

Recommendations for Regulating and Supervising Bank and Non-bank Payment Service Providers Offering Cross-border Payment Services: Consultation report

Response to Consultation

The Clearing House Association

Introduction

- 1. Do the definitions contained in the report provide sufficient clarity and establish the common understanding necessary to facilitate the practical implementation of recommendations proposed in this report?**

Yes

- 2. What adjustments are required to the draft definitions to improve clarity?**

The Clearing House (TCH) suggests that “payments” be defined as an instruction of a payer (or payee) to their financial institution to transfer value denominated in fiat currency to a payee (or from a payer) that may be carried out through further instructions from the financial institution to other financial institutions.

TCH suggests that the definition of payment system include the infrastructure through which payment instructions are exchanged and settled between financial institutions.

- 3. What other terms should be defined in this section?**

No other terms need to be defined.

- 4. Does the explanation regarding the scope of the report provide sufficient clarity to promote the intended understanding of the recommendations?**

Yes, the Scope section of the Report clearly explains the context in which the Report will set out proposed policy recommendations intended to strengthen consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services in a way that is proportionate to the risks associated with such activities.

Section 1: The role of banks and non-banks in cross-border payments

- 5. Do the descriptions of the roles of banks and non-banks in providing cross border payment services adequately reflect current practices?**

Yes, the Report accurately describes the commercial environment for retail cross-border payments and correctly identifies many of the regulatory risks and frictions associated with the provision of cross-border payment services. The Report also reasonably portrays some of the inconsistencies in the supervision and regulation of bank and non-bank PSPs within and across jurisdictions.

Section 2: Cross Border Payment Frictions and Risks

6. What additional risks or frictions, within the scope of this report, are created by potential inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payment services?

The Clearing House (“TCH”)* respectfully suggests that the Report does not adequately account for the friction created by the risk of non-compliance with economic sanctions in cross-border payments. Although Recommendation 6 touches on the friction that results from differences in national economic sanctions regimes, TCH believes that greater attention needs to be paid to the impact on cross-border payments that results from the approach that bank regulators take to the supervision of bank economic sanctions compliance efforts. TCH has previously sent a letter on this subject to the FSB. See TCH Letter to FSB (“Re: G20 Roadmap for Enhancing Cross-Border Payments and Sanctions Compliance”) (May 19, 2023).

Because of the disproportionate impact that sanctions screening requirements have on bank PSPs and the overall impact sanctions screening has on the speed and processing of cross-border payments, TCH respectfully asserts that any discussion of regulatory complexity as a source of friction must address the friction that derives from regulatory obligations that require PSPs to perform real-time sanctions screening on cross-border payment transactions.

* The Clearing House Association L.L.C., the oldest banking trade association in the United States, is a nonpartisan organization that provides informed advocacy and thought leadership on critical payments-related issues. Its sister company, The Clearing House Payments Company L.L.C., owns and operates core payments system infrastructure in the United States, clearing and settling more than \$2 trillion each day. See The Clearing House’s website at

www.theclearinghouse.org.

Section 3: Principles for developing recommendations

7. Do the identified principles provide sufficient support and appropriately frame boundaries for the recommendations in the report?

Yes

Section 4: Recommendations for improving alignment of PSP regulatory and supervisory regimes

- 8. Are the recommendations sufficiently granular, actionable, and flexible to mitigate and reduce frictions while accommodating differences in national legal and regulatory frameworks and supporting the application of proportionality?**

Please see our responses to other questions.

- 9. To what extent would the recommendations improve the quality and consistency of regulation and supervision of non-bank payment service providers (PSPs) active in cross-border payments services?**

The Report is an important step toward improving the quality and consistency of regulation and supervision of non-bank PSPs and ultimately achieving the G20 targets. The FSB's recommendations will carry significant weight with national authorities and therefore it is important to account for all frictions and related factors in the development of the recommendations. For the reasons discussed in these responses, TCH respectfully requests that the FSB consider further in developing its recommendations regarding the regulation and supervision of cross-border payments (1) the significant impact that supervisory expectations for sanctions screening have on the cost and speed of cross-border payments, (2) the disparity in regulation and supervision of bank and non-bank PSPs, and (3) the fallacy in policies that treat bank and non-bank PSPs differently when giving weight to public policy goals, business models and the value of innovation. We discuss each of these topics in our responses to these questions.

- 10. For the purpose of identifying material areas to be addressed from a priority and effectiveness perspective, should the report categorise the identified frictions created by inconsistencies in the legal, regulatory and supervisory frameworks applicable to banks and non-banks in their provision of cross-border payments services in terms of focus or order in which they should be addressed?**

TCH does not have a view on this.

- 11. Recommendation 5 focuses on domestic licensing. How and to what extent would licensing recognition regimes between jurisdictions support the goal of strengthening consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services? What risks need to be considered?**

Please see our responses to other questions.

- 12. There are no comprehensive international standards for the regulation, supervision and oversight of non-bank PSPs and the cross-border payment services that they offer. Is there a need for such international standards?**

Yes, TCH fully endorses efforts to create an international framework for the supervision and regulation of non-bank PSPs that fills the gap between the regulatory treatment of such entities and bank PSPs. Also, we respectfully request that the FSB explicitly state in its

recommendations that it is not encouraging more regulation or supervision of bank PSPs. Regulation and supervision of bank PSPs already is extensive and, in some respects, so much so that it works at cross-purposes with the G20 targets. The FSB's efforts should focus on closing the gap between the fulsome regulation and supervision of bank PSPs and the often sparse regulation and supervision of non-bank PSPs by decreasing unreasonably burdensome requirements on bank PSPs and increasing requirements on non-bank PSPs, as appropriate, to achieve a middle-ground level playing field.

General

13. What, if any, additional issues relevant to consistency in the regulation and supervision of banks and non-banks in their provision of cross-border payment services should be considered in the report?

The Report asserts that in considering whether regulation and supervision of a cross-border payment service is proportional to the risks presented, authorities "should keep in mind the importance of a balance between the jurisdiction's priority public policy goals and preserving the integrity of the financial system and the PSPs and other financial institutions that operate within it." Report, pg. 22. The Report also identifies the differences in business models between bank and non-bank PSPs as a challenge to leveling the regulatory and supervisory playing field. TCH is concerned that the type of remarks made in the Report regarding policy goals and business models (which often are coupled with praise for innovation) are too frequently used by policy makers as a justification for regulating and supervising the same activity performed by bank and non-bank PSPs in different ways.

TCH respectfully suggests that public policy goals (e.g., financial inclusion), differences in business models and notions that burdening non-bank PSPs undermines innovation should not justify applying softer standards to the same activities or risks in the cross-border payment services of bank and non-bank PSPs. TCH acknowledges the need for an appropriate balance of public policy goals and regulation/supervision, but that balance should be applied equally to bank and non-bank regulatory and supervisory frameworks. In particular, the principle of proportionality and the need to balance between different public policy goals is highly relevant to economic sanctions generally and the U.S. supervisory expectation for sanctions screening specifically, as suggested in TCH's previous letter on this topic to the FSB. This is consistent with the "same activity, same risk, same rule" approach to regulation and supervision promoted by the FSB in the Report. Report, pg. 4-5. Similarly, TCH believes that it is incumbent upon the FSB to recognize in its recommendations the unhelpful circularity of arguments about the relationship between business model/innovation and regulation/supervision. That is, non-bank PSPs are able to have untraditional business models and innovative services largely because they are not burdened by the same regulation and supervision as bank PSPs, and bank PSPs could develop untraditional business models and more innovative services absent the regulation and supervision they shoulder. If all PSPs were subject to the same regulation/supervision for the same activity, all PSPs would be equally able to develop the best cross-border payment services for customers.