	• An electronic history of the consumer's account transactions, such as through an Internet website, that covers at least 60 days preceding the date the consumer electronically accesses the account, **and**	☐	☐	☐
	• A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request? (12 CFR 1005.18(b)) NOTE: The history of account transactions must include the information set forth in 12 CFR 1005.9(b).	☐	☐	☐
58.	Does the financial institution provide initial disclosures that include, at a minimum:			
	• A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of a website, and a summary of the consumer's right to receive a written account history upon request, including a	☐	☐	☐

		Yes	No	NA
	telephone number to call to request a history, **and**			
	• A notice concerning error resolution? (12 CFR 1005.18(c)(1))	☐	☐	☐
59.	Does the financial institution provide an annual notice concerning error resolution or, alternatively, an abbreviated notice with each electronic and written history? (12 CFR 1005.18(c)(2))	☐	☐	☐
60.	Does the financial institution begin the 60-day period for reporting any unauthorized transfer under 12 CFR 1005.6(b)(3) on the earlier of the date the consumer electronically accesses the consumer's account after the electronic history made available to the consumer reflects the transfer; or the date the financial institution sends a written history of the consumer's account transactions requested by the consumer in which the unauthorized transfer is first reflected? (12 CFR 1005.18(c)(3)) NOTE: A financial institution may comply with the provision above by limiting the consumer's liability for an unauthorized transfer as provided under 12 CFR 1005.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.	☐	☐	☐
61.	Does the financial institution comply with the error resolution requirements in response to an oral or written notice of an error from the consumer that is received by the earlier of 60 days after the date the consumer electronically accesses the consumer's account after the electronic history made available to the consumer reflects the alleged error; or 60 days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer in which the alleged error is first reflected? (12 CFR 1005.18(c)(4)) NOTE: The financial institution may comply with the requirements for resolving errors by investigating any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.	☐	☐	☐
Requirements for Gift Cards and Gift Certificates - 12 CFR 1005.20				
62.	Does the institution offer gift certificates, store gift cards, general-use prepaid cards, loyalty, award, or promotional gift cards? <u>If no, do not complete this section</u>.	☐	☐	☐
63.	Determine if the institution offers consumers, primarily for personal, family, or household purposes, in a specified amount, a card, code, or other device on a prepaid basis, the following:			

		Yes	No	NA
	• Gift certificates - which may not be increased or reloaded in exchange for payment; and are redeemable upon presentation at a single merchant or an affiliated group of merchants for goods and services? (12 CFR 1005.20(a)(1))	☐	☐	☐
	• Store gift cards - which may be increased or reloaded, in exchange for payment; and are redeemable upon presentation at a single merchant or an affiliated group of merchants for goods and services? (12 CFR 1005.20(a)(2))	☐	☐	☐
	• General-use prepaid cards - which may be increased or reloaded, in exchange for payment; and are redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or useable at automated teller machines? (12 CFR 1005.20(a)(3))	☐	☐	☐
64.	Do loyalty, award, or promotional gift cards as defined by (12 CFR 1005.20(a)(4)) contain the following disclosures as applicable?			
	• A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device (12 CFR 1005.20(a)(4)(iii)(A));	☐	☐	☐
	• The expiration date for the underlying funds, which must be included on the front of the card, code, or other device (12 CFR 1005.20(a)(4)(iii)(B));	☐	☐	☐
	• The amount of fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided with the card, code, or other device (12 CFR 1005.20(a)(4)(iii)(C)); and	☐	☐	☐
	• A toll-free telephone number and, if one is maintained, a website, that a consumer may use to obtain fee information, which must be included on or with the card, code, or other device (12 CFR 1005.20(a)(4)(iii)(D))?	☐	☐	☐
65.	If the terms of the gift certificate, store gift card, or general-use prepaid card impose a dormancy, inactivity, or service fee as defined under (12 CFR 1005.20(a)), please answer the following:			
	• Has there been activity with respect to the certificate or card, in the one-year period ending on the date on which the fee was imposed (12 CFR 1005.20(d)(1));	☐	☐	☐
	• As applicable, are the following, clearly and conspicuously stated on the gift certificate, store gift card, or general-use prepaid card	☐	☐	☐

		Yes	No	NA
	○ The amount of any dormancy, inactivity, or service fee that may be charged (12 CFR 1005.20(d)(2)(i));	☐	☐	☐
	○ How often such a fee may be assessed (12 CFR 1005.20(d)(2)(ii)); and	☐	☐	☐
	○ That such fee may be assessed for inactivity (12 CFR 1005.20(d)(2)(iii))?	☐	☐	☐
	• Is the dormancy, inactivity, or service fee imposed limited to one in any given calendar month (12 CFR 1005.20(d)(3))?	☐	☐	☐
66.	If the financial institution sells or issues a gift certificate, store gift card, or general-use prepaid card with an expiration date, please answer the following:			
	• Has the financial institution established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date (12 CFR 1005.20(e)(1))?	☐	☐	☐
	• The expiration date for the underlying funds is at least the later of five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or the certificate or card expiration date, if any (12 CFR 1005.20(e)(2))?	☐	☐	☐
67.	If the financial institution sells or issues a gift certificate, store gift card, or general-use prepaid card with an expiration date, then are the following disclosures provided on the certificate or card, as applicable:			
	• The expiration date for the underlying funds, or if the underlying funds do not expire, the fact that the funds do not expire (12 CFR 1005.20(e)(3)(i));	☐	☐	☐
	• A toll-free number and, if one is maintained, a website that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available (12 CFR 1005.20(e)(3)(ii)); and	☐	☐	☐
	• Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:	☐	☐	☐
	○ The certificate or card expires, but the underlying funds either do not expire or expire later than the	☐	☐	☐

		Yes	No	NA
	certificate or card (12 CFR 1005.20(e)(3)(iii)(A));			
	○ The consumer may contact the issuer for a replacement card (12 CFR 1005.20(e)(3)(iii)(B)); and	☐	☐	☐
	○ No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some manner prior to the funds expiration date unless such certificate or card has been lost or stolen. (12 CFR 1005.20(e)(4)).	☐	☐	☐
68.	Are the following disclosures provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:			
	• For each type of fee that may be imposed in connection with the gift certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under (12 CFR 1005.20(d)(2)), the following information must be provided on or with the certificate or card:			
	○ The type of fee (12 CFR 1005.20(f)(1)(i));	☐	☐	☐
	○ The amount of the fee (or an explanation of how the fee will be determined) (12 CFR 1005.20(f)(1)(ii)); and	☐	☐	☐
	○ The conditions under which the fee may be imposed (12 CFR 1005.20(f)(1)(iii)).	☐	☐	☐
	• A toll-free telephone number and, if one is maintained, a website, that a consumer may use to obtain information about dormancy, inactivity, service, or each type of fee that may be imposed in connection with the certificate or card (12 CFR 1005.20(f)(2)).	☐	☐	☐

Subpart B - Requirements for Remittance Transfers

		Yes	No	NA
1.	Does the provider offer remittance transfers in the normal course of business?	☐	☐	☐
	If the provider deems itself to not offer remittance transfers in the normal course of business as a result of the 100-transfer safe harbor, are the provider's method for counting transactions appropriate?	☐	☐	☐

Complete the rest of the checklist if the provider offers remittance transfers in the normal course of business.

		Yes	No	NA
2.	Does the provider have written policies and operating procedures that govern its remittance transfer operations?	☐	☐	☐
3.	Do these policies and procedures adequately address the requirements of Subpart B?	☐	☐	☐
4.	Are the provider's personnel who are involved in remittance transfer operations knowledgeable about the requirements of Subpart B?	☐	☐	☐

Disclosures - 12 CFR 1005.31

(Unless otherwise indicated, the disclosure requirements apply to all remittance transfer transactions, including those scheduled before the date of transfer.)

5.	Does the provider provide pre-payment disclosures and receipts or combined disclosures to its remittance transfer customers (12 CFR 1005.31(b)(1), (2), and (3))? [NOTE: specific content of disclosures are addressed below]	☐	☐	☐
6.	Are written disclosures:			
	• in the appropriate form (12 CFR 1005.31(c))	☐	☐	☐
	• clear and conspicuous (12 CFR 1005.31(a)(1))	☐	☐	☐
	• in retainable form (12 CFR 1005.31(a)(2))?	☐	☐	☐
7.	Are written and electronic disclosures provided in compliance with the foreign language requirements of 12 CFR 1005.31(g)?	☐	☐	☐
8.	If the provider uses scripts to provide oral disclosures for remittance transfer transactions and error resolution procedures conducted over the telephone, do the contents of the scripts comply with the requirements of 12 CFR 1005.31(a)(3) and (a)(4)?	☐	☐	☐
9.	Do disclosures related to telephone, mobile application, or text message transactions comply with the disclosure requirements with respect to foreign languages and notice of cancellation rights (12 CFR 1005.31(g)(2) and 12 CFR 1005.31(b)(2)(iv)?	☐	☐	☐
10.	Does information in written or electronic disclosures comply with the grouping requirements of 12 CFR 1005.31(c)(1)?	☐	☐	☐
11.	Is the exchange rate used for the remittance transfer generally disclosed in close proximity to the other information in the pre-payment disclosures (12 CFR 1005.31(c)(2))?	☐	☐	☐
12.	In case of a disclosure that includes the disclaimer statement under 12 CFR 1005.31(b)(1)(viii), is the disclaimer in close proximity to the Total to Recipient (12 CFR 1005.31(c)(2))?	☐	☐	☐

		Yes	No	NA
13.	Are disclosures on error resolution and cancellation rights generally disclosed in close proximity to the other disclosures on the receipt (12 CFR 1005.31(c)(2))?	☐	☐	☐
14.	Are disclosures that are provided in writing or electronically provided in a minimum of eight point font, in equal prominence to each other, and on the front of the page on which the disclosures are printed (12 CFR 1005.31(c)(3))?	☐	☐	☐
15.	For disclosures that are provided in writing or electronically:			
	• do they contain only information directly related to the disclosures, and	☐	☐	☐
	• are they segregated from everything else (12 CFR 1005.31(c)(4))?	☐	☐	☐
16.	Are estimated amounts in the disclosures appropriately described using the term "estimated" or a substantially similar term in close proximity to the term described (12 CFR 1005.31(d))?	☐	☐	☐
17.	Are disclosures provided in compliance with the timing requirements of 12 CFR 1005.31(e)?	☐	☐	☐
18.	Do disclosures comply with the accuracy requirements of 12 CFR 1005.31(f)? NOTE: For a one-time transfer scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, disclosures must be accurate when a sender makes payment except to the extent estimates are permitted. For any subsequent transfer in a series of preauthorized remittance transfers, disclosures must be accurate as of the date the preauthorized remittance transfer to which it pertains is made. (12 CFR 1005.36(b).)	☐	☐	☐
Pre-payment Disclosures - 12 CFR 1005.31(b)(1)				
19.	Does the provider appropriately distinguish between covered and non-covered third party fees?	☐	☐	☐
20.	Do the provider's pre-payment disclosures appropriately disclose to the recipient the following information as applicable, using the terms in quotes (or substantially similar terms) listed below:	☐	☐	☐
	• "Transfer Amount" both in the currency in which transaction is funded and in the currency in which the funds will be made available to the recipient;	☐	☐	☐
	• "Transfer Fees" and "Transfer Taxes";	☐	☐	☐

	Yes	No	NA
• "Other Fees";	☐	☐	☐
• "Exchange Rate";	☐	☐	☐
• "Total to Recipient", and	☐	☐	☐
• If applicable, a disclaimer statement that non-covered third-party fees or taxes collected on the remittance transfer by a third person may apply, resulting in the designated recipient receiving less than the amount disclosed (12 CFR 1005.31(b)(1))?	☐	☐	☐

Receipt - 12 CFR 1005.31(b)(2)

21.	Do the provider's receipts appropriately calculate and disclose to the recipient the following information as applicable, using the terms in quotes (or substantially similar terms) listed below, as applicable:			
	• all the information required to be provided in the pre-payment disclosure;	☐	☐	☐
	• "Date Available";	☐	☐	☐
	• "Recipient"	☐	☐	☐
	• a statement about the sender's error resolution and cancellation rights, using language set forth in Model Form A-37 of Appendix A or substantially similar language; NOTE: If the transfer is scheduled at least three business days before the date of the transfer, the statement about the sender's cancellation rights should reflect the requirements of 12 CFR1005.36(c);	☐	☐	☐
	• name, telephone number(s) and website of the provider;	☐	☐	☐
	• a statement that the sender can contact the State agency that licenses or charters the remittance transfer provider with respect to the particular transfer (if applicable) and the Consumer Financial Protection Bureau, for questions or complaints about the remittance transfer provider using language set forth in Model Form A-37 of Appendix A or substantially similar language; and NOTE: The statement must include the name, telephone number(s) and website of the State agency and the name, toll-free telephone number(s) and website of the CFPB.	☐	☐	☐
	• the transfer date (only for transfers scheduled at least three business days in advance, or the first transfer in a series of	☐	☐	☐

		Yes	No	NA
	preauthorized remittance transfers)?			

Combined disclosure - 12 CFR 1005.31(b)(3)

Complete this section if the provider provides combined disclosures as an alternative to pre-payment disclosures and receipts.

22.	Does the combined disclosure contain all the information required to be provided on the receipt?	☐	☐	☐
23.	Does the provider provide the combined disclosure when the sender requests the remittance transfer, but prior to payment for the transfer; and provide a proof of payment when payment is made for the transfer? NOTE: 1. The proof of payment must be clear and conspicuous, provided in writing or electronically, and provided in a retainable form. 2. For one-time transfers scheduled five or more business days in advance or for the first in a series of preauthorized transfers, the provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment if payment is not processed at the time the remittance transfer is scheduled. No further proof of payment is required when payment is later processed.	☐	☐	☐

Long form error resolution and cancellation notice - 12 CFR 1005.31(b)(4)

24.	Does the provider promptly provide, at the sender's request, a notice describing the sender's error resolution and cancellation rights, using language set forth in Model Form A-36 of Appendix A or substantially similar language? (12 CFR 1005.31(b)(4)). NOTE: For a remittance transfer scheduled at least three business days before the date of the transfer, the description of the rights of the sender regarding cancellation must instead reflect the requirements of 12 CFR 1005.36(c).	☐	☐	☐

Estimates - 12 CFR 1005.32

Temporary exception for insured institutions - 12 CFR 1005.32(a)

25.	If the remittance transfer provider is an insured institution (as defined by 12 CFR 1005.32(a)(3)), does the institution use estimates in its disclosures for transactions sent from the sender's account with the institution?	☐	☐	☐
26.	If so, can the financial institution not determine the exact amounts for reasons beyond its control because a person other than the institution or with which the institution has no	☐	☐	☐

		Yes	No	NA
	correspondent relationship sets the exchange rate required to be disclosed or imposes a fee required to be disclosed? (12 CFR 1005.32(a) and Comment 32(a)(1)-1)?			
Permanent exception for transfers to certain countries - 12 CFR 1005.32(b)(1)				
27.	Does the provider appropriately rely on the list provided by the CFPB when using estimates under the permanent exception set forth under 12 CFR 1005.32(b)(1) for transactions to those countries?	☐	☐	☐
28.	If the provider provides estimates for transactions in a country which does not appear on the safe harbor list published by the CFPB, does the entity appropriately determine that the laws of or the method by which transactions are conducted in the recipient country do not permit the determination of exact amounts. (12 CFR 1005.32(b)(1)(ii) and Comment 32(b)-5)? NOTE: A provider cannot rely on the CFPB list if it has information that the laws of a country on the list permit exact disclosures.	☐	☐	☐
Permanent exception for transfers scheduled before the date of transfer-12 CFR 1005.32(b)(2)				
29.	For transfers scheduled five or more business days before the date of the transfer for which estimates may be provided, does the provider comply with the requirements of 12 CFR 1005.32(b)(2)?	☐	☐	☐
Permanent exception for optional disclosure of non-covered third-party fees and taxes collected by a third party--12 CFR 1005.32(b)(3)				
30.	If the provider includes in the disclaimer statement required by 12 CFR 1005.31(b)(1)(viii), an optional estimated disclosure of applicable non-covered third party fees or taxes, are the estimates based on reasonable sources? (12 CFR 1005.32(b)(3)?	☐	☐	☐
Bases for Estimates - 12 CFR 1005.32(c)				
31.	Are the bases used to derive the estimates under 12 CFR 1005.32(a), (b)(1), and (b)(2) in compliance with the method for disclosing estimates set forth in 12 CFR 1005.32(c)? NOTE: For transfers scheduled five or more business days before the date of the transfer for which estimates may be provided, the requirements of 12 CFR 1005.32(d) apply.	☐	☐	☐
32.	Does the provider use the approaches listed in the rule to estimate:			
	• exchange rate;	☐	☐	☐

		Yes	No	NA
	• transfer amount in which funds will be received;	☐	☐	☐
	• covered third party fees; and	☐	☐	☐
	• the amount of currency that will be received by the designated recipient?	☐	☐	☐
33.	If estimates are based on an approach that is not one of the listed bases, does the designated recipient receive the same, or greater, amount of funds than the remittance transfer provider disclosed?	☐	☐	☐
Procedures for resolving errors - 12 CFR 1005.33				
34.	Does the provider have adequate policies and procedures to address the error resolution requirements applicable to remittance transfers (12 CFR 1005.33(g))?	☐	☐	☐
35.	Do the policies and procedures adequately state what constitutes an error and what does not as defined in 12 CFR 1005.33(a)?	☐	☐	☐
36.	Do the policies and procedures specifically address:			
	• timing and content of the sender's notice of error (12 CFR 1005.33(b)(1));	☐	☐	☐
	• provider's request for additional information or clarification (12 CFR 1005.33(b)(2));	☐	☐	☐
	• time limits for investigation, reporting results, and correcting an error (12 CFR 1005.33(c));	☐	☐	☐
	• sender's request for documentation that the provider relied on to make a decision (12 CFR 1005.33(d)); and	☐	☐	☐
	• the retention of records related to error investigations (12 CFR 1005.33(g)(2) and (12 CFR 1005.13))?	☐	☐	☐
37.	Does the provider complete its investigation of alleged errors and determine whether an error occurred within 90 days of receiving notice of the error (12 CFR 1005.33(c))?	☐	☐	☐
38.	Does the provider report investigation results to the sender within three business days after completing its investigation and include notice of any remedies available for correcting any error determined to have occurred and provide remedy within one business day (12 CFR 1005.33(c))? NOTE: The provider can ask the sender to designate a preferred remedy at the time the sender provides notice of the error but must indicate that a resend remedy may be unavailable if the error occurred because the sender provided	☐	☐	☐

		Yes	No	NA
	incorrect or insufficient information.			
39.	If the sender provided an incorrect account number or recipient institution identifier, does the provider comply with the requirements of 12 CFR 1005.33(h) in determining that no error occurred?	☐	☐	☐
40.	If the provider determines that no error or a different error occurred, does it provide a written explanation of the findings, and note the sender's right to request the documents upon which the provider relied in making its determination (12 CFR 1005.33(d))?	☐	☐	☐
41.	If the provider provides a default remedy, does it correct the error within one business day or as soon as reasonably practicable, after the reasonable time (deemed to be ten business days) or the sender to designate the remedy has passed? NOTE: A default remedy is not applicable where the sender provided incorrect or insufficient information.	☐	☐	☐
42.	If the sender requests a refund (for errors other than those related to failure to deliver by the disclosed date where the sender provided incorrect or insufficient information), does the provider refund within one business day or as soon as reasonably practicable thereafter (12 CFR 1005.33(c)(2)(A))? NOTE: The provider may generally, at its discretion, issue a refund either in cash or in the same form of payment that was initially provided by the sender for the remittance transfer.	☐	☐	☐
43.	If the sender requests delivery of the amount appropriate to correct the error and the error did not occur because the sender provided incorrect or insufficient information, does the provider correct the error within one business day, or as soon as reasonably practicable, applying the same exchange rate, fees, and taxes stated in the disclosure provided in connection with the unsuccessful remittance transfer attempt (Comment 33(c)- 3)?	☐	☐	☐
44.	In the case of errors involving incorrect or insufficient information provided by the sender for the transfer, does the provider comply with the requirements of 12 CFR 1005.33(c)(2)(iii)?	☐	☐	☐
45.	If the provider determines that an error occurred that relates to: • an incorrect amount paid by the sender; • a computational or bookkeeping error made by the remittance transfer provider; or	☐	☐	☐

		Yes	No	NA
	• failure to make the amount of currency stated in the disclosures available to the designated recipient, does the provider either: • refund the amount of funds provided by the sender (in case of a transaction that was not properly transmitted), • refund the amount appropriate to resolve the error; or • make available to the designated recipient, the amount appropriate to resolve the error without additional cost to the sender or the designated recipient(12 CFR 1005.33(c)(2)(i))?			
46.	If the error relates to the failure to make funds available to the designated recipient by the disclosed date of availability (except in cases where the sender provided incorrect or insufficient information), does the provider • either (i) refund the amount of funds that was not properly transmitted, or the amount appropriate to resolve the error to the sender; or (ii) make available to the designated recipient the amount appropriate to resolve the error; and • refund to the sender any fees and, to the extent not prohibited by law, taxes imposed for the remittance transfer (12 CFR 1005.33(c)(2)(ii))?	☐	☐	☐
47.	If an error occurred, does the provider impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) (Comment 33(c)-9)? If so, is the provider in violation of 12 CFR 1005.33(c)?	☐	☐	☐
48.	Does the provider retain policies and procedures and documentation, including those related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider (12 CFR 1005. 33(g) and 1005.13)?	☐	☐	☐
Procedures for Cancellation and Refund of Remittance Transfers - 12 CFR 1005.34				
49.	Does the provider comply with any oral or written request to cancel a remittance transfer (except for transfers scheduled three or more business days before the date of transfer) from the sender that is received no later than 30 minutes after the sender makes payment in connection with the remittance transfer (12 CFR 1005.34(a))? NOTE: The request to cancel must enable the provider to identify the sender's name and address or telephone number	☐	☐	☐

		Yes	No	NA
	and the particular transfer to be cancelled; and the transferred funds must not have been picked up by the designated recipient or deposited into an account of the designated recipient (12 CFR 1005.34(a)(1) and (2)).			
50.	If a sender provides a timely request to cancel a remittance transfer, does the provider refund all funds provided by the sender in connection with the remittance transfer at no additional cost to the sender, within three business days of receiving the request (12 CFR 1005.34(b))? NOTE: The funds to be refunded include any fees and, to the extent not prohibited by law, taxes that have been imposed for the transfer, whether the fee or tax was assessed by the provider or a third party, such as an intermediary institution, the agent or bank in the recipient country, or a State or other governmental body (12 CFR 1005.34(b)).	☐	☐	☐
Acts of agents - 12 CFR 1005.35				
51.	Has the provider established and maintained policies or procedures, including policies, procedures for compliance, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider?	☐	☐	☐
	Consider:			
	• the degree of control the agent exercises over the remittance transfer activities performed on the provider's behalf;	☐	☐	☐
	• the quality and frequency of training provided to ensure that agents are aware of the regulatory requirements and the provider's internal policy guidelines; and	☐	☐	☐
	• the adequacy of the provider's oversight of agents' activities.	☐	☐	☐
Transfers Scheduled Before the Date of Transfer - 12 CFR 1005.36				
52.	For one-time transfers scheduled five or more business days in advance or for the first in a series of preauthorized remittance transfers, does the provider provide either a pre-payment disclosure and a receipt or a combined disclosure at the time the sender requests the transfer but prior to payment (12 CFR 1005.36(a)(1)(i))? NOTE: If any of the disclosures provided contain estimates, the provider must mail or deliver an additional receipt no later than one business day after the date of the transfer. If the transfer involves the transfer of funds from the sender's account held by the provider, this additional receipt may be	☐	☐	☐

		Yes	No	NA
	provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided. (12 CFR 1005.36(a)(1)(ii))			
53.	For each subsequent preauthorized remittance transfer, does the provider provide an updated receipt if any of the information (other than temporal disclosures or disclosures that are permitted to be estimated) on the most recent receipt is no longer accurate (12 CFR 1005.36(a)(2)(i))? NOTE: The receipt must clearly and conspicuously indicate that it contains updated disclosures and must be mailed or delivered to the sender within a reasonable time prior to the scheduled date of the next subsequent preauthorized remittance transfer. A disclosure that is mailed no later than ten business days or hand or electronically delivered no later than five business days is deemed to have been provided within a reasonable time (12 CFR 1005.36(a)(2)(i) and Comment 36(a)(2)-3).	☐	☐	☐
54.	If there is no updated information and the remittance transfer does not involve the transfer of funds from the sender's account held by the provider, does the provider mail or deliver to the sender a receipt no later than one business day after the date of the transfer for each subsequent preauthorized transfer (12 CFR 1005.36(a)(2)(ii))?	☐	☐	☐
55.	If there is no updated information and the remittance transfer involves the transfer of funds from the sender's account held by the provider, is the receipt provided on or with the next periodic statement for that account, or within 30 days after the date of the transfer if a periodic statement is not provided (12 CFR 1005.36(a)(2)(ii))?	☐	☐	☐
56.	For any subsequent transfer in a series of preauthorized remittance transfers, does the provider disclose the date of the subsequent transfer using the term "Future Transfer Date" or a substantially similar term, a statement of the sender's cancellation rights, and the name, telephone number(s), and website of the remittance transfer provider no more than 12 months, and no less than 5 business days prior to, the date of the subsequent preauthorized remittance transfer (12 CFR 1005.36(d))? NOTE: While the rule generally provides flexibility as to when and where future transfer dates may be disclosed, for any subsequent preauthorized remittance transfer for which the date of transfer is four or fewer business days after the date payment is made, the disclosure must generally be provided on or with the receipt for the initial transfer in that series (12 CFR 1005.36(d)(2)(ii)).	☐	☐	☐

		Yes	No	NA
57.	Does the provider comply with any oral or written request to cancel any remittance transfer scheduled by the sender at least three business days before the date of the remittance transfer (12 CFR 1005.36(c))? NOTE: The request to cancel must: • enable the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; and • be received by the provider at least three business days before the scheduled date of the remittance transfer. (12 CFR 1005.36(c)).	☐	☐	☐

Comments

EXHIBIT C
Permissible Investments Under
UMSA, CA MTA and NY TML

Part (a): Definition of "Permissible Investments" under UMSA

"UMSA - SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.

(a) . . . the following investments are permissible under Section 701:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depository institution. . . ;

(2) banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission . . . , and whose portfolio is restricted by the management company's investment policy to investments specified in paragraphs (1) through (4).

(b) The following investments are permissible under Section 701, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission . . . and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the [superintendent] designates, to the extent specified by the [superintendent].

(c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with Section 701[346]*."*

Part (b): Definition of "Eligible Securities" under CA MTA

"CAL. FIN. CODE SECTION 2081 - ELIGIBLE SECURITY.

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) For the purposes of this division, the following are United States currency eligible securities:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association or insured credit union.

(3) Any bond, note, or other obligation that is issued or is guaranteed by the United States or any agency of the United States.

(4) Any bond, note, or other obligation that is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and that is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance that is eligible for discount by a federal reserve bank.

(6) Any commercial paper that is assigned an eligible rating by an eligible rating securities service.

[346] UMSA §702.

(7) Any bond, note, or other obligation that is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940, and the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. 270.2a-7). For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (15 U.S.C. Secs. 80a-4 and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute eligible securities that comply with the valuation requirements of this division.

(10) Any account due to any licensee from any agent in the United States on account of the receipt of money on behalf of the licensee for money transmission by the agent, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities.

(12) Any receivable owed by a bank and resulting from an automated clearinghouse, debit, or credit-funded transmission[347]."

Part (c): Definition of "Permissible Investments" under NY TML

"NY. BNK. LAW SECTION 640. DEFINITIONS.

(1)~(8) (omitted)

(9) Permissible investments" means:

(i) cash;

(ii) certificates of deposit or other debt instruments of a commercial bank;

(iii) bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as bankers acceptances, which are eligible for purchase by member banks of the federal reserve system;

(iv) commercial paper of prime quality as defined by a nationally recognized organization which rates such securities;

(v) interest-bearing bills, notes, bonds, debentures or other obligations issued or guaranteed by the United States or any state or other local governmental entity or any agent or instrumentality thereof, bearing a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating state and municipal issues for a period of not less than five years;

[347] Cal. Fin. Code §2082.

(vi) interest-bearing bills, notes, bonds, debentures or preferred stock traded on any national securities exchange or on a national over-the-counter market or bearing a rating of one of the three highest grades by a nationally recognized investment service organization that has been engaged regularly in rating corporate debt or equity issues for a period of not less than five years; and

(vii) such other investments or assets if and as approved by the superintendent[348].

[348] N.Y. BNK LAW §640.