Client Alert.

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CFPB Proposes Definition of Larger Participants for the International Money Transfer Market

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On January 23, 2014, the Consumer Financial Protection Bureau ("CFPB") issued a proposed rule that would define which nonbank covered persons[1] would be designated "larger participants" for purposes of the international money transfer market (the "Proposal"). The Proposal would be the fourth rulemaking designating nonbank covered persons as larger participants of markets for "other consumer financial products or services" under section 1024 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "Dodd-Frank Act").[2] Prior rulemakings have defined larger participants in the consumer reporting, consumer debt collection, and student loan servicing markets.[3] There is a 60-day comment period for the Proposal, beginning from the date the Proposal is published in the *Federal Register*.

A Level Playing Field?

By defining larger participants in the international money transfer market, the CFPB would be designating certain nonbanks for CFPB supervision. Such authority would enable the CFPB to supervise and examine designated nonbanks for compliance with the Electronic Fund Transfer Act and Regulation E (including Subpart B of Regulation E, the "Remittance Transfer Rule"), among other federal consumer financial laws, as well as the Dodd-Frank Act prohibition on unfair, deceptive or abusive acts or practices ("UDAAP"). The Remittance Transfer Rule, which took effect on October 28, 2013, sets forth certain protections for senders of remittance transfers: (1) remittance transfer providers are required to provide specific disclosures to each sender of a remittance transfer, (2) senders have the right to dispute errors for up to 180 days following a remittance transfer, and (3) senders have the right to cancel, under certain circumstances, remittance transfers within 30 minutes of requesting the transfer.[4]

On October 22, 2013, the CFPB released Remittance Transfer Rule exam procedures for use in the CFPB's examinations of entities within its supervisory authority. If adopted, the Proposal would enable the CFPB to use these exam procedures – the same exam procedures the CFPB uses for the largest banks and credit unions providing remittance transfers currently subject to its supervisory authority – to examine nonbank larger participants in the international money transfer market. The CFPB stated that "[f]inalization of this Proposed Rule would bring nonbanks that are larger participants of the international money transfer market within the Bureau's supervisory jurisdiction, thereby promoting the Bureau's objective of enforcing Federal consumer financial law consistently without regard to whether a person is a depository institution." Supervision and enforcement of the type that is applied to banks would represent a significant change for nonbank international money transfer providers.

[1] "Covered person" means any person (or the affiliate of any person) that engages in offering or providing a consumer financial product or service. 12 U.S.C. § 5481(6).

[2] 12 U.S.C. § 5514(a)(1)(B).

[3] For additional information on the rulemakings defining larger participant for these markets, see our alert here.

[4] For additional information on the Remittance Transfer Rule, see our alert here.

Significantly, supervision of nonbank international money transfer providers by the CFPB, as proposed, would not include capital requirements that would apply to a bank providing such services and investing the float in market investments.

The International Money Transfer Market

The Proposal defines an "international money transfer" as the electronic transfer of funds requested by a sender to a designated recipient that is sent by an international money transfer provider. Using different terminology than the Remittance Transfer Rule ("international money transfer" and "international money transfer provider," as compared to "remittance transfer" and "remittance transfer provider"), the Proposal also differs substantively from the Remittance Transfer Rule. The Proposal would cover all transfers without regard to the amount of the transfer, while the Remittance Transfer Rule excludes transfers of $15 or less (i.e., the Dodd-Frank Act's small-value transaction exclusion).[5] In addition, the Proposal would not require that transfers be provided "in the normal course of business" in order for an entity to be considered a provider. Practically, however, this distinction would not matter for purposes of the Proposal because larger participants in the international money transfer market (i.e., providers that exceed the threshold defined below) must, by definition, be providing transfers "in the normal course of business."[6]

Other defined terms in the Proposal (e.g., sender, designated recipient) would substantively parallel the definitions in the Remittance Transfer Rule.

The Million Transfer Threshold

The Proposal would provide that a nonbank covered person is "a larger participant of the international money transfer market if the nonbank covered person has at least one million aggregate annual international money transfers." The Proposal provides additional detail on the calculation methodology, which, like the thresholds for larger participants in the consumer reporting and consumer debt collection markets, depends on how long the covered person has been in business.

Based on "highly approximated estimates," the CFPB has determined that approximately 25 nonbanks sent one million or more international money transfers, and these nonbanks account for more than 80 percent of all international money transfers. The vast majority of remaining international money transfers are sent by "a few hundred nonbanks that each sent less than 500,000 transfers in 2012." The CFPB acknowledged that the proposed threshold is based on a "lack[of] precise data on the international money transfer market." Nonetheless, the CFPB concluded that the international money transfer market is concentrated in firms that provide more than one million transfers per year.

No Significant Impact on Small Businesses?

Under the Regulatory Flexibility Act ("RFA"),[7] the CFPB is required to convene a small business review panel prior to publishing a proposed rule to consider the impact of the proposal on small businesses, unless the CFPB certifies that a proposed rule will not have a significant economic impact on a substantial number of small entities.[8] "Small entities"

[5] 15 U.S.C. § 1693o-1(g)(2)(B).

[6] Under the Remittance Transfer Rule, if a person provided 100 or fewer remittance transfers in the previous calendar year, and provides 100 or fewer remittance transfers in the current calendar year, then the person is deemed not to be providing remittance transfers for a consumer in the normal course of its business. 12 C.F.R. § 1005.30(f)(2).

[7] 5 U.S.C. § 609(b).

[8] See, e.g., Final Report of the Small Business Review Panel on CFPB's Proposals Under Consideration for Residential Mortgage Loan Origination Standards Rulemaking (July 11, 2012), http://files.consumerfinance.gov/f/201208_cfpb_LO_comp_SBREFA.pdf.

under the RFA include "small businesses" that fall below thresholds developed by the Small Business Administration ("SBA") pursuant to the Small Business Act. Under the Proposal, the CFPB states that the most relevant SBA coding is for "Other Activities Related to Credit Intermediation," which includes "[m]oney transmission services." The SBA threshold for small businesses in this coding is annual receipts below $19 million. Of the approximately 25 potential larger participants identified by the CFPB, the CFPB approximates that 10 providers have annual receipts under $19 million. Despite the fact that "small businesses" compose more than one third of larger participants, the CFPB compared these 10 providers to the more than 5,000 small firms in this coding, and concluded that the Proposal would impact less than one percent of the small businesses in the industry. Accordingly, the CFPB certified that the Proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

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