

# OCC Payment System Membership Rule (12 CFR § 7.1026) for National Banks and Federal Savings Associations

## Information Regarding Safety and Soundness Considerations (RTP<sup>®1</sup> System)

### I. OCC Payment System Membership Rule

The OCC's Payment System Membership Rule (12 C.F.R. § 7.1026(f)) codifies requirements for national banks and federal savings associations regarding membership in payment systems, which were previously set out in OCC Interpretative Letters.<sup>2</sup> These requirements include notice obligations,<sup>3</sup> as well as safety and soundness procedures that include a risk evaluation prior to joining a payment system<sup>4</sup> and ongoing risk management after joining.<sup>5</sup> Under the rule, the risk evaluation and ongoing risk management should consider seventeen specified payment system characteristics.<sup>6</sup>

The OCC indicates that not all seventeen characteristics are applicable in all instances, and the applicability and relative importance of each characteristic may depend on, among other things, the nature and characteristics of a payment system and the risk tolerance of the financial institution.<sup>7</sup>

The Clearing House has prepared the following information that national banks and federal savings associations may wish to consider as they conduct the risk assessment and ongoing risk management in relation to the RTP System.

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<sup>1</sup> RTP<sup>®</sup> is a registered service mark of The Clearing House Payments Company L.L.C.

<sup>2</sup> See OCC Interpretive Letter 1157 (December 2017), available at: <https://www.occ.gov/topics/licensing/interpretations-and-actions/2017/int1157.pdf>; and OCC Interpretive Letter 1140 (January 13, 2014), available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2014/int1140.pdf>.

<sup>3</sup> 12 C.F.R. § 7.1026(c)-(d).

<sup>4</sup> 12 C.F.R. § 7.1026(e)(1).

<sup>5</sup> 12 C.F.R. § 7.1026(e)(2).

<sup>6</sup> 12 C.F.R. § 7.1026(f).

<sup>7</sup> Specifically, the OCC explains that "national banks and Federal savings associations are best positioned to evaluate the applicability and importance of each factor given the wide variety of global payment systems as well as the varied complexity of and risk tolerances at individual banks and savings associations. The OCC expects banks and savings associations to review the standards and identify the components that are applicable to the payment system and financial institution at issue." Activities and Operations of National Banks and Federal Savings Associations, 85 Fed. Reg. 83686, 83701-02 (December 22, 2020).

## II. Background Regarding The Clearing House

The Clearing House Payments Company L.L.C. (TCH) is a bank-owned<sup>8</sup> industry utility and operates four interbank payments systems: a high-value funds transfer system (CHIPS); an ACH system (EPN); a check image exchange (Image Exchange Network); and a real-time payment system (RTP System).

TCH is highly-regulated, falling under the FFIEC's Significant Service Provider (SSP) program with respect to its operation of EPN, Image Exchange Network, and the RTP System.<sup>9</sup> Under the FFIEC framework, TCH is examined each year by a multi-agency team. SSP exams include a broad range of activities including governance, risk management, internal controls, information security, and financial condition. Additionally, TCH, as the operator of CHIPS, has been designated under Title VIII of the Dodd Frank Act as a systemically important financial market utility (SIFMU). Under this designation TCH is subject to continuous supervision by full-time, dedicated Federal Reserve examiners and CHIPS must meet Regulation HH's<sup>10</sup> enhanced requirements for SIFMUs. As TCH payment services generally utilize a common infrastructure and fall under a common governance structure, TCH's Title VIII supervision and standards benefit all TCH services.

## III. Evaluation of the RTP System Under the Characteristics for Payment Systems

The seventeen payment system characteristics set forth in 12 C.F.R. § 7.1026(f) appear below, along with relevant information regarding the RTP System. Capitalized terms that are not defined herein have the meaning ascribed to them in the RTP Rules.<sup>11</sup>

<b>Characteristic #1</b> <b><i>Does the processing occur on a real-time gross settlement basis or provide reasonable assurance (e.g., prefunding, etc.) that members will meet settlement obligations?</i></b>
<p>The RTP System is a real-time gross settlement system, which uses a prefunded model. RTP Payments are immediately settled between the Sending Participant and the Receiving Participant by the RTP System. Settlement is accomplished through credits and debits to ledger positions that the RTP System maintains for each Participant. The system does not allow negative positions. As explained in further detail below, positions on the RTP ledger are backed dollar-for-dollar by funds held in a special</p>

<sup>8</sup> Additional information about The Clearing House is available here: [www.theclearinghouse.org](http://www.theclearinghouse.org).

<sup>9</sup> The SSP program was previously known as the Multi-Regional Data Processing Servicers (MDPS) program, and is described here: <https://ithandbook.ffiec.gov/it-booklets/supervision-of-technology-service-providers/supervisory-programs/mdps-program.aspx>.

<sup>10</sup> 12 C.F.R. Part 234.

<sup>11</sup> The RTP Participation and Operating Rules are available at <https://www.theclearinghouse.org/payment-systems/rtp/document-library>.

deposit account (the RTP Prefunded Balance Account) at the Federal Reserve Bank of New York (FRBNY). The account is jointly owned by all Funding Participants and Funding Agents and TCH is the sole agent of the account.

Section VI of the RTP Operating Rules sets out RTP pre-funding requirements and settlement procedures. A Participant may be either a “Funding Participant” (which satisfies its prefunding obligations on its own) or a “Non-Funding Participant” (which uses a Funding Agent to satisfy prefunding obligations). Non-Funding Participants may select from one of two types of Funding Agent: a Funding Manager, which provides separate funding for each Non-funding Participant; or a Funding Provider, which provides shared funding for Participants in its “Non-Funding Group.” TCH will determine a Prefunded Requirement for each Sending Participant that (i) is a Funding Participant or (ii) uses a Funding Manger. These Participants (directly or through their Funding Manager) must transfer funds via the Fedwire Funds Service in the amount of this Prefunded Requirement to the Prefunded Balance Account before the Participant can begin sending RTP payments.<sup>12</sup>

The RTP System continuously maintains a Net Position for each Participant (regardless of their funding model). Upon receipt of a Payment Message from a Sending Participant, the system determines whether the Participant’s Current Prefunded Position (or its Funding Provider’s Current Prefunded Position) is equal to or greater than the amount of the Payment Message. If so, the RTP System will send the Payment Message to the Receiving Participant and reserve the amount of the Payment within the Participant’s Current Prefunded Position so that the Participant’s Current Prefunded Position (or its Funding Provider’s Current Prefunded Position) cannot be reduced below the reserved amount while awaiting an accept or reject response from the Receiving Participant. If the Sending Participant’s Current Prefunded Position (or its Funding Provider’s Current Prefunded Position) is insufficient to settle the payment, the system will reject it.

If the Receiving Participant accepts the Payment Message (or accepts without posting), the RTP System settles the Payment in real time by increasing the Net Position of the Sending Participant and decreasing the Net Position of the Receiving Participant within the system. These Net Positions are backed dollar-for-dollar by the funds in the Prefunded Balance Account. Under the RTP Operating Rules, this settlement is final and constitutes discharge of the Sending Participant’s obligation to pay the amount of the payment to the Receiving Participant.

**Characteristic #2**

***How Does the payment system’s rules limit its liability to members?***

The RTP Operating and Participation Rules limit TCH’s liability to RTP Participants. The RTP Participation Rules provide that in carrying out its responsibilities as operator of the system, TCH shall

<sup>12</sup> In addition, TCH will determine a Prefunded Requirement for Funding Providers. The system liquidity resulting from the Funding Provider’s funding belongs to the Funding Provider, which permits the Non-Funding Group to use its liquidity.

only be liable to a Participant for TCH's gross negligence or intentional misconduct.<sup>13</sup> TCH's liability in such instances is limited to actual damages attributable to its gross negligence or intentional misconduct and does not include consequential damages, even if such damages were foreseeable.<sup>14</sup> The RTP Operating Rules further provide that the operating rules and RTP Participation rules shall not be construed to create any third-party beneficiaries.<sup>15</sup>

**Characteristic #3**

***Does the payment system have insurance coverage and/or self-insurance arrangements to cover operational losses?***

TCH has a financial institution bond and computer crime policy with a \$50 million aggregate limit and a \$25 million single loss limit. TCH's insurance coverage is reviewed on a regular basis by a committee of its Managing Board and can be adjusted at the direction of the Board.

**Characteristic #4**

***Do the payment system's rules provide an unambiguous pro-rata loss allocation methodology under its indemnity provisions and does the methodology provides members the opportunity to reduce or eliminate liability exposure by decreasing or ceasing use of the payment system?***

As required by the FRBNY for use of a joint account on its books, each Funding Participant (and Funding Agent) must indemnify and hold harmless the FRBNY and each other Federal Reserve Bank for any Claim (as defined in the RTP Joint Account Agreement). The RTP Rules restate this indemnity obligation to the FRBNY.<sup>16</sup> RTP provides an unambiguous pro-rata loss allocation methodology for any indemnity claim brought by the FRBNY under this indemnity and the methodology provides Funding Participants and Funding Agents the ability to reduce or eliminate their liability exposure by limiting or stopping their use of the RTP System. Specifically, the RTP Operating Rules provide that each Funding Participant's and Funding Agent's pro rata responsibility for an indemnity claim equals the proportion of the average daily RTP usage of that Funding Participant or Funding Agent and, in the case of a Funding Agent, all Participants for which the Funding Agent has been designated as Funding Agent to the average daily RTP usage of all Participants.<sup>17</sup> While an RTP Funding Participant may eliminate future liability

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<sup>13</sup> RTP Participation Rule X.A.

<sup>14</sup> *Id.*

<sup>15</sup> RTP Operating Rule XI.G.

<sup>16</sup> RTP Operating Rule VI.H.

<sup>17</sup> RTP Operating Rule VI.H.1.

exposure by ceasing its use of the RTP System or terminating its participation,<sup>18</sup> the Participant will remain liable for obligations that accrued based on its RTP usage prior to such cessation or termination.<sup>19</sup>

**Characteristic #5**

***Do the payment system's rules provide for unambiguous membership withdrawal procedures that do not require the prior approval of the system?***

RTP Participants may unilaterally resign from the system upon not less than 30 days prior written notice to TCH.<sup>20</sup> The RTP Rules also contemplate that TCH may accept shorter notice.

**Characteristic #6**

***Does the payment system have appropriate admission and continuing participation requirements for system participants? Such requirements should address, among other things:***

- (a) the participants' access to sufficient financial resources to meet obligations arising from participation;***
- (b) the adequacy of participants' operational capacities to meet obligations arising from participation; and***
- (c) the adequacy of the participants' own risk management processes.***

The RTP Participation Rules set forth general eligibility requirements and procedures for approval of Participants and state that TCH's review of a prospective Participant may include considerations of the institution's business practices and those of its customers, and that a prospective Participant must satisfy TCH's due diligence requirements, which may be updated from time to time.<sup>21</sup> TCH's procedures for approval include confirmation of the prospective Participant's eligibility under the RTP Rules, and an evaluation of the prospect against due diligence requirements relating to financial resources and relevant enforcement actions.

- (a) Financial Resources. As part of the evaluation of a prospective Participant, TCH reviews the prospect to confirm it has an adequate capital ratio, liquidity, and credit quality to meet its obligations arising from participation in the RTP System. Because RTP ledger positions are prefunded and are not permitted to become negative as a result of RTP Payment activity on the ledger, a Participant's primary financial obligation is to provide and maintain sufficient funding to enable settlement of payments it sends to the system. Hence, the RTP Operating Rules provide

<sup>18</sup> With respect to liability exposure to the FRBNY under the RTP Joint Account Agreement, a Participant may also eliminate liability exposure by using a Funding Agent.

<sup>19</sup> RTP Participation Rule IX.

<sup>20</sup> RTP Participation Rule VII.

<sup>21</sup> RTP Participation Rule IV.B.

that a Funding Participant is obligated to satisfy its funding obligations in accordance with the system rule.<sup>22</sup> To enable prefunding, TCH requires Participants to have an account with a Federal Reserve Bank or to have a funding relationship with another financial institution (a Funding Agent).<sup>23</sup> TCH determines a Prefunded Requirement for each Sending Participant (or for its Funding Agent if it has selected the Funding Provider pre-funding model) and will not allow a Participant to send Payments until the Participant (or its Funding Agent) has satisfied its Prefunded Requirement.<sup>24</sup> The RTP Operating Rules require each Sending Participant with a funding obligation (and each Funding Provider) to monitor its position and provide supplemental funding if its position falls below its Prefunded Requirement during Fedwire operating hours.<sup>25</sup>

- (b) Operational Capacities. TCH requires each Participant to have the ability to continuously operate and manage its RTP activities, consistent with the requirements of the RTP Operating Rules and Technical Specifications.<sup>26</sup> TCH's onboarding procedures for the RTP System require Participants or their Third Party Service Provider to certify to the system's technical requirements by testing and confirming their ability to send and receive messages to and from the system and perform certain other functions before they are permitted to "go live" on the system. TCH also requires Participants to recertify when certain technical changes are made to the system. As the RTP Technical Specifications are incorporated into the RTP Rules, a Participant's failure to comply with the technical obligations, including the continuous operations requirement, is subject to enforcement under section X of the RTP Operating Rules. In addition, a Participant's operational failures that negatively impact TCH or other RTP Participants may be addressed under TCH's risk management framework and TCH's authority under the RTP Rules to suspend or terminate a Participant.<sup>27</sup>
- (c) Risk Management Processes. TCH requires all RTP Participants to be supervised depository institutions.<sup>28</sup> TCH relies upon the risk management standards that are applied to supervised depository institutions through applicable laws, regulations, and supervisory guidance. In its initial due diligence and ongoing monitoring of Participants, TCH reviews public enforcement actions and would consider risk management failings documented in such actions as a potential basis for not allowing a depository institution to become or remain a Participant. In addition, the RTP Rules, require all Participants to conduct an annual audit of their compliance with the RTP Rules. Each Participant must submit a self-audit form to certify to TCH that it has completed the self-audit and that any material findings of non-compliance, as determined by the Participant's audit standards or risk management framework, were reported to the Participant's

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<sup>22</sup> RTP Operating Rule VI.A

<sup>23</sup> RTP Participation Rule I.A.3.

<sup>24</sup> RTP Operating Rule VI.C.2.

<sup>25</sup> RTP Operating Rule VI.D.3.

<sup>26</sup> RTP Participation Rule I.A.4.

<sup>27</sup> RTP Participation Rule VIII.C.

<sup>28</sup> RTP Participation Rule I.B.

audit committee or equivalent body responsible for overseeing the Participant's internal controls.<sup>29</sup>

In addition, the RTP Operating Rules include schedules that set minimum risk management requirements relating to key risks. The Rules schedules include:

- Risk Management and Fraud Control Requirements. This document describes minimum risk management and fraud control measures, such as multi-factor authentication and appropriate fraud monitoring, that a Participant must employ in connection with the Participant's use of the RTP System.
- Requirements for Request for Payment Customers. This document sets forth Customer due diligence and monitoring requirements applicable to Participants TCH has approved to submit Request for Payment messages to the RTP System.

In addition, TCH has broad discretion to terminate a Participant if its continued participation in the RTP system is not in the best interest of TCH, the system, or other Participants, including if the Participant is not being operated in a safe and sound manner.<sup>30</sup>

#### **Characteristic #7**

***Does the payment system have processes and controls in place to verify and monitor on an ongoing basis the compliance of each participant with admission and participation requirements?***

As noted in response to Criteria # 6, TCH uses initial onboarding procedures and ongoing monitoring, as well as the self-audit requirement, to verify and monitor the compliance of each Participant with RTP admission and participation requirements.

In addition, TCH maintains the right to audit, monitor, inspect, and investigate a Participant for its compliance with the RTP Rules and to enforce the RTP Rules through rules enforcement proceedings.<sup>31</sup> This framework involves TCH's internal RTP Rules enforcement function and the Rules Enforcement Committee. TCH may take certain actions under its rules enforcement authority provided in the RTP Rules, including the imposition of fines and the limitation, suspension, or termination of a Participant or its Customer's RTP activities.<sup>32</sup>

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<sup>29</sup> RTP Operating Rule IX.A.2.

<sup>30</sup> Participation Rule VIII.C.

<sup>31</sup> RTP Operating Rule IX.A.

<sup>32</sup> *Id.*

In addition, under the RTP Participation Rules, TCH may terminate or suspend a Participant for risk-related reasons.<sup>33</sup>

**Characteristic #8**

***Does the payment system have written policies and procedures for addressing participant failures to meet ongoing participation requirements?***

See responses to Criteria #6 and #7. TCH has developed the RTP Rules Enforcement Guide, which sets forth the framework for enforcement activities related to the RTP Rules. TCH also has a written Risk Management Framework (internal policy).

**Characteristic #9**

***Are the payment system's rules relating to the system's emergency authorities unambiguous and may they be amended or otherwise altered without prior notification to all members and an opportunity to withdraw?***

In the event of an emergency, including, but not limited to, severance of communications between TCH and one or more Participants, failure or disruption of RTP operations, or any other emergency, RTP services shall be handled in accordance with the decisions of the Chief Executive Officer.<sup>34</sup>

**Characteristic #10**

***Is the payment system governed by uniform, comprehensive and clear legal standards in its operating jurisdiction that address payment and/or settlement activities?***

The RTP Rules set forth uniform, comprehensive and clear legal standards for RTP Participants that address payment and settlement activities, as well as other topics such as erroneous and unauthorized RTP Payments, immediate funds availability, and requirements regarding payment status and message information. The Operating Rules also incorporate New York Uniform Commercial Code Article 4-A with respect to funds transfers (commercial payments) through the RTP System.<sup>35</sup> Each RTP Participant and Funding Agent must agree by contract (also governed by New York law) to the RTP Rules.

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<sup>33</sup> RTP Participation Rule VIII.C.

<sup>34</sup> RTP Operating Rule IV.E.

<sup>35</sup> RTP Operating Rules I.F.



**Characteristic #11**

***Is the payment system subject to and in compliance (or observance) with the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (CPSS-IOSCO) Principles for Financial Market Infrastructures?***

CPMI-IOSCO's Principles for Financial Market Infrastructures (PFMI) is an international standard designed for systemically important financial market utilities. In the U.S., the PFMI has been adopted into Regulation HH, which is applicable to payment and clearing systems that have been designated as systemically important under Title VIII of the Dodd Frank Act. CHIPS has been designated as systemically important and follows the requirements of Regulation HH. In the U.S., neither Regulation HH nor the PFMI have been applied to low-value systems like ACH and card networks.

As RTP is a low-value system, the PFMI does not apply and TCH has not undertaken to be fully in observance with it. However, the RTP system satisfies many of the PFMI principles, such as with respect to legal basis, comprehensive risk management, and governance.

The Federal Reserve's Policy on Payment System Risk (PSR), which sets forth the Federal Reserve's expectations for payment system operators, including those that are not subject to the PFMI, is the relevant framework for RTP.<sup>36</sup> The PSR establishes expectations with respect to credit risk, liquidity risk, operational risk, and legal risk with respect to the operation of a payment, clearing, settlement, or recording system. The RTP System is in compliance with PSR expectations.

**Characteristic #12**

***Is the payment system designated as a systemically important financial market utility (SIFMU) by the Financial Stability Oversight Counsel (FSOC) or the international or foreign equivalent?***

RTP is a low-value system and has not been designated as systemically important by the FSOC. It should be noted, however, that TCH, as the operator of CHIPS, has been designated a SIFMU by the FSOC and TCH's infrastructure and governance is largely shared with TCH's other payment systems including the RTP system.

**Characteristic #13**

***Does the payment system provide members with information relevant to governance, risk management practices, and operations in a timely manner and with sufficient transparency and***

<sup>36</sup> See Part I(C) of Federal Reserve Policy on Payment System Risk (March 19, 2021), available at [https://www.federalreserve.gov/paymentsystems/files/psr\\_policy.pdf](https://www.federalreserve.gov/paymentsystems/files/psr_policy.pdf).

***particularity for the bank to ascertain with reasonable certainty the bank's level of risk exposure to the system?***

TCH provides at least two vendor management sessions a year for participants in its payment systems. These sessions address a range of topics including governance, risk management, operations, and the regulatory framework applicable to TCH. TCH also cooperates with reasonable requests for audits and vendor management reviews by its RTP Participants in order to assist Participants in meeting their responsibilities to regulatory authorities.<sup>37</sup> In addition, TCH makes SOC1 and SOC2 reports available to participants of its payment networks. The RTP system is subject to supervision and examination under the FFIEC's SSP program and reports of such examination are available to Participants from their supervisory authority upon request.

**Characteristic #14**

***Is the payment system operated by or subject to oversight of a central bank or regulatory authority?***

TCH's operation of the RTP system is subject to supervision under the FFIEC's SSP program. This program includes supervision of TCH's governance, technology and operations, risk management, and financial condition. The Federal Reserve Board is the lead supervisory agency under the SSP program.

**Characteristic #15**

***Is the payment system legally organized as a not-for-profit enterprise or owned and operated by a government entity?***

TCH is legally a for profit entity. However, it is bank-owned and operates on a utility model, charging fees only to cover the costs incurred in operating TCH's payment systems and to support future innovation.

**Characteristic #16**

***Does the payment system have appropriate systems and controls for timely communications to members of material events that relate to or could result in potential operational losses, e.g. fraud, system failures, natural disasters, etc.?***

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<sup>37</sup> RTP Operating Rule IX.A.3.

TCH has the ability to communicate material events to RTP Participants via system messages within the RTP system interface and via email announcements to business and operational contacts.<sup>38</sup> TCH has corporate communication procedures for material events impacting its payment operations.

**Characteristic #17**

***Has the payment system ever exercised its authority under indemnification provisions?***

TCH has never exercised its authority under indemnification provisions.

In addition, the FRBNY has authority to exercise the indemnity under the RTP Joint Account Agreement. To date, the FRBNY has not exercised this indemnity.

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<sup>38</sup> TCH also has the ability to communicate through postings to its public website and press releases.