Leach-Bliley Act (15 U.S.C. 6805(a)) and section 5g of the Commodity Exchange Act (7 U.S.C. 7b–2); and

(b) The Federal Trade Commission, with respect to designated payment systems and participants therein not otherwise subject to the jurisdiction of any Federal functional regulators (including the Commission) as described in paragraph (a) of this section.

APPENDIX A TO PART 233—MODEL NOTICE

[Date]
[Name of foreign sender or foreign banking office]
[Address]
Re: *U.S. Unlawful Internet Gambling Enforcement Act Notice*

Dear [Name of foreign counterparty]:

On [date], U.S. government officials informed us that your institution processed payments through our facilities for Internet gambling transactions restricted by U.S. law on [dates, recipients, and other relevant information if available].

We provide this notice to comply with U.S. Government regulations implementing the Unlawful Internet Gambling Enforcement Act of 2006 (Act), a U.S. federal law. Our policies and procedures established in accordance with those regulations provide that we will notify a foreign counterparty if we learn that the counterparty has processed payments through our facilities for Internet gambling transactions restricted by the Act. This notice ensures that you are aware that we have received information that your institution has processed payments for Internet gambling restricted by the Act.

The Act is codified in subchapter IV, chapter 53, title 31 of the U.S. Code (31 U.S.C. 5361 *et seq.*). Implementing regulations that duplicate one another can be found at part 233 of title 12 of the U.S. Code of Federal Regulations (12 CFR part 233) and part 132 of title 31 of the U.S. Code of Federal Regulations (31 CFR part 132).

PART 234—DESIGNATED FINANCIAL MARKET UTILITIES (REGULATION HH)

Sec.

AUTHORITY: 12 U.S.C. 5461 *et seq.*

SOURCE: 77 FR 45919, Aug. 2, 2012, unless otherwise noted.

§ 234.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of sections 805, 806, and 810 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111–203, 124 Stat. 1376; 12 U.S.C. 5464, 5465, and 5469).

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. The risk-management standards do not apply, however, to a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency (as defined below). In addition, this part sets out requirements and procedures for a designated financial market utility that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency.

EFFECTIVE DATE NOTE: At 78 FR 76979, Dec. 20, 2013, § 234.1 was amended by revising paragraph (b), effective Feb. 18, 2014. For the convenience of the user, the revised text is set forth as follows:

234.1 Authority, purpose, and scope.

* * * * *

(b) *Purpose and scope.* This part establishes risk-management standards governing the operations related to the payment, clearing, and settlement activities of designated financial market utilities. In addition, this part sets out requirements and procedures for a designated financial market utility

that proposes to make a change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility and for which the Board is the Supervisory Agency (as defined below). The risk management standards do not apply, however, to a designated financial market utility that is a derivatives clearing organization registered under section 5b of the Commodity Exchange Act (7 U.S.C. 7a–1) or a clearing agency registered with the Securities and Exchange Commission under section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1), which are governed by the risk-management standards promulgated by the Commodity Futures Trading Commission or the Securities and Exchange Commission, respectively, for which each is the Supervisory Agency. This part also sets out standards, restrictions, and guidelines regarding a Federal Reserve Bank establishing and maintaining an account for, and providing services to, a designated financial market utility. In addition, this part sets forth the terms under which a Reserve Bank may pay a designated financial market utility interest on the designated financial market utility's balances held at the Reserve Bank.

§ 234.2 Definitions.

As used in this part:

(a) *Central counterparty* means an entity that interposes itself between the counterparties to trades, acting as the buyer to every seller and the seller to every buyer.

(b) *Central securities depository* means an entity that holds securities in custody to enable securities transactions to be processed by means of book entries or an entity that enables securities to be transferred and settled by book entry either free of or against payment.

(c) *Designated financial market utility* means a financial market utility (as defined in paragraph (d) of this section) that the Financial Stability Oversight Council has designated under section 804 of the Dodd-Frank Act (12 U.S.C. 5463).

(d) *Financial market utility* has the same meaning as the term defined in section 803(6) of the Dodd-Frank Act (12 U.S.C. 5462(6)).

(e) *Payment system* means a set of payment instructions, procedures, and rules for the transfer of funds among system participants.

(f) *Supervisory Agency* has the same meaning as the term is defined in section 803(8) of the Dodd-Frank Act (12 U.S.C. 5462(8)).

§ 234.3 Standards for payment systems.

(a) A designated financial market utility that is designated on the basis of its role as the operator of a payment system must implement rules, procedures, or operations designed to ensure that it meets or exceeds the following risk-management standards with respect to the payment, clearing, and settlement activities of that payment system:

(1) The payment system has a well-founded legal basis under all relevant jurisdictions.

(2) The payment system's rules and procedures enable participants to have a clear understanding of the payment system's impact on each of the financial risks they incur through participation in it.

(3) The payment system has clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the payment system operator and the participants and which provide appropriate incentives to manage and contain those risks.

(4) The payment system provides prompt final settlement on the day of value, during the day and at a minimum at the end of the day.

(5) A payment system in which multilateral netting takes place is, at a minimum, capable of ensuring the timely completion of daily settlements in the event of an inability to settle by the participant with the largest single settlement obligation.

(6) Assets used for settlement are a claim on the central bank or other assets that carry little or no credit risk and little or no liquidity risk.

(7) The payment system ensures a high degree of security and operational reliability and has contingency arrangements for timely completion of daily processing.

(8) The payment system provides a means of making payments that is practical for its users and efficient for the economy.

(9) The payment system has objective and publicly disclosed criteria for participation, which permit fair and open access.

(10) The payment system's governance arrangements are effective, accountable, and transparent.

(b) The Board, by order, may apply heightened risk-management standards to a particular designated financial market utility in accordance with the risks presented by that designated financial market utility. The Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.

§ 234.4 Standards for central securities depositories and central counterparties.

(a) A designated financial market utility that is designated on the basis of its role as a central securities depository or a central counterparty must implement rules, procedures, or operations designed to ensure that it meets or exceeds the following risk-management standards with respect to the payment, clearing, and settlement activities of that central securities depository or central counterparty:

(1) The central securities depository or central counterparty has a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.

(2) The central securities depository or central counterparty requires participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the central securities depository or central counterparty. The central securities depository or central counterparty has procedures in place to monitor that participation requirements are met on an ongoing basis. The central securities depository's or central counterparty's participation requirements are objective and publicly disclosed, and permit fair and open access.

(3) The central securities depository or central counterparty holds assets in a manner whereby risk of loss or of delay in its access to them is minimized. Assets invested by a central securities depository or central counterparty are held in instruments with minimal credit, market, and liquidity risks.

(4) The central securities depository or central counterparty identifies sources of operational risk and minimizes them through the development of appropriate systems, controls, and procedures; has systems that are reliable and secure, and has adequate, scalable capacity; and has business continuity plans that allow for timely recovery of operations and fulfillment of the central securities depository's or central counterparty's obligations.

(5) The central securities depository or central counterparty employs money settlement arrangements that eliminate or strictly limit its settlement bank risks, that is, its credit and liquidity risks from the use of banks to effect money settlements with its participants and requires funds transfers to the central securities depository or central counterparty be final when effected.

(6) The central securities depository or central counterparty is cost-effective in meeting the requirements of participants while maintaining safe and secure operations.

(7) The central securities depository or central counterparty evaluates the potential sources of risks that can arise when the central securities depository or central counterparty establishes links either cross-border or domestically to settle transactions or clear trades, and ensures that the risks are managed prudently on an ongoing basis.

(8) The central securities depository or central counterparty has governance arrangements that are clear and transparent to fulfill public interest requirements and to support the objectives of owners and participants and promotes the effectiveness of a central securities depository's or central counterparty's risk-management procedures.

(9) The central securities depository or central counterparty provides market participants with sufficient information for them to identify and evaluate accurately the risks and costs associated with using its services.

(10) The central securities depository or central counterparty establishes default procedures that ensures that the

central securities depository or central counterparty can take timely action to contain losses and liquidity pressures and to continue meeting its obligations and provides for key aspects of the default procedures to be publicly available.

(11) The central securities depository or central counterparty ensures that final settlement occurs no later than the end of the settlement day and requires that intraday or real-time finality be provided where necessary to reduce risks.

(12) The central securities depository or central counterparty eliminates principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment.

(13) The central securities depository or central counterparty states its obligations with respect to physical deliveries, and the risks from these obligations are identified and managed.

(14) The central securities depository immobilizes or dematerializes securities certificates and transfers them by book entry to the greatest extent possible.

(15) The central securities depository institutes risk controls that include collateral requirements and limits, and ensure timely settlement in the event that the participant with the largest payment obligation is unable to settle when the central securities depository extends intraday credit.

(16) The central counterparty measures its credit exposures to its participants at least once a day and limits its exposures to potential losses from defaults by its participants in normal market conditions so that the operations of the central counterparty would not be disrupted and non-defaulting participants would not be exposed to losses that they cannot anticipate or control.

(17) The central counterparty uses margin requirements to limit its credit exposures to participants in normal market conditions and uses risk-based models and parameters to set margin requirements and reviews them regularly. Specifically, the central counterparty—

(i) Provides for annual model validation consisting of evaluating the performance of the central counterparty's margin models and the related parameters and assumptions associated with such models by a qualified person who does not perform functions associated with the central counterparty's margin models (except as part of the annual model validation) and does not report to such a person.

(ii) Reviews and backtests margin models and parameters at least quarterly.

(18) The central counterparty maintains sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions.

(b) The Board, by order, may apply heightened risk-management standards to a particular designated financial market utility in accordance with the risks presented by that designated financial market utility. The Board, by order, may waive the application of a standard or standards to a particular designated financial market utility where the risks presented by or the design of that designated financial market utility would make the application of the standard or standards inappropriate.

§ 234.5 Changes to rules, procedures, or operations.

(a) *Advance notice.*

(1) A designated financial market utility shall provide at least 60-days advance notice to the Board of any proposed change to its rules, procedures, or operations that could materially affect the nature or level of risks presented by the designated financial market utility.

(2) The notice of the proposed change shall describe—

(i) The nature of the change and expected effects on risks to the designated financial market utility, its participants, or the market; and

(ii) How the designated financial market utility plans to manage any identified risks.

(3) The Board may require the designated financial market utility to provide additional information necessary to assess the effect the proposed change would have on the nature or level of risks associated with the utility's payment, clearing, or settlement

activities and the sufficiency of any proposed risk-management techniques.

(4) A designated financial market utility shall not implement a change to which the Board has an objection.

(5) The Board will notify the designated financial market utility of any objection before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(6) A designated financial market utility may implement a change if it has not received an objection to the proposed change before the end of 60 days after the later of—

(i) The date the Board receives the notice of proposed change; or

(ii) The date the Board receives any further information it requests for consideration of the notice.

(7) With respect to proposed changes that raise novel or complex issues, the Board may, by written notice during the 60-day review period, extend the review period for an additional 60 days. Any extension under this paragraph will extend the time periods under paragraphs (a)(5) and (a)(6) of this section to 120 days.

(8) A designated financial market utility may implement a proposed change before the expiration of the applicable review period if the Board notifies the designated financial market utility in writing that the Board does not object to the proposed change and authorizes the designated financial market utility to implement the change on an earlier date, subject to any conditions imposed by the Board.

(b) *Emergency changes.*

(1) A designated financial market utility may implement a change that would otherwise require advance notice under this section if it determines that—

(i) An emergency exists; and

(ii) Immediate implementation of the change is necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(2) The designated financial market utility shall provide notice of any such emergency change to the Board as soon as practicable and no later than 24 hours after implementation of the change.

(3) In addition to the information required for changes requiring advance notice in paragraph (a)(2) of this section, the notice of an emergency change shall describe—

(i) The nature of the emergency; and

(ii) The reason the change was necessary for the designated financial market utility to continue to provide its services in a safe and sound manner.

(4) The Board may require modification or rescission of the change if it finds that the change is not consistent with the purposes of the Dodd-Frank Act or any applicable rules, order, or standards prescribed under section 805(a) of the Dodd-Frank Act.

(c) *Materiality.*

(1) The term ''materially affect the nature or level of risks presented'' in paragraph (a)(1) of this section means matters as to which there is a reasonable possibility that the change would materially affect the overall nature or level of risk presented by the designated financial market utility, including risk arising in the performance of payment, clearing, or settlement functions.

(2) A change to rules, procedures, or operations that would materially affect the nature or level of risks presented includes, but is not limited to, changes that materially affect any one or more of the following:

(i) Participant eligibility or access criteria;

(ii) Product eligibility;

(iii) Risk management;

(iv) Settlement failure or default procedures;

(v) Financial resources;

(vi) Business continuity and disaster recovery plans;

(vii) Daily or intraday settlement procedures;

(viii) The scope of services, including the addition of a new service or discontinuation of an existing service;

(ix) Technical design or operating platform, which results in non-routine changes to the underlying technological framework for payment, clearing, or settlement functions; or

(x) Governance.

(3) A change to rules, procedures, or operations that does not meet the conditions of paragraph (c)(2) of this section and would not materially affect the nature or level of risks presented includes, but is not limited to the following:

(i) A routine technology systems upgrade;

(ii) A change in a fee, price, or other charge for services provided by the designated financial market utility;

(iii) A change related solely to the administration of the designated financial market utility or related to the routine, daily administration, direction, and control of employees; or

(iv) A clerical change and other nonsubstantive revisions to rules, procedures, or other documentation.

§ 234.6 Access to Federal Reserve Bank accounts and services.

(a) This section applies to any designated financial market utility for which the Board may authorize a Federal Reserve Bank to open an account or provide services in accordance with section 806(a) of the Dodd-Frank Act. Upon receipt of Board authorization and subject to any limitations, restrictions, or other requirements established by the Board, a Federal Reserve Bank may enter into agreements governing the details of its accounts and services with a designated financial market utility, consistent with this section and any other applicable Board direction. The agreements may include, among other things, provisions regarding documentation to establish the account and receive services, conditions imposed on the account and services, service charges, reporting, accounting for activity in the account, liability and duty of care, and termination.

(b) A Federal Reserve Bank should ensure that its establishment and maintenance of an account for or provision of services to a designated financial market utility does not create undue credit, settlement, or other risk to the Reserve Bank. In order to establish and maintain an account with a Federal Reserve Bank or receive financial services from a Federal Reserve Bank, the designated financial market utility must be in compliance with the Supervisory Agency's regulatory and supervisory requirements regarding financial resources, liquidity, participant default management, and other aspects of risk management, as determined by the Supervisory Agency. In addition, at a minimum, the designated financial market utility must, in the Federal Reserve Bank's judgment—

(1) Be in generally sound financial condition, including maintenance of sufficient working capital and cash flow to permit the designated financial market utility to continue as a going concern and to meet its current and projected operating expenses under a range of scenarios;

(2) Be in compliance with Board orders and policies, Federal Reserve Bank account agreements and, as applicable, operating circulars, and other applicable Federal Reserve requirements regarding the establishment and maintenance of an account at a Federal Reserve Bank and the receipt of financial services from a Federal Reserve Bank; and

(3) Have an ongoing ability, including during periods of market stress or a participant default, to meet all of its obligations under its agreement for a Federal Reserve Bank account and services, including by maintaining—

(i) Sufficient liquid resources to meet its obligations under the account agreement;

(ii) The operational capacity to ensure that such liquid resources are available to satisfy the account obligations on a timely basis in accordance with the account agreement; and

(iv) Sound money settlement processes designed to adequately monitor its Federal Reserve Bank account on an intraday basis, process money transfers through its account in an orderly manner, and complete final money settlement no later than the value date.

(c) The Board will consult with the Supervisory Agency of a designated financial market utility prior to authorizing a Federal Reserve Bank to open an account, and periodically thereafter, to ascertain the views of the Supervisory Agency regarding the designated financial market utility's compliance with the requirements in paragraph (b) of this section.

(d) In addition to any right that a Reserve Bank has to limit or terminate an account or the use of a service pursuant to its account agreement, the Board may direct the Federal Reserve Bank to impose limits, restrictions, or other conditions on the availability or use of a Federal Reserve Bank account or service by a designated financial market utility, including directing the Reserve Bank to terminate the use of a particular service or to close the account. If the Reserve Bank determines that a designated financial market utility no longer complies with one or more of the minimum conditions in subsection (b), the Reserve Bank will consult with the Board regarding continued maintenance of the account and provision of services.

[78 FR 76979, Dec. 20, 2013]

EFFECTIVE DATE NOTE: At 78 FR 76979, Dec. 20, 2013, §234.6 was added, effective Feb. 18, 2014.

§234.7 Interest on balances.

(a) A Federal Reserve Bank may pay interest on balances maintained by a designated financial market utility at the Federal Reserve Bank in accordance with this section and under such other terms and conditions as the Board may prescribe.

(b) Interest on balances paid under this section shall be at the rate paid on balances maintained by depository institutions or another rate determined by the Board from time to time, not to exceed the general level of short-term interest rates.

(c) For purposes of this section, ''short-term interest rates'' shall have the same meaning as the meaning provided for that term in §204.10(b)(3) of this chapter.

[78 FR 76979, Dec. 20, 2013]

EFFECTIVE DATE NOTE: At 78 FR 76979, Dec. 20, 2013, §234.7 was added, effective Feb. 18, 2014.

PART 235—DEBIT CARD INTERCHANGE FEES AND ROUTING

Sec.

AUTHORITY: 15 U.S.C. 1693o–2.

SOURCE: 76 FR 43466, July 20, 2011, unless otherwise noted.

§235.1 Authority and purpose.

(a) *Authority*. This part is issued by the Board of Governors of the Federal Reserve System (Board) under section 920 of the Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693o–2, as added by section 1075 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010)).

(b) *Purpose*. This part implements the provisions of section 920 of the EFTA, including standards for reasonable and proportional interchange transaction fees for electronic debit transactions, standards for receiving a fraud-prevention adjustment to interchange transaction fees, exemptions from the interchange transaction fee limitations, prohibitions on evasion and circumvention, prohibitions on payment card network exclusivity arrangements and routing restrictions for debit card transactions, and reporting requirements for debit card issuers and payment card networks.

§235.2 Definitions.

For purposes of this part:

(a) *Account* (1) Means a transaction, savings, or other asset account (other than an occasional or incidental credit balance in a credit plan) established for any purpose and that is located in the United States; and

(2) Does not include an account held under a bona fide trust agreement that is excluded by section 903(2) of the Electronic Fund Transfer Act and rules prescribed thereunder.

(b) *Acquirer* means a person that contracts directly or indirectly with a merchant to provide settlement for the