FEDERAL RESERVE SYSTEM

[Docket No. OP—1557]

Proposed Guidelines for Evaluating Joint Account Requests, Request for Comments

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is requesting comment on proposed guidelines to evaluate requests for joint accounts at Federal Reserve Banks (Reserve Banks) by private-sector arrangements within the U.S. payment system. Under the Federal Reserve Act (FRA), Reserve Banks have the authority to open accounts for member banks and other eligible depository institutions. The Reserve Banks typically permit a single master account per eligible institution but have, in limited cases, opened joint accounts for specific uses. Given the potential for this type of account to be of interest to payment system participants, the Board proposes to establish guidelines to be considered in evaluating requests for joint accounts to facilitate settlement for payment systems in the United States. The Board seeks comment on all aspects of the proposed guidelines.

DATES: Comments on the proposed guidelines must be received on or before February 21, 2017.

ADDRESSES: You may submit comments, identified by Docket No. OP–1557, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW. (between 18th and 19th Street NW.), Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Susan V. Foley, Senior Associate Director (202–452–3596), Kylie Stewart, Manager (202–245–4207), or Ian C.B. Spear, Senior Financial Services Analyst (202–452–3959), Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

Section 13(1) of the FRA authorizes each Reserve Bank to ''receive from any of its member banks or other depository institutions . . . deposits of current funds in lawful money.'' [1] The Reserve Banks routinely open and maintain individual Federal Reserve accounts for eligible institutions. The Reserve Banks have also, in limited cases, opened joint accounts for specific purposes, including conducting settlement for payment systems. A joint account is held for the benefit of multiple depository institution account holders. Currently, the Reserve Banks maintain two joint accounts to facilitate settlement between users of private-sector payment services operated by The Clearing House (TCH): One to facilitate wholesale payments through the Clearing House Interbank Payments System (CHIPS) and another to facilitate TCH's Universal Payment Identification Code (UPIC) service for ACH payments.[2] Both of these joint accounts are long-standing, with the more recent account being established approximately 15 years ago. The Reserve Banks do not offer joint accounts as a standard available account option, and consistent with the Reserve Banks' authority under the FRA, institutions seeking to collectively establish a joint account at a Reserve Bank must individually satisfy the FRA's eligibility requirements to establish a Federal Reserve account.

For purposes of the proposed guidelines, the joint account would be held for the benefit of ''joint account holders,'' that is, depository institutions that are eligible to open an account with a Reserve Bank and that under the rules of a private-sector payment system are either required or permitted to be one of the joint account holders. Each of the joint account holders authorizes a single entity to serve as the ''agent'' for the joint account holders with respect to the account and to provide instructions with respect to the joint account.[3] As in the case of the existing joint accounts, the account-holding Reserve Bank would be authorized to act on any instruction provided by the agent, consistent with the security procedures and other provisions of the joint account agreement.[4] In addition, and also consistent with existing practice, the joint account holders would indemnify the account-holding Reserve Bank jointly and severally for losses related to the Reserve Bank's operation of the joint account. The ''operator'' of the private-sector arrangement, which could be the agent of the joint account or a separate entity, would provide the clearing services for, and typically serve as the source for the positions of, the participants in the private-sector arrangement. ''Participants'' could include joint account holders, as well as other depository institutions and nondepository institutions that are directly part of the private-sector arrangement's payment system.

Given the ongoing evolution of the U.S. payment system, there may be broader interest in establishing joint accounts to facilitate settlement on the part of market participants. For instance, as part of the Board's and Reserve Banks' (collectively the Federal Reserve's) *Strategies for Improving the U.S. Payment System* efforts, the Federal Reserve is facilitating a multiyear collaborative effort to support the desired outcome of ''a ubiquitous, safe, faster electronic solution for making a broad variety of business and personal payments supported by a flexible and cost-effective means for payment clearing and settlement groups to settle their positions rapidly and with

[1] 12 U.S.C. 342.

[2] CHIPS is a multilateral netting system that continuously settles wholesale payments between two or more participating institutions.

TCH offers a UPIC service that enables its customer's end users to provide payment instructions to third parties without disclosing their bank account information and enables such end users to change banking relationships without needing to notify each payor of the change (the UPIC remains the same). The joint account for UPIC transactions enables the settlement of ACH credit transactions using UPICs when the transactions are sent by customers of the Reserve Banks' FedACH service and destined for participants in TCH's UPIC service.

[3] Joint account holders must authorize the same agent as a condition of being a joint account holder, but any joint account holder may withdraw from the joint account with appropriate notice. Although joint account holders must be eligible depository institutions, the designated agent of the private-sector arrangement would not need to be a depository institution.

[4] Rules and agreements among the parties would determine what obligations the agent has to the joint account holders with respect to instructions initiated by the agent.

finality.'' [5] To help foster this outcome, the Federal Reserve in 2015 established the Faster Payments Task Force (Task Force), consisting of diverse payment industry stakeholders, to identify effective approaches to implementing safe, ubiquitous, faster payments capabilities in the United States.

The Task Force developed a process whereby proposals for safe, ubiquitous, faster payment capabilities (''faster retail payment systems'') could be assessed by a qualified independent assessment team and the Task Force against the *Faster Payments Effectiveness Criteria* developed by the Task Force.[6] As part of this process, the Federal Reserve made proposers aware that they could discuss Reserve Bank services, such as settlement options, with Federal Reserve representatives if they had an interest in using those services to facilitate their proposed faster retail payment systems. Federal Reserve staff received one request from an organization to open a joint account to facilitate settlement to support that organization's proposed faster retail payment system.

The Board recognizes that other potential providers may contemplate similar account arrangements or might reconsider their options for settlement capabilities if they understood better the availability of joint accounts. The Board therefore proposes to establish guidelines for evaluating requests for joint accounts to facilitate settlement. In particular, a private-sector arrangement may seek a joint account model, in certain instances, to facilitate near credit-risk-free settlement in support of its payment system. Today, the credit-risk-free settlement of U.S. dollar payment, clearing, and settlement systems typically requires the Reserve Banks to make the appropriate debits and credits to accounts on their books. Under one potential joint account model, each participant in the private-sector arrangement would rely on the presence of balances held in a Federal Reserve account to obtain certainty that transactions settled via the arrangement are ultimately backed by funds on deposit at the central bank.[7]

II. Discussion of Proposed Guidelines

The Board proposes the following guidelines to evaluate requests for joint accounts by a private-sector arrangement within the U.S. payment system. The proposed guidelines are intended to broadly outline considerations necessary for evaluating such requests. Requests would be evaluated on a case-by-case basis, and evaluating a particular request would likely require more-specific considerations and information based on the complexity of the arrangement and other factors.

1. Each Joint Account Holder Must Meet All Applicable Legal Requirements To Have a Federal Reserve Account, and the Reserve Bank Will Not Have Any Obligation to Any Non-Account Holder With Respect to the Funds in the Account

Only an institution that is eligible to have a Federal Reserve account under the FRA and applicable Federal Reserve rules, policies, and procedures is able to be a joint account holder. Section 13(1) of the FRA permits Reserve Banks to receive deposits from member banks or other depository institutions.[8] Section 19(b)(1)(A) further defines depository institutions to include any insured bank, any mutual savings bank, any savings bank, any savings association as defined in the Federal Deposit Insurance Act, any insured credit union as defined in the Federal Credit Union Act, and those entities that are eligible to ''make application to become'' a federally insured institution.[9] As a result, unless otherwise specified by statute, only those entities that meet the definition of a depository institution are legally able to obtain Federal Reserve accounts and payment services.[10] All other nondepository institutions are ineligible for accounts and payment services. Moreover, as part of evaluating any joint account requests, and consistent with Federal Reserve policies and procedures, the account-holding Reserve Bank must approve all joint account holders that are part of a proposed private-sector arrangement.[11] Consistent with the limits on the Reserve Banks' deposit-taking authority, a Reserve Bank's obligation with respect to any funds in a joint account will be limited to the joint account holders, and no non-account holders may have any rights against the Reserve Bank with respect to those funds.

2. The Private-Sector Arrangement Must Demonstrate That It Has a Sound Legal and Operational Basis for Its Payment System

The private-sector arrangement must have a sound legal and operational basis for its payment system, including an effective legal framework for achieving settlement finality. The arrangement must have analyzed the application of U.S. sanction programs, Bank Secrecy Act and anti-money-laundering requirements or regulations, and other laws and regulations (including the Electronic Funds Transfer Act) as applicable, and must have established appropriate compliance procedures. The private-sector arrangement must provide an analysis of the attachment risk related to the account and the impact of participant insolvency on the account, as well as have policies and procedures to minimize disruption to its system when one of its participants, the agent, or the operator fails, when fraudulent activity occurs, or in the event of operational failures. Requestors of a joint account will likely be required to provide supporting legal analysis as well as the system's rules, agreements, and other governing documents.

An evaluation under this guideline will take into account the applicable supervisory framework for the private-sector arrangement, including the agent, the operator, and the participants.[12] The

[5] The *Strategies for Improving the U.S. Payment System* paper was published in January 2015, and is available at *https://fedpaymentsimprovement.org/wp-content/uploads/strategies-improving-us-payment-system.pdf*.

[6] The Task Force's *Faster Payments Effectiveness Criteria* is available at *https://fedpaymentsimprovement.org/wp-content/uploads/fptf-payment-criteria.pdf*. The Federal Reserve contracted with an external firm to support the Task Force efforts to perform a qualified independent assessment of the faster payments solution proposals (*https://fedpaymentsimprovement.org/news/press-releases/fre-in-effort-to-assess-faster-payments/*). The faster retail payments solutions provided to the qualified independent assessment team and the Task Force are considered confidential within the process established by the Task Force. The Task Force intends to release a final report mid-2017, which will contain the proposals and assessments for those organizations that agree to be included in that report.

[7] Other potential models are also offered by the Reserve Banks, for example the Reserve Banks' National Settlement Service, *https://www.frbservices.org/nationalsettlement/index.html*.

[8] 12 U.S.C. 342.

[9] 12 U.S.C. 461(b).

[10] There are certain statutory provisions allowing Reserve Banks to act as a depository and fiscal agent for the Treasury and certain government-sponsored entities (*See i.e.,* 12 U.S.C. 391, 393–95, 1823, 1435) as well as for certain international organizations (*See i.e.,* 22 U.S.C. 285d, 286d, 290o–3, 290i–5, 290l–3). In addition, Reserve Banks are authorized to offer deposit accounts to designated financial market utilities (12 U.S.C. 5465), Edge and Agreement corporations (12 U.S.C. 601–604a, 611–631), branches or agencies of foreign banks (12 U.S.C. 347d), and foreign banks and foreign states (12 U.S.C. 358).

[11] The designated agent or operator of the private-sector arrangement would not need to be a depository institution. The designated agent would, however, need to be approved by the account-holding Reserve Bank, pursuant to these guidelines.

[12] For example, the Bank Service Company Act grants federal banking agencies the authority to regulate and examine third-party service providers and bank service companies that perform services for depository institutions under the federal banking agencies' supervision as if the company were an insured depository institution. 12 U.S.C. 1867(b). Evaluation under this guideline could therefore include considering whether the operator

agent and the operator of the private-sector arrangement should be subject to the examination authority of a federal or state supervisory agency and be in compliance with the requirements imposed by its supervisor regarding financial resources, liquidity, participant default management, and other aspects of risk management. As discussed in the proposed guideline below, the private-sector arrangement also would be expected to manage risks consistent with the standards outlined in Part I of the Board's Policy on Payment System Risk (PSR Policy), even if the private-sector arrangement is not otherwise subject to the PSR Policy.[13]

3. The Design and Rules of a Private-Sector Arrangement Must Be Consistent With the Federal Reserve's Policy Objectives To Promote a Safe, Efficient, and Accessible Payment System for U.S. Dollar Transactions and Be Consistent With the Intended Use of the Arrangement

The design and rules of the private-sector arrangement must be consistent with the Federal Reserve's policy objectives of fostering the long-term safety, efficiency, and accessibility of the U.S. dollar payment system. An evaluation under this guideline would assess whether the private-sector arrangement promotes payment system improvements and innovations and the extent to which the arrangement fosters competition in the payment system. Of relevance is whether the system is widely available for use by its intended end users and is designed to minimize the risk of disruption (rejection or delay of payments) to end users. Also of relevance is whether the system creates undue inefficiencies in the payment process or undue barriers to interoperability within the U.S. dollar payment system.

A private-sector arrangement that uses a joint account to facilitate settlement should also conform to the standards in the PSR Policy for risk management. Thus, even if the PSR Policy would not otherwise apply, before authorizing the establishment of a joint account, the private-sector arrangement would need to demonstrate that it has a general risk-management framework appropriate for the risks the system poses to the operator, agent, participants, the Reserve Bank granting the joint account, and other relevant parties and payment systems.

Finally, the design and rules of the private-sector arrangement, including rules relating to the funding of and disbursements from the joint account, should be consistent with the intended use of the account. For example, the rules should not provide an incentive for a participant that is not a joint account holder and not eligible for its own individual Federal Reserve account to use its participation in the arrangement, including the funding of its obligations under the arrangement through a joint account holder, to inappropriately take advantage of the credit-risk-free nature of the joint account for purposes other than settling payments through the arrangement.

4. Provision of a Joint Account Must Not Create Undue Credit, Settlement, or Other Risks to the Reserve Banks

Granting a request for a joint account must not create undue risks to a Reserve Bank. For instance, requests for joint accounts involving a financially unsound operator or agent would not be approved. Financially unsound depository institutions also may not be approved as accountholders for the joint account. In addition, the agent or operator and joint account holders must demonstrate an ongoing ability to meet all their obligations under the joint account agreement with a Reserve Bank, including during periods of stressed operating conditions or default by the agent, operator, one or more joint account holders, or other participants.

The manner in which the joint account will be used in support of the private-sector arrangement and any anticipated use of Reserve Bank services must also be identified as part of a joint account request. The private-sector arrangement must structure its use of the joint account and Reserve Bank services, including settlement processes, in a manner that seeks to avoid intraday overdrafts. No overnight or intraday credit would be permitted in a joint account. The agent also must demonstrate ways to monitor the joint account at all times necessary to avoid overdrafts and to promptly cover any inadvertent overdrafts. Further, the agent must demonstrate the ability to appropriately manage and control the transactions originated and received by the joint account.

5. Provision of a Joint Account Must Not Create Undue Risk to the Overall Payment System

The private-sector arrangement must not cause undue credit, settlement, or other risks to the efficient operation of other payment systems or the payment system as a whole. In evaluating a joint account request under this guideline, the operational and financial interaction with and use of other payment systems is relevant, as is the extent to which the use of the joint account may restrict a portion of funds from being available to support intraday liquidity needs of individual depository institutions for other payment and settlement activity.

6. Provision of a Joint Account Must Not Adversely Affect Monetary Policy Operations

The joint account must not adversely affect the conduct of monetary policy. The provision of a joint account could have important implications for monetary policy implementation, particularly if a joint account or joint accounts in aggregate have balances that fluctuate to the extent that they materially affect the supply of reserve balances available to depository institutions for meeting reserve requirements. Joint account balance volatility could be a particular concern if a future monetary policy framework relies on controlling the supply of reserves. Evaluation of the potential monetary policy implications of use of a joint account would include whether the balance in the joint account would be treated as reserves, the expected predictability and volatility of payment flows into and out of the joint account, and the potential for a Reserve Bank to impose limitations on account volatility without affecting the intended function of the arrangement.

Because of the potential effects on monetary policy implementation of the volatility of balances or payment flows in joint accounts, as a condition of opening the joint account, the Reserve Bank would retain the right to limit account volatility or require information on the level or the projected volatility of balances. An information requirement might include a notice period within which the agent must notify the Reserve Bank of shifts in account balances greater than a designated threshold. The Reserve Bank might also retain the right to impose a limit on the absolute size of the account at any time it determines appropriate. Finally, if other potential conditions discussed above are ineffective, the Reserve Bank might also

and agent of the private-sector arrangement would be subject to such supervision.

[13] The Board's PSR Policy sets forth standards regarding the management of risks that financial market infrastructures (FMIs) present to the financial system when an FMI expects to settle a daily aggregate gross value of $5 billion on a given day and when providing accounts and services to FMIs. Generally, FMIs are multilateral systems among participating financial institutions, including the system operator, used for the purposes of clearing, settling, or recording payments, securities, or other financial transactions. For the purposes of a system that uses a joint account to facilitate settlement, the standards would be applicable regardless of the daily aggregate gross value in a given day. The PSR policy is available at *https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf.*

retain the right to restrict further or close joint accounts if warranted to implement appropriate monetary policy objectives.

III. Process for a Joint Account

The Board and the Reserve Banks will consider requests submitted to the Reserve Banks against the final guidelines when published.

As discussed above, the account agreement may place conditions on the private-sector arrangement, the agent, operator, or account holders regarding matters pertinent to the joint account, including, for example, limits on the level or volatility of account balances, requirements for information on projected balances or volatility of balances, or requirements related to compliance with risk management standards, including those within the PSR Policy.

IV. Request for Comment

The Board requests comment on all aspects of the proposed guidelines, including whether the scope and application of the proposed guidelines are sufficiently clear and appropriate to achieve their intended purpose and other criteria or information that commenters believe may be relevant to evaluate a joint account request under the proposed guidelines. The Board further seeks comment specifically on the following aspects of the proposed guidelines:

- What information, if any, about the establishment of an individual joint account should be made public?
- If the Reserve Banks reserved the right to set limits on balances in joint accounts, to require information on projected balances or volatility of balances, or to restrict further or close joint accounts (as discussed in guideline six), how, if at all, would the possibility of such limits affect interest in establishing a joint account, or use of such an account once opened? Are there other types of restrictions or conditions that, while equally effective in attaining the same objectives, might be less burdensome to a private-sector arrangement if placed on joint accounts once in use?
- Are there additional criteria or information that may be relevant to evaluate joint account requests for U.S. depository institutions to provide services to foreign clearing and settlement arrangements?

Finally, the Board also seeks comment on whether the Board or the Reserve Banks should consider other steps or actions to facilitate settlement for private-sector arrangements in light of market participants' efforts to develop faster retail payment solutions.

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By order of the Board of Governors of the Federal Reserve System, December 19, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–30860 Filed 12–21–16; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 152 3105]

West-Herr Automotive Group, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before January 17, 2017.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/westherrconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/westherrconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Evan Zullow, (202) 326–2914, Attorney, Financial Practices Division, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 16, 2016), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before January 17, 2017. Write ''In the Matter of West-Herr Automotive Group, Inc., File No. 152 3105—Consent Agreement'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.