UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

DIVISION OF
TRADING AND MARKETS

December 14, 2012

Manisha Kimmel
Executive Director
Financial Information Forum
5 Hanover Square
New York, New York 10004

Dear Ms. Kimmel:

I am writing in response to your letter dated December 12, 2012, on behalf of the Financial Information Forum's Regulation E Working Group.

The Consumer Financial Protection Bureau recently adopted amendments to Regulation E, which implements the Electronic Fund Transfer Act. [1] The amendments to Regulation E are designed to provide new protections, including disclosures and error resolution and cancellation rights, to consumers who send remittance transfers to other consumers or businesses in a foreign country. The Commission has enforcement authority over Regulation E with respect to broker-dealers subject to the Securities Exchange Act of 1934.[2]

Your letter requests assurances from the staff of the Division of Trading and Markets that the staff will not recommend enforcement action to the Securities and Exchange Commission under Regulation E if a broker-dealer provides to consumers disclosures of fees, currency exchange rates and taxes in the same way that an "insured institution" is permitted to do under Sections 1005.32(a) and 1005.32(c) of Regulation E.

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[1] See "Electronic Fund Transfers," 77 FR 6194 (Feb. 7, 2012); "Electronic Fund Transfers (Regulation E); Correction," 77 FR 40459 (July 10, 2012); "Electronic Fund Transfers (Regulation E)," 77 FR 50244 (Aug. 20, 2012).

[2] Section 918(a)(4) of the Electronic Fund Transfer Act provides: "[s]ubject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], compliance with the requirements imposed under this subchapter shall be enforced under...(4) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act."

Based on the facts and representations contained in your letter, and without necessarily agreeing with your analysis and conclusions, the staff will not recommend enforcement action to the Commission under Regulation E if a broker-dealer provides to consumers disclosures of fees, currency exchange rates and taxes as though the broker-dealer was an "insured institution" for purposes of Sections 1005.32(a) and 1005.32(c) of Regulation E.

This position is based strictly on the facts and representations you have made in your letter, and any different facts or representations might require a different response. This no-action position is subject to modification or revocation at any time the Staff determines that such modification or revocation is consistent with the public interest or the protection of investors. Furthermore, this response only expresses the Staff's position on enforcement action and does not purport to express any legal conclusions on the questions presented. The Staff expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of any other federal or state laws, or self-regulatory organization rules.

If you have any questions regarding this letter, please call Lourdes Gonzalez, Assistant Chief Counsel, Mark Attar, Branch Chief, Lindsay Kidwell, Attorney-Advisor, or me at (202) 551-5550.

Sincerely,

David W Blass

David W. Blass
Chief Counsel
Division of Trading and Markets

cc: Eric I. Goldberg, Counsel
Office of Regulations, Consumer Financial Protection Bureau

FINANCIAL INFORMATION FORUM
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212-422-8568

December 12, 2012

David Blass
Chief Counsel, Division of Trading & Markets
Securities and Exchange Commission
100 F Street, NE,
Washington, DC 20549-1090

Re: Request for No-Action Relief Under Electronic Fund Transfers (Regulation E); Docket No. CFPB–2011–0009, RIN 3170–AA15

Dear David,

The Financial Information Forum (FIF)[1], on behalf of our Regulation E Working Group ("Working Group") is submitting this no-action relief request with respect to recent amendments to Regulation E (the "Rule") which implements the Electronic Fund Transfer Act (EFTA) as it relates to broker-dealer compliance with the Rule.[2] The Working Group is comprised of broker-dealers which offer remittance transfer services and are impacted by the Rule. The Working Group appreciates and supports the consumer protection provisions of the rule; however based on practical implementation issues seeks assurances from Securities and Exchange Commission ("SEC" or "the Commission") staff that they would not recommend enforcement action in cases where broker-dealers provide estimates of fees, currency exchange rates and taxes ("charges") in the same way that "insured institutions" are permitted to in accordance with Section 1005.32(a)[3] and Section 1005.32(c) of the Rule.

[1] FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the securities industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.
[2] Electronic Fund Transfers (Regulation E); Docket No. CFPB–2011–0009, RIN 3170–AA15
[3] Section 1005.32(a) reads as follows: (a) Temporary exception for insured institutions— (1) General. For disclosures described in §§ 1005.31(b)(1) through (3) and 1005.36(a)(1) and (2), estimates may be provided in accordance with paragraph (c) of this section for the amounts required to be disclosed under § 1005.31(b)(1)(iv) through (vii), if:
(i) A remittance transfer provider cannot determine the exact amounts for reasons beyond its control;
(ii) A remittance transfer provider is an insured institution; and
(iii) The remittance transfer is sent from the sender's account with the institution.
(2) Sunset date. Paragraph (a)(1) of this section expires on July 21, 2015.
(3) Insured institution. For purposes of this section, the term "insured institution" means insured depository institutions (which includes uninsured U.S. branches and agencies of foreign depository institutions) as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and insured credit unions as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

Background

As a service to their customers, registered broker-dealers often offer electronic fund transfer services. These fund transfers may be performed from a brokerage account at the broker-dealer. The funds transfer may not originate from the purchase or sale of a security or a commodity.

Section 1073 of the Dodd-Frank Act expanded the scope of the EFTA to provide for the regulation of remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Authority to implement the new Dodd-Frank Act provisions amending the EFTA transferred from the Board of Governors of the Federal Reserve System (FRB) to the Bureau of Consumer Financial Protection ("CFPB") effective July 21, 2011. The CFPB issued amendments to Regulation E which implements EFTA in February 2011.

Under the CFPB's amendments to Regulation E, remittance transfer providers are now subject to extensive disclosure and error resolution requirements governing remittance transfers. Specifically, among other items, remittance transfer providers must provide a pre-payment and receipt disclosure that provides the exact transfer amount, transfer fees and taxes and total amount to be received by the designated recipient of the transfer. Under Section 1073 of Dodd-Frank, and carried through to the Rule, insured depository institutions and insured credit unions meeting certain conditions may provide reasonably accurate estimates of the amounts to be received until 2015. Under the Rule, entities that are not insured depository institutions or insured credit unions (such as broker-dealers) are not afforded this safe harbor and are required to provide exact amounts to be received by the designated recipient of the remittance transfer.

The EFTA allocated administrative enforcement authority over various categories of entities to specified agencies. The SEC was given administrative enforcement authority solely with respect to broker-dealers subject to the Securities Exchange Act of 1934.

Discussion- Use of Open Networks

FIF has articulated a number of implementation concerns in the June 26, 2012 letter to CFPB that were shared with Commission staff.[4] In order to meet the compliance date for Rule, firms have been working diligently to modify systems, policies and procedures in order to comply with the Rule. A major obstacle in complying with the exact charges disclosure requirement stems from the difficulty in accurately assessing the exact charges associated with a remittance transfer when the transfer is conducted using open networks, which is the case for most, if not all, broker-dealers.

As the Rule states, "communications within the open network can be complicated. Where a sending institution has no contractual, account, or other relationships with a recipient institution, it may communicate indirectly by sending funds and payment instructions to a correspondent institution, which will then transmit the instructions and funds to the recipient institution directly or indirectly through other intermediary institutions. In some cases the sending institutions may not know the identity of the intermediary institution prior to initiating the transfer because more than one transfer route may be possible. Institutions may learn about each other's practices through any direct contractual or other relationships that do exist, through experience in effectuating wire transfers over

[4] See June 26 FIF Letter to David Silberman, Consumer Financial Protection Bureau

time, through reference materials, or through information provided by the consumer. However, as open networks operate today, there is no global practice of communications by intermediary and recipient institutions that do not have direct relationships with a sending institution regarding fees deducted from the principal amount or charged to the recipient, exchange rates that are set by the intermediary or recipient institution, or compliance practices. Furthermore, even among contractual partners, communication practices could vary."[5]

The Rule acknowledges these difficulties: "Congress specifically recognized that these determinations would be difficult with regard to open network transactions by financial institutions and tailored a specific accommodation to allow use of reasonably accurate estimates for an interim period until financial institutions can develop methods to determine exact disclosures, such as fees and taxes charged by third parties."[6] While the banking industry may be working to develop the necessary infrastructure to make these determinations, the timetable for doing so is based on the current July 21, 2015 expiration date of the temporary exception.[7] This infrastructure will not be in place when the Rule goes live.

Broker-dealers are subject to the same difficulties discussed in the rule. Specifically, broker-dealers and their clearing firms are only aware of the charges assessed by the initiating broker-dealer and any fees and rates charged by the correspondent institution to which the remittance transfer is directly routed. A broker-dealer has no visibility beyond this stage of the transmittal route, and there are at least one (and very often two) additional financial institutions involved in the route. Information relating to these institutions' charges is not available because there is no set route that a remittance transfer will follow, and there are countless worldwide banking organizations with varying charges that could potentially handle a remittance transfer. Indeed, banking institutions based outside the United States are not within the jurisdictional scope of the Rule and, accordingly, are not incentivized to disclose fee information, particularly within the compliance timetable for the Rule. In addition, broker-dealers may be sending U.S. dollar remittance transfers without knowledge as to whether instructions exist at the foreign financial institution to convert the funds into local currency upon receipt. Therefore, they will not know that it is necessary to disclose an exchange rate.

Broker-dealers are even less equipped than "insured institutions" to determine and disclose all applicable charges that may be assessed en route to the final destination of a remittance transfer. Indeed, it is the very financial institutions that fit within the temporary exception that may possess this information, but may not disclose it to broker-dealers for proprietary reasons, or because there is no contractual relationship between the broker-dealer and the financial institution. Without no-action relief, broker-dealers are unreasonably disadvantaged as compared to "insured institutions" that can avail themselves of the temporary exception.

[5] See 77 FR 6197
[6] See 77 FR 6224
[7] "The statute authorizes the Bureau to extend that date for no more than five years if it determines that termination of the exception would negatively affect the ability of depository institutions and credit unions to send remittances to locations in foreign countries." See 77 FR 6200

Discussion- Impact on Broker-Dealers and Individual Investors

It is important to note that while remittance transfers are incidental to the business conducted by broker-dealers and are typically transacted through third-party intermediaries, the broker-dealers of the FIF Regulation E Working Group conduct on average 43,000 wires on an annual basis per firm. The limited consideration extended to broker-dealers in the Rule for electronic transfers made for the purchase and sale of securities[8] does not address the other types of remittance transfers sent out by broker-dealers. It is not the case that all -- or nearly all -- remittance transfers effectuated by broker-dealers are for the primary purpose of a securities transaction. This number far exceeds the limit of 100 wire transfers annually required to fall under the safe harbor with respect to the phrase "normal course of business" in the definition of "remittance transfer provider," which determines whether a person is covered by the rule. As such, broker-dealers and their customers are directly impacted by the Rule.

Individual investors that perform wire transfers through broker-dealers may face higher fees and limitations on services as a result of the inability of broker-dealers to estimate charges. Individual investors are particularly disadvantaged by higher fees in that they are unlikely to discontinue a relationship with their broker-dealer based on wire transfer fees. In the event broker-dealers discontinue these services, investors would be forced to initiate a multi-step process with additional cost and complexity to move funds from brokerage accounts to another entity to perform wire transfers.

Summary

We are seeking relief from Commission staff on this matter because we are concerned about the threat of enforcement action in connection with the Rule. We respectfully request that the Commission staff confirm that they will not recommend enforcement action when broker-dealers provide estimates in the same manner as "insured institutions" in accordance with Section 1005.32(a) and (c). We would expect no-action relief to put broker-dealers in parity with "insured institutions" and be in effect for the same length of time as the temporary exception afforded "insured institutions." If broker-dealers are placed on the same schedule as "insured institutions," this would allow a much broader range of remittance transfer providers to move in lock-step with their compliance schedules. It would also promote greater cooperation between the correspondent banks facilitating the wires and the broker-dealers they serve. Finally, simultaneous schedules would allow broker-dealers to avail themselves of the compliance products being offered by third-party vendors that, at present, are geared principally towards "insured institutions."

Given the implementation date of the Rule, firms are actively preparing for Regulation E compliance. The Commission staff's perspective on these issues will impact both business and technology decisions. We look forward to Commission staff action in this matter shortly.

Regards,

Manisha Kimmel

Manisha Kimmel
Executive Director

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[8] See 77 FR 6211 "Section 1005.3(c)(4) exempts from the definition of "electronic fund transfer" any transfer of funds the primary purposes of which is the purchase or sale of a security or commodity where the security or commodity is: (i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission; (ii) purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or (iii) held in book-entry form by a Federal Reserve Bank or Federal agency."

Financial Information Forum

cc: Mark Attar, Branch Chief, Division of Trading and Markets, Securities and Exchange Commission

Lourdes Gonzalez, Assistant Chief Counsel – Sales Practices, Division of Trading and Markets, Securities and Exchange Commission

Lindsay Kidwell, Attorney-Advisor, Division of Trading and Markets, Securities and Exchange Commission