

“Back to the Future”: Emerging Payment Systems

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Together we'll go far



Anatomy of a payment system: Zelle

Background of Zelle

- Clear Exchange, LLC, is a limited liability company registered in Delaware on March 7, 2011, principally as a directory service.
- Established originally by Bank of America, N.A., JPMorgan Chase Bank, N.A., and Wells Fargo Bank, N.A., as charter members holding equal interests in this company.
- Capital One joined in February 2014 and U.S. Bank, N.A., joined in March 2015 as additional owner banks.
- Exclusively a “push” (credit, payment) process, not a “pull” (debit) process.

Background of Zelle

- Clear Exchange, LLC, acquired by Early Warning Services, LLC (“EWS”), on January 12, 2016.
- The payment service is rebranded “Zelle” by EWS (etymologically, truncation of “gazelle”).
- Zelle is the brand used by the EWS network member banks for P2P, B2P, and B2B funds transfers, currently with 12 members and 7 owners. B2B may be restricted by members, with a consumer as an intended payment recipient.
- EWS also makes Zelle directly available at its website through an online or mobile application (“Zelle App”).
- EWS is owned by seven banks (Wells Fargo Bank, N.A., Bank of America, N.A., JPMorgan Chase Bank, N.A., Capital One Bank, PNC Bank, U.S. Bank, N.A., and BB&T Bank).

Background of Zelle

- In order to offer the Zelle service, network member banks agree to:
- Follow universal product naming and brand positioning standards.
- Adopt the standard user experience within their online banking platform and mobile app.
- Support out of network transfers by acquiring Visa and MasterCard transactions.
- Support customer use of the Zelle App, effecting a payment through a network branded debit card.

Background of Zelle

OWNER BANKS



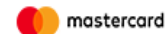
PARTICIPATING BANKS



PROCESSOR PARTNERS



TECHNOLOGY PARTNERS



Zelle moving parts

- The enrollment and payment process for a sender banking with a Zelle network member bank differs as to a payment for an intended recipient at a member bank and an intended recipient at a nonmember bank.
- Sender may know intended recipient of payment banks with a member bank.
- Sender may not know whether an intended recipient banks with a member or nonmember bank.
- Let's posit a sender enrolling online in Zelle service offered by one of the network member banks without banking relationship information of recipient.

Zelle moving parts-payment through member bank to member bank

- Sender identifies the name of recipient, recipient's cell phone or email address (each a "token"), and the amount of the payment. (Name not used for verification purposes.)
- Upon completion of enrollment by sender in the Zelle service, the member debits sender's demand account.
- The member credits its general settlement account established for this service, pending completion of the transfer on behalf of sender.
- The member generates a unique transaction number specifically for this transfer.

Zelle moving parts-payment through member bank to member bank

- The member bank transmits inquiry to EWS to determine if recipient's token is in a "shared directory."
- Assume recipient is **not** in the directory.
- EWS informs the member bank that recipient's token is not in the shared directory. (If recipient is in the directory, payment is available same day, virtually in real time.)
- The member bank contacts recipient through the token advising the recipient of the pending transfer by sender and requesting recipient to enroll in the service through recipient's bank (if that bank offers the Zelle payment service) or with EWS.
- If recipient banks with a network member bank, recipient may enroll in Zelle through that bank.
- If recipient banks with a nonmember, recipient may elect to receive the payment through enrollment with EWS directly.

Zelle moving parts-payment through member bank to member bank

- Assume recipient banks with a network member bank. As recipient banks with a member, recipient can enroll directly with the member's Zelle service using its online or mobile application.
- The recipient's member bank transmits the enrollment information to EWS. A token used to receive a payment is registered in the shared directory.
- By matching the enrollment information, EWS now has knowledge that both sender and intended recipient bank with member banks.
- This information is shared with sender's member bank to facilitate and complete the transfer.
- The recipient's member bank credits recipient's account, receiving payment for this credit through its settlement account by ACH originated by sender's member bank. Timing of credit to recipient could be subject to ACH payment to settlement account of recipient's member bank.
- Information of intended recipient is in the Addenda Record associated with the Entry in the ACH file. Addenda Record is a Record that contains supplemental data related to an Entry. NACHA Operating Rules § 8.4.

Zelle moving parts-payment through member bank to member bank

- Through these settlement accounts, members settle each business day on a net-basis generating ACH files, with sending member as both “Originator” and “Originating Depository Financial Institution” (“ODFI”) and receiving member as both “Receiver” and “Receiving Depository Financial Institution” (“RDFI”).
- No same day ACH files currently.
- These net settlement payments would bear the Standard Entry Class code “CCD” (Corporate Credit or Debit) for a business to business Entry.

Zelle moving parts-payment through member bank to nonmember bank

- If recipient learns that recipient's bank does not offer Zelle, recipient is directed to enroll directly through EWS in the payment service.
- Recipient provides name, routing number, and account number of recipient's bank.
- EWS transmits this recipient information to sender's member bank.
- Based on this information, sender's bank creates an ACH file naming itself as Originator and ODFI.
- Recipient's bank is RDFI and recipient is Receiver.

Zelle moving parts-payment through member bank to nonmember bank

- These net payments could bear one of the following Standard Entry Class codes: “PPD” (Prearranged Payment and Deposit) for a business to consumer Entry or “WEB” (Internet-Initiated/Mobile) for a consumer to consumer Entry.
- While unlikely due to restrictions, the Entry could bear “CCD” (Corporate Credit or Debit) for a business to business Entry and “CIE” (Customer Initiated Entry) for a consumer to business Entry. Zelle is principally intended as a consumer to consumer payment portal.
- As same day ACH is not employed, settlement occurs one to two business days later for these payments outside the EWS network member banks.

EWS App

- Rather than a bank, when a sender proceeds to EWS offering a Zelle payment service directly through a Zelle App, that payment may proceed through multiple channels, including ACH or a card network, Visa Original Credit Transaction and MasterCard MoneySend services.
- Upon enrollment at EWS, sender provides the name of the intended recipient, a token, and amount of the payment.
- If recipient is not in the shared directory, EWS contacts the intended recipient through use of the token and secures recipient's debit card number or other information to remit the payment through a card payment network or ACH.

EWS App

- If an intended recipient is in the shared directory through a network member bank, the member bank will credit the recipient upon notification from EWS of the intended payment, as recipient banks with member.
- The funding of that payment to recipient will be processed through a payment network by EWS in favor of the member crediting recipient upon EWS securing funds from sender.
- If the intended recipient does not bank with a member bank, the remittance of the payment may be through a designated payment network and the funding of that payment may also be through that network.

Issues:

1. NACHA Operating Rules
2. CAN-SPAM Act
3. Telephone Consumer Protection Act
4. The Travel Rule under Bank Secrecy Act
5. Regulation E
6. Funds availability

NACHA Operating Rules

NACHA Operating Rule

- Originator must obtain an authorization from a Receiver to originate an Entry to or against a Receiver's account.
- Sender through a network member to an intended recipient as Receiver through a nonmember bank captured under this rule.
- If an Originator (a member bank) is originating a credit Entry to a consumer's account, the authorization need not be in writing. NACHA Operating Rule ("Rule") § 2.3.2.1.
- Nevertheless, the authorization must conform to certain requirements, Rule § 2.3.2.3:
 - Identifiable as an authorization;
 - Have clear and understandable terms; and
 - Provide Receiver may revoke the authorization only by notifying Originator in the time and manner stated in the authorization.

NACHA Operating Rule

- For a CCD Entry (B2B), Originator must obtain Receiver's agreement to be bound by the Rules, Rule § 2.3.3.1.
- For a credit Entry subject to UCC Article 4A (e.g., CCD Entry), an ODFI must provide Originator with notice:
 - The Entry may be transmitted through the ACH;
 - The rights and obligations of Originator concerning the Entry are governed by the laws of New York;
 - Credit given by RDFI to Receiver for the Entry is provisional until RDFI has received final settlement; and
 - If RDFI does not receive such payment for the Entry, RDFI is entitled to a refund from Receiver and Originator is considered not to have paid the amount of the Entry to Receiver.
- As Originator and ODFI are both the same member bank, this formality may not be strictly necessary to observe.

EWS as Third Party Sender or Third Party Service Provider

- **Third party sender and third party service provider.** One question is to determine whether EWS is a third party sender or a third party service provider under the NACHA Operating Rules as to an Entry originated under a payment. If EWS is such a party, it incurs additional obligations and liabilities, e.g., it must provide additional information to an ODFI under § 2.15.1. Further, this third party sender status would trigger compliance requirements applicable to an ODFI under Operating Rules § 2.2.2.2 where an ODFI must enter into an Origination Agreement with such party.
- Under § 8.106 of the Operating Rules, a "third party sender" is defined as follows:

SECTION 8.106 " Third-Party Sender"

a type of Third-Party Service Provider that acts as an intermediary in Transmitting Entries between an Originator and an ODFI, including through Direct Access, and acts on behalf of an Originator or another Third-Party Sender. A Third-Party Sender must have an Origination Agreement with the ODFI of the Entry. A Third-Party Sender is never the Originator for Entries it Transmits on behalf of another Organization. However, a Third- Party Sender of Entries may also be an Originator of other Entries in its own right.

- Under § 8.107 of the Operating Rules, a "third party service provider" is defined as follows:

SECTION 8.107 " Third-Party Service Provider"

an Organization that performs any functions on behalf of the Originator, the Third-Party Sender, the ODFI, or the RDFI (not including the Originator, ODFI, or RDFI acting in such capacity for such Entries) related to the processing of Entries, including the creation of the Files or acting as a Sending Point or Receiving Point on behalf of a Participating DFI. An Organization acting as Third- Party Sender also is a Third-Party Service Provider.

EWS as Third Party Sender or Third Party Service Provider

- The phrase "related to the processing of Entries" is not defined in the Operating Rules.
- The first issue with regard to these two definitions is to determine if EWS is a Third Party Sender or a Third Party Service provider in its role solely as among the member banks.
- **Inasmuch as EWS has not authorized an ODFI or a Third Party Service provider to transmit a credit Entry, EWS is not a Third Party Sender.**
- Further, EWS is not performing any function for an Originator, an ODFI, or an RDFI related to the processing of an Entry. Thus, it is not a Third Party Service Provider.
- The second issue is whether the same analysis and conclusion above applies in the event EWS is involved in facilitating the payment to beneficiaries associated with financial institutions outside of the EWS network member banks.
- EWS's role does not materially change. EWS again has not authorized an ODFI or a Third Party Service Provider to transmit a credit Entry. Additionally, even vis-à-vis a beneficiary associated with a financial institution outside the network member banks, EWS does not perform a function for an Originator, an ODFI, or an RDFI.

NACHA Operating Rules-funds availability

- Member bank to nonmember bank ACH payment.
- SUBSECTION 3.3.1.1 **General Rule for Availability of Credits**

For a credit Entry that is not a Same Day Entry, an RDFI must make the amount of the credit Entry received from its ACH Operator available to the Receiver for withdrawal no later than the **end of the Settlement Date of the Entry**, subject to its right to return the Entry under these Rules.

For a credit Same Day Entry, an RDFI must make the amount of the credit Entry received from its ACH Operator available in the Receiver's account no later than the completion of the RDFI's processing for that Settlement Date, subject to its right to return the Entry under these Rules. An RDFI is not required to make such funds available for withdrawal on the Settlement Date.

An RDFI that reasonably suspects that a credit Entry is unauthorized is exempt from these requirements, subject to applicable Legal Requirements. As RDFI invoking such an exemption must promptly notify the ODFI.

NACHA Operating Rules-funds availability

- SUBSECTION 3.3.1.4 Credit Entries Subject to Article 4A Are Provisional

For a credit Entry subject to Article 4A, credit given to a Receiver by an RDFI as provided in this Subsection 3.3.1 (Availability of Credit Entries to Receivers) is provisional until the RDFI has received final settlement through a Federal Reserve Bank or has otherwise received payment as provided in Section 4A-403(a) of UCC Article 4A. If such settlement or payment is not received, the RDFI is entitled to a refund from the Receiver of the amount credited, and the Originator is considered not to have paid the Receiver the amount of the Entry. This Subsection 3.3.1.4 applies only if the Receiver has agreed to be bound by the Rules contained in this Subsection 3.3.1.4.

NACHA Operating Rules-funds availability

- SUBSECTION 3.3.1.2 Availability for Certain Credit PPD Entries [B2P]

For a credit PPD Entry that is made available to the RDFI by its ACH Operator by 5:00 p.m. (RDFI's local time) on the Banking Day prior to the Settlement Date, the RDFI must make the amount available to the Receiver for withdrawal at the **opening of business on the Settlement Date**. For purposes of this subsection, opening of business is the later of 9:00 a.m. (RDFI's local time) or the time the RDFI's teller facilities (including ATMs) are available for customer account withdrawals. An RDFI that reasonably suspects that a credit Entry is unauthorized is exempt from this requirement, subject to applicable Legal Requirements. An RDFI invoking such an exemption must promptly notify the ODFI.

CAN-SPAM Act

CAN-SPAM Act

- Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (“CAN-SPAM Act”), 15 U.S.C. §§ 7701-7713.
- Oversight of the Act is vested with the FTC.
- Implemented through 16 CFR Part 316.
- The Act sets rules for commercial email, establishes requirements for commercial messages, gives recipients the right to stop receiving them, and spells out substantial penalties for violations (up to \$40,654 per violation).

CAN-SPAM Act

- The Act covers all commercial messages, which the law defines as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.”
- Under Zelle, an email can be used as a token.
- In assessing the coverage of the Act to a certain email, the key is the primary purpose of the email.

CAN-SPAM Act

- To determine the primary purpose, an email can contain three different types of information:
 - Commercial content –advertises or promotes a commercial product or service, including content on a website operated for a commercial purpose;
 - Transactional or relationship content –facilitates an already agreed-upon transaction or updates a customer about an ongoing transaction; and
 - Other content –is neither commercial nor transactional or relationship.
- The terms between sender and sending bank can grant assurance from sender to bank that recipient consents to the receipt of an email token to mitigate risk.

CAN-SPAM Act

- If the message contains only commercial content, its primary purpose is commercial and it must comply with the requirements of CAN-SPAM.
- If it contains only transactional or relationship content, its primary purpose is transactional or relationship. In that case, it may not contain false or misleading routing information, but is otherwise exempt from most provisions of the CAN-SPAM Act.

Telephone Consumer Protection Act

The Telephone Consumer Protection Act of 1991

- The Telephone Consumer Protection Act of 1991 (“TCPA”) is codified at 47 U.S.C. § 227.
- The TCPA restricts telephone solicitations and the use of automated telephone equipment.
- The TCPA limits the use of automatic dialing systems, artificial or prerecorded voice messages, SMS text messages, and fax machines.

Federal Communication Commission

- The TCPA also specifies several technical requirements for fax machines, autodialers, and voice messaging systems—principally with provisions requiring identification and contact information of the entity using the device to be contained in the message.
- FCC Declaratory Ruling and Order, released July 10 2015, clarified the scope and nature of coverage.

<https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order>

- Pages 63-68, starting at ¶ 127, exempts from TCPA's consumer consent requirement **time-sensitive messages relating to the transfer of funds** subject to certain enumerated conditions detailed in the Ruling and Order:

FCC declaratory ruling and order

- No cost to consumer (services available to cover costs);
- Voice calls and text messages must be sent, if at all, only to the wireless telephone number provided by a customer of the financial institution;
- Voice calls and text messages must state the name and contact information of the financial institution (for voice calls, these disclosures must be made at the beginning of the call);
- Voice calls and text messages are strictly limited to purposes discussed under the ruling and order (time-sensitive payment); and must not include any telemarketing, cross-marketing, solicitation, debt collection, or advertising content;
- Voice calls and text messages must be concise, generally one minute or less in length for voice calls (unless more time is needed to obtain customer responses or answer customer questions) and **160 characters or less in length for text messages**;

FCC declaratory ruling and order

- A financial institution may initiate no more than **three messages (whether by voice call or text message) per event over a three-day period for an affected account;**
- A financial institution must offer recipients within each message an easy **means to opt out of future such messages**, (i) voice calls that could be answered by a live person must include an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the call recipient to make an opt-out request prior to terminating the call, (ii) voice calls that could be answered by an answering machine or voice mail service must include a toll-free number that the consumer can call to opt out of future calls, (iii) text messages must inform recipients of the ability to opt out by replying "STOP," which will be the exclusive means by which consumers may opt out of such messages; and,
- A financial institution must **honor opt-out requests immediately.**

Recent ruling under the TCPA

- In *Susinno v. Work Out World Inc.*, 2017 WL 2925432, on July 10, 2017, the U.S. Court of Appeals for the Third Circuit vacated a U.S. district court decision that had dismissed a consumer's claim for a violation of the TCPA.
- The unanimous panel held that a single unsolicited prerecorded voicemail lasting a minute violated the TCPA and was sufficient to establish a "concrete injury" under the Supreme Court's recent *Spokeo, Inc. v. Robins* decision dealing with the Fair Credit Reporting Act of 1970 (___ U.S. ___, 136 S.Ct. 1540, 2016).

The “Travel Rule” under the Bank Secrecy Act

BSA Travel Rule - Introduction

- In general, 31 C.F.R. § 1010.410(f) requires a covered financial institution to collect and pass on certain information to the next financial institution in certain funds transmittals of **\$3,000 or more**.
 - Referred to as the “travel rule” because it requires that the required information travel with the transmittal order.
 - Applies to both bank and nonbank financial institutions.
 - The Travel Rule issued concurrently in 1995 with complementary funds transmittal/transfer recordkeeping rule.
- Compliance duties depend on a financial institution’s role in the transaction.

BSA Travel Rule - Introduction

- The purpose of the Travel Rule is to assist law enforcement's investigations of money laundering involving transmittals of funds, by ensuring that transmittal orders include identifying information concerning a sender and a recipient. Prior to the Travel Rule, such information was not regularly available in a funds transfer.
- The Travel Rule is also intended to deter money launderers from attempting to abuse wire transfer payment and messaging systems by mandating the collection and inclusion of certain identifying information.
- The Rule is not a reporting requirement. It imposes no independent duty to submit information to the government (but remember the suspicious activity report, 31 C.F.R. § 1020.320).

BSA Travel Rule - Introduction

- For funds transmittals of \$3000 or more, the transmitter's financial institution must include the following information in the transmittal order at the time the transmittal order is sent to a receiving financial institution:
 - Name of the transmitter, and, if the payment is ordered from an account, the account number of the transmitter;
 - Address of the transmitter;
 - Amount of the transmittal order;
 - Date of the transmittal order;
 - Identity of the recipient's financial institution;
 - As many of the following items as received with the transmittal order:
 - Name and address of the recipient;
 - Account number of the recipient; and
 - Any other specific identifier of the recipient.
 - Name and address or numerical ID of the transmitter's financial institution.

Travel Rule and Zelle payments

- “Transmittal of funds” does **not** include:
 - Electronic fund transfer as defined in § 903(7) of the Electronic Fund Transfer Act of 1978 (“EFTA”); a “remittance transfer” is covered, Regulation E, subpart B.
 - Transfers made through an automated clearinghouse, ATM, or point-of-sale system.
- A funds transfer by a business to a business (CCD Entry) is not subject to the Travel Rule so long as that transfer is made through an automated clearinghouse. What about a payment through a network member bank to member where RDFI and Receiver are a bank?
- A transfer by a consumer to a consumer (WEB Entry), a consumer to a business (CIE Entry), or a business to a consumer (PPD Entry) would be covered generally by the EFTA, and thus excluded from these definitions. What if a prepaid account other than a payroll account is involved? What if an account under a bona fide trust account is involved?

Regulation E

Regulation E

- Regulation E § 1005.7(a), initial disclosure requirement:

A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

- Regulation E § 1005.7(b)(4):

The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfers system

New disclosure obligation

- Regulation E § 1005.7(c), additional disclosure requirement:

If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

Refreshment of initial disclosure

- Comment 7(a)-1:

Early disclosures. Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, **if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.**

Regulation E periodic statement descriptor

■ Regulation E § 1005.9(b)(1):

(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

- (i) The amount of the transfer;
- (ii) The date the transfer was credited or debited to the consumer's account;
- (iii) The type of transfer and type of account to or from which funds were transferred;
- (iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
- (v) The name of any third party to or from whom funds were transferred.

Funds availability- Regulation CC and UCC 4A

Funds availability- Regulation CC

Availability for “electronic payments” under Regulation CC

- **Member to member availability of payment by agreement.** As a EWS network member bank, a payment received by a member participating in Zelle is credited by agreement to a recipient’s deposit account within *one* business day after good funds are received in the settlement account through ACH.
- **Member to nonmember payment.** An ACH credit Entry to a Receiver through a member bank to nonmember bank is subject to the ACH availability rules and to Regulation CC § 229.10(b) as an “electronic payment.”
- **Funds availability under Regulation CC (12 CFR Part 229) for member to member payment.** A payment through a network member bank to a member bank recipient could be covered by Regulation CC § 229.10(b) as an **electronic payment** afforded next business day availability, with emphasis as follows:

(b) Electronic payments—

(1) In general. **A bank shall make funds received for deposit in an account by an electronic payment available for withdrawal not later than the business day after the banking day on which the bank received the electronic payment.**

(2) When an electronic payment is received. An electronic payment is received when the bank receiving the payment has received both—

(i) Payment in actually and finally collected funds; and

(ii) Information on the account and amount to be credited.

A bank receives an electronic payment only to the extent that the bank has received payment in actually and finally collected funds.

- **Electronic payment.** The term electronic payments is defined in Regulation CC § 229.2(p) as follows, with emphasis added:

(p) **Electronic payment means a wire transfer or an ACH credit transfer.**

- **ACH** (potentially inapplicable as Receiver does not receive a credit Entry for payment through network member bank to member bank). The term "ACH" is defined in Regulation CC § 29.2(b), as follows:

(b) Automated clearinghouse or ACH means a facility that processes debit and credit transfers under rules established by a Federal Reserve Bank operating circular on automated clearinghouse items or under rules of an automated clearinghouse association.

Availability for “electronic payments” under Regulation CC

- **Wire transfer.** The definition for the term "wire transfer" is more complex. The definition for this term is set forth in Regulation CC § 229.2(II) as follows, with emphasis added:

(II) Wire transfer means an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary upon receipt or on a day stated in the order, that is transmitted by electronic or other means through Fedwire, the Clearing House Interbank Payments System, other similar network, between banks, or on the books of a bank. **Wire transfer does not include an electronic fund transfer as defined in section 903(6) [903(7)] of the Electronic Fund Transfer Act (15 U.S.C. 1693a(6)).**

- This definition is amplified by Regulation CC, Comment 229.2(II)-1, with emphasis added:

LL. 229.2(II) Wire Transfer

1. The EFA Act delegates to the Board the authority to define the term wire transfer. The regulation defines wire transfer as an unconditional order to a bank to pay a fixed or determinable amount of money to a beneficiary, upon receipt or on a day stated in the order, that is transmitted by electronic or other means over certain networks or on the books of banks and that is used primarily to transfer funds between commercial accounts. “Unconditional” means that no condition, such as presentation of documents, must be met before the bank receiving the order is to make payment. A wire transfer may be transmitted by electronic or other means. “Electronic means” include computer-to-computer links, on-line terminals, telegrams (including TWX, TELEX, or similar methods of communication), telephone calls, or other similar methods. Fedwire (the Federal Reserve's wire transfer network), CHIPS (Clearing House Interbank Payments System, operated by the New York Clearing House), and **book transfers among banks or within one bank are covered by this definition. Credits for credit and debit card transactions are not wire transfers. The term wire transfer excludes electronic fund transfers as that term is defined by the Electronic Fund Transfer Act.**

Availability for “electronic payments” under Regulation CC

- Given the foregoing definition and commentary, an electronic fund transfer as defined in the Electronic Fund Transfer Act (“EFTA”) § 903(7) are outside of this definition of wire transfer for purposes of the next business day availability requirement under Regulation CC § 229.10(b).
- The definition of an electronic fund transfer under EFTA is referenced, and not Regulation E. The definition of an electronic fund transfer under EFTA is substantially broader, at 15 U.S.C. § 1693a(7), than the definition of an electronic fund transfer in Regulation E, at § 1005.3(b)(1), with the former providing as follows:
- (7) the term “electronic fund transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include--
 - (A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;
 - (B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer [Fedwire];
 - (C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;
 - (D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or
 - (E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;as determined under regulations of the Board;

Availability for “electronic payments” under Regulation CC

- In summary, given these definitions and commentaries, under Regulation CC strictly speaking an electronic fund transfers as defined under 15 U.S.C. § 1693a(7), **to** a consumer's deposit account or payroll card account (both of which are generally covered under the EFTA), would not to be a “wire transfer,” thus not subject to the next business day availability requirement applicable generally to electronic payments under Regulation CC § 229.10(b).
- Accordingly, a network member bank to network member bank consumer to consumer or business to consumer Zelle payment generally is **not** covered by Regulation CC § 229.10(b)’s next business day availability requirement as the payment is arguably not ACH and not a wire transfer as the payment is covered under the EFTA.
- Such member bank to member bank Zelle payment by a business to a business, a business to consumer or consumer to consumer, to a prepaid card account other than a payroll card account or an account under a bona fide trust arrangement would be subject to the next business day availability requirement applicable generally to an electronic payment under that § 229.10(b) as the payment is not covered under the EFTA.

Funds availability- UCC

4A

Funds availability under UCC 4A

- For a payment by a business to business covered under UCC 4A, funds availability is governed by UCC § 4A-404 (CA UCC § 11404), with emphasis added:
 - (a) Subject to subdivision (e) of Section 11211 [cancelled payment order], and subdivision (d) [subject to funds transfer system rule] and (e) of Section 11405 [funds transfer system rule], if a beneficiary's bank accepts a payment order, the bank is obliged to pay the amount of the order to the beneficiary of the order. **Payment is due on the payment date of the order**, but if acceptance occurs on the payment date after the close of the funds-transfer business day of the bank, payment is due on the next funds-transfer business day. If the bank refuses to pay after demand by the beneficiary and receipt of notice of particular circumstances that will give rise to consequential damages as a result of nonpayment, the beneficiary may recover damages resulting from the refusal to pay to the extent the bank had notice of the damages, unless the bank proves that it did not pay because of a reasonable doubt concerning the right of the beneficiary to payment.
 - (b) If a payment order accepted by the beneficiary's bank instructs payment to an account of the beneficiary, the bank is obliged to notify the beneficiary of receipt of the order before midnight of the next funds-transfer business day following the payment date. If the payment order does not instruct payment to an account of the beneficiary, the bank is required to notify the beneficiary only if notice is required by the order. Notice may be given by first-class mail or any other means reasonable in the circumstances. If the bank fails to give the required notice, the bank is obliged to pay interest to the beneficiary on the amount of the payment order from the day notice should have been given until the day the beneficiary learned of receipt of the payment order by the bank. No other damages are recoverable. Reasonable attorney's fees are also recoverable if demand for interest is made and refused before an action is brought on the claim.
 - (c) The right of a beneficiary to receive payment and damages as stated in subdivision (a) may not be varied by agreement or a funds-transfer system rule. The right of a beneficiary to be notified as stated in subdivision (b) may be varied by agreement of the beneficiary or by a funds-transfer system rule if the beneficiary is notified of the rule before initiation of the funds transfer.

Questions?