

CSBS Fintech Industry Advisory Panel

Payments Subgroup

January 2019

Recommendations of the Payments Subgroup of the Fintech Industry Advisory Panel

Executive Summary

The payments industry subgroup (the "Subgroup") respectfully requests regulatory harmonization and risk-based implementation of state money transmitter laws in order to reduce unnecessary burden on industry and to ensure customers in all states have opportunities to obtain innovative money transmission services.¹ Accordingly, this paper sets forth the Subgroup's recommendations for areas to standardize and reduce tension among varying state interpretations without sacrificing the important mission of money transmission regulation to: (1) ensure consumer protection, (2) prevent bad actors from entering the money transmitter ecosystem, and (3) protect the integrity of, and maintain public confidence in, the financial system as a whole (collectively, our "Shared Goals"). The paper focuses on encouraging uniformity in the following areas:

- The scope of covered money transmission activities and applicable exemptions;
- The change in control process, including the personal vetting requirements for individuals deemed new control persons;
- Prudential regulations – in particular, permissible investment, net worth, and surety bond requirements; and
- Supervision processes, including examinations and reports.

The variations in definitions and related exemptions, as well as varied licensing and supervision regimes among states lead to operational challenges that hinder innovation, drive up the cost to customers, and limit access to financial services. These impacts are particularly significant for money transmitters that operate or offer products to consumers on a nationwide basis.

A Brief Overview of Money Transmitters in the U.S.

Money transmitters are critical in providing consumers, small and medium-sized businesses, and, in some cases, large enterprises with access to financial services.² For example, money

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² See "The State of State Money Services Businesses Regulation and Supervision", available at <https://www.csbs.org/sites/default/files/2017-11/State%20of%20State%20MSB%20Regulation%20and%20Supervision%202.pdf> (citing the vital role money services businesses play in providing non-bank financial services to consumers and small businesses).

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transmitters provide a variety of different products and services, such as money transfer services to enable consumers to send money to friends and family in the U.S. and abroad, bill payment services, payment processing services to e-commerce merchants and marketplaces, and mobile wallets.³ It is estimated that over 25% of U.S. households use non-bank financial services, including money transmitters.⁴

Many members of the Subgroup have had a long and successful relationship with the members of the Conference of State Bank Supervisors ("CSBS") as our regulators. We have worked through various innovations, changes, and developments as the payments industry has evolved from paper money orders to mobile wallets. The last concerted effort to address current developments in the industry and to look to the future was the Uniform Money Services Act ("UMSA") (approved in 2000 and amended in 2004).⁵ Importantly, the UMSA addressed stored value products and online delivery of services. In 2018, the state regulators introduced Vision 2020 – a series of initiatives from the CSBS to modernize state regulation of non-banks, including fintech companies. The Subgroup commends the regulators for taking action and welcomes the opportunity to engage with them on this important enterprise.

The payments industry is facing a paradigm shift in how it interacts with customers. In part, this shift is fueled by technological developments and consumer demand, warranting a coordinated look at exceptions and exemptions in the laws and regulations impacting the payments industry. The Subgroup has carefully considered where we believe urgent attention is required in order to continue to provide value and innovation to our customers and your constituents consistent with our Shared Goals. We believe several of the recommendations can be accomplished at the regulatory rather than legislative level.

Subgroup Recommendations

I. Money Transmission Activities & Exemptions

One area of confusion among state regulatory regimes that poses an obstacle to industry and innovation is that companies must navigate a myriad of regulations and formal and informal regulatory guidance that is distinct for all jurisdictions (49 states plus the District of Columbia and applicable U.S. territories, "States") to determine how money transmission is defined and which persons and activities are exempt.⁶ Even where the statutory definition of money transmission

³ *See id.*

⁴ *Id.*

⁵ National Conference of Commissioners on Uniform State Laws, Money Services Act (last revised 2004), *available at* <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4ddb7fd0-891f-7140-4ce4-680c84bde71d&forceDialog=0>.

⁶ "There are currently 49 states plus the District of Columbia and Puerto Rico that impose some sort of licensing requirement in order to engage in the business of money transmission or money services." *Id.* Guam (11 G.C.A. § 109101 *et seq.*), the Northern Mariana Islands (Commonwealth Banking Code of 1984), and the U.S. Virgin Islands

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is substantively similar, each State defines and interprets money transmission and its exempt activities and persons differently.⁷ For example, the treatment of "agent of the payee" transactions varies among the States.⁸ To further the complexity, companies often experience diverging analysis, interpretations, or enforcement of exemptions from a State.

Some activities likely fall outside the scope of the state money transmitter laws. For example, the Subgroup believes one area where all the states may be able to clarify a uniform position based on the existing regulatory landscape and industry practice without requiring statutory amendments concerns certain payment processing activities. At the outset, we note, for example, that the official comments to the UMSA point out that "clearing agents should clearly fall outside the scope of a safety and soundness statute."⁹ Currently, payment processors must look to various exemptions, whether established by law or by regulatory interpretation, including but not limited to exemptions for agents of banks, agents of payees, payment processors, and operators of a payment system. Such approach is suboptimal in a modern, competitive, innovative, and national landscape.

Federal law developments under the Bank Secrecy Act ("BSA") regulations provide some useful instruction. Generally, federal law broadly defines money transmitters as non-bank financial institutions that accept "currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds or other value that substitutes for currency to another location of person by any means. . . ."¹⁰ Nevertheless, on August 27, 2014, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued an administrative ruling clarifying that Independent Sales Organizations and payment processors meeting certain requirements are not money transmitters subject to BSA regulations.¹¹ The reasoning in the federal ruling is persuasive. While not all States have yet followed FinCEN's lead

(9 V.I.C. § 501 *et seq.*) also impose a licensing requirement in order to engage in the business of money transmission or money services.

⁷ The vast majority of States define money transmission to include "receiving money or monetary value for transmission." *See, e.g.*, UMSA § 102.

⁸ *See infra* n.15.

⁹ UMSA at 19.

¹⁰ 31 C.F.R. § 1010.100(ff)(5)(i)(A).

¹¹ *See* U.S. Department of Treasury Financial Crimes Enforcement Network Administrative Ruling "FIN-2014-R009", available at https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R009.pdf.

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and exempted, by statute or opinion, payment processors that are exempt under federal law,¹² some states have adopted exemption for payment processors.¹³

Clearly, FinCEN's ruling does not control a state's interpretation of its own statute. The States regulate, license, and supervise money transmitters, and many States define money transmission activities and exemptions thereto differently.¹⁴ Rather, this example of payment processors helps lay out a framework of how to move forward together. With respect to payment processing—as with a number of the activities and entities listed below—the Subgroup urges the state banking supervisors to consider existing interpretations, analysis, guidance, regulations, and public policy considerations at the federal level and among sister states that provide support for many of the exemptions identified below even without requiring statutory amendments.

In addition, the Subgroup, acknowledging the need and desire for regulation of money transmission services, recommends that regulation take into account a risk-based analysis of all participants involved in the funds flows, including whether the participants are consumers or businesses and whether a licensee is already subject to separate supervision. Appropriate uniform exemptions should be provided accordingly.

As an initial matter and consistent with the framework discussed above, the Subgroup recommends that the definitions and exemptions in the following areas be harmonized:

- 1) Agent of the payee¹⁵
- 2) Insured prepaid card¹⁶

¹² For clarity, payment processing can involve additional activities beyond those contemplated by the noted FinCEN ruling. The Subgroup offers this example to illustrate the divergence that can exist between state and federal laws. The Subgroup is also aware that FinCEN's policy objective of anti-money laundering is different from the policy objectives of the states, which include anti-money laundering, consumer protection, and safety and soundness. We do not think these policy differences undermine this example.

¹³ See *infra* n.15, 18, and 25.

¹⁴ See U.S. Department of Treasury "A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation", available at <https://home.treasury.gov/sites/default/files/2018-08/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation.pdf>.

¹⁵ Although some States have an express agent of payee exemptions in their statutes, in other States, regulators have clarified that agents of payees may be exempt through no action memorandum, interpretive guidance, or FAQs. See *e.g.*, Cal. Fin. Code § 2010(l), N.Y. Bank. Law § 641(1); Notice issued by Connecticut Banking Commissioner on Oct. 24, 2017, related to No Action Position on Person Acting as Agent of Payee, available at https://portal.ct.gov/-/media/DOB/consumer_credit_nonhtml/102417MemoAgentofPayeepdf.pdf?la=en; Kansas State Bank Commissioner Guidance Document MT 2016-01, dated Nov. 20, 2016, available at http://www.osbckansas.org/mt/guidance/mt2016_01_agent_of_the_payee.pdf; General Money Transmitter FAQs in Hawaii, available at <http://cca.hawaii.gov/dfi/mt-faq/>.

¹⁶ See, *e.g.*, Rev. Code Wash. § 19.230.020(14) (The Washington Uniform Money Services Act does not apply to "[a] seller or issuer of prepaid access when the funds are covered by federal deposit insurance immediately upon sale or

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- 3) Closed loop prepaid access¹⁷
- 4) Payment processors¹⁸
- 5) Payroll services & 1099 contractors¹⁹
- 6) Agents²⁰ and services providers²¹ of bank
- 7) Pre-funding²²
- 8) Payment of business taxes²³
- 9) Business to business activities²⁴

issue."); California Department of Business Oversight Interpretive Letter dated Aug. 18, 2016 ("[B]ank-issued, FDIC insured stored value cards, to the extent they involve money received for transmission, are exempt from the [California Money Transmission Act]."), *available at* [http://www.dbo.ca.gov/Laws & Regs/dfi_orders_files/2016/8-18-16%20Exemption%20for%20Sale%20of%20Bank-Issued%20Stored%20Value%20Cards%20-%20Opinion%20Letter.pdf](http://www.dbo.ca.gov/Laws%20&%20Regs/dfi_orders_files/2016/8-18-16%20Exemption%20for%20Sale%20of%20Bank-Issued%20Stored%20Value%20Cards%20-%20Opinion%20Letter.pdf).

¹⁷ *See, e.g.*, Rev. Code Wash. § 19.230.010(6), (18) (The scope of money transmission activities does not include "closed loop prepaid access," as defined.). Most, but not all, States contain an express exemption from the definition of payment instrument (or similar term) for payment instruments issued and redeemed by the issuer in goods or services. *See, e.g.*, Tex. Fin. Code § 151.301(b)(6)(B) (definition of payment instrument excludes "an instrument, service, or device that . . . is redeemed by the issuer in goods or services.").

¹⁸ *See, e.g.*, 7 TAC § 33.4 (certain classes of payment processors are not required to obtain a money transmission license).

¹⁹ *See, e.g.*, Cal Fin Code § 2010(j).

²⁰ *See, e.g.*, Cal Fin Code § 2010(d); Tex. Fin. Code § 151.003(3)

²¹ *See, e.g.*, Kan. Stat. § 9-511(a)(2); Ky. Rev. Stat. § 286.11-007(5); Rev. Code Wash. § 19.230.020(9)(b).

²² *See, e.g.*, California Department of Business Oversight Interpretive Letter dated Oct. 6, 2016 ("Whether [] is receiving money for transmission turns on whether [] receives funds from its customers in advance of or contemporaneously with its payments to beneficiaries."), *available at* [http://www.dbo.ca.gov/Laws & Regs/dfi_orders_files/2016/10-6-2016%20Opinion%20Request%20Letter.pdf](http://www.dbo.ca.gov/Laws%20&%20Regs/dfi_orders_files/2016/10-6-2016%20Opinion%20Request%20Letter.pdf).

²³ While the Subgroup is not aware of a State that expressly exempts this specific type of activity, many States and the UMSA exempt the transfer of governmental benefits, and the rationale for exempting such activity (*i.e.*, business activity with an extremely low risk of money laundering) should likewise apply to processing payments of business taxes. *See, e.g.*, Cal. Fin. Code § 2010(e); UMSA § 103(5).

²⁴ *See, e.g.*, Ind. Code § 28-8-4-10 ("As used in this chapter, 'licensed activities' means money transmission activities: (1) that a licensee engages in: (A) from a place of business in Indiana; or (B) with a consumer who is a resident of Indiana and who enters into the transaction in Indiana."); 7 Pa. Stat. § 6102(b) ("This act does not apply to money transmission between business entities in connection with commercial contracts, unless the contracts involve money transmission for personal or household purposes involving individuals.")

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10) Integral or incidental exemption²⁵

II. Control Events and Control Persons (Change in Control)

a. Control Events

Startup payment companies are more likely to have several control events during their early years than more established companies. For example, a typical control event could involve a capital fundraise that results in a new direct or indirect shareholder that holds either non-voting or voting stock of a licensee above certain thresholds. These events should be understood as generally positive and expected, with actions including additional capital raises, strengthening of their Boards with seasoned and experienced executives and corporate restructurings to reinforce governance and facilitate streamlined and accurate financial reporting.

The reality of the current change of control landscape is that there is very little harmonization of approach among the States, from varying definitions of what type of an investment constitutes a control event to whether a formal application or mere notice is required in order for the investment to close. This creates significant administrative burden on the licensee to undertake a state-by-state analysis (including individual or counsel-led interactions) to document and clarify the requirements. In deal-making terms, this uncertainty of outcome has the potential to increase deal costs and reduces the appetite of potential investors.

To illustrate, even a straightforward acquisition of between 10% and 20% of a licensee's stock by a public company will lead to at least three different outcomes, depending on the State, for example:

- No notification prior to transaction close, notification within 30 days after close (*e.g.*, New Hampshire);²⁶
- Notification prior to transaction close, regulator may require licensee to submit a new application upon review of the notice (*e.g.*, Tennessee and West Virginia);²⁷ or

²⁵ Federal law provides an exemption from the definition of money transmitter for a person that accepts and transmits funds only integral to the sale of goods or the provision of services other than money transmission services. See C.F.R. § 1010.100(ff)(5)(ii)(F). See also Kan. Stat. § 9-511(b); Florida Declaratory Statement and Final Order Administrative Proceeding Docket Number 90871 dated Sept. 10, 2018 accessible at <https://real.flofr.com/datamart/searchFinalOrderFLOFR.do>.

²⁶ See *e.g.*, N.H. Rev. Stat. § 399-G:9 ("A licensee shall submit written notification to the department of the addition or deletion of a principal, and shall provide the name and address of each new principal no later than 30 days after such change.").

²⁷ See Tenn. Code § 45-7-213(a) ("Upon notification, the commissioner may require information deemed necessary to determine whether an application for a license is required."); W. Va. Code § 32A-2-13(c) ("Upon notice . . . the commissioner may require all information necessary to determine whether it results in a transfer or assignment of

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- Full change of control application with transaction contingent on State's approval prior to close (*e.g.*, New York).²⁸

Certain States, recognizing that passive investments are commonplace in early stage companies, allow for rebuttal of control filings.²⁹ While this is both acknowledged and appreciated, from an administrative perspective, the rebuttal filings are often no less onerous than a full change of control filing and there is no efficiency gained where a multi-state filing is contemplated, and the other States require additional filings. Based on the foregoing, the Subgroup encourages the States to revisit the change in control requirements in order to streamline the process while preserving the Shared Goals to ensure that only appropriately qualified and vetted parties participate in the money transmitter system.

b. Control Persons (including Foreign Control Persons)

It is recognized that within the Subgroup, certain control persons have more difficulty than others being vetted by States. This is understandable when one reviews the current forms and required disclosures, which were not developed to accommodate sophisticated investment vehicles used by venture capital ("VC") investors.

Rather than suggest a prescribed approach to vetting VC (or similar) investors, the Subgroup recommends that States recognize the distinction between passive ownership and control of the investment made in licensees when a VC firm is involved. Recognizing this distinction and leveraging a uniform change of control process will undoubtedly yield better outcomes for licensees who may be considering investments by VC firms.

Further, to the extent that existing VC firms may already have been subjected to rigorous vetting, it may be beneficial to consider centralizing this information within NMLS (or similar location) and allowing suitably qualified firms to make additional investments in the industry with additional due diligence limited to any material changes in the VC firm since their previous vetting as a control Person of a licensee. This may facilitate investment interest in the payments industry for the deployment of investment capital versus other non-regulated investment opportunities.

The Subgroup appreciates that the accelerated adoption of NMLS by the States for control person vetting has made this process significantly easier, but there are still challenges with the mechanical aspects related to submission of physical fingerprint cards (even when the other items have been submitted electronically), and the treatment of foreign control persons remains

the license and thus if a new application is required in order for the company to continue doing business under this article.").

²⁸ See *e.g.*, N.Y. Bank. Law § 652-a ("Prior to any change of control, the person desirous of acquiring control of the business of a licensee shall make written application to the superintendent. . .").

²⁹ See *e.g.*, Cal. Fin. Code § 1250(b).

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challenging. For example, one State prohibits the appointment of a foreign person to serve as a principal officer or director of a licensee.³⁰

The payments industry is a global industry, and in order for the U.S. to maintain its position as a leading player, States should have the mechanisms in place to facilitate the employment of the world's best and brightest in the payments space. These foreign control individuals should be required to meet the same bar for integrity that we expect of local control persons, and the mechanisms by which we evaluate them should be consistent and uniform throughout the U.S. to ensure that bad actors cannot participate anywhere in the system. Without a uniform approach to the acceptance and vetting of foreign control persons, licensees are forced to create unnecessary and obfuscating legal structures.

The Subgroup recommends that the States seek to identify relevant providers of the equivalent criminal background checks in foreign countries and to establish minimum standards to be met for the provision of financial information for cases where credit checks do not have the same utility as in the U.S. (*e.g.*, the EU).³¹

Prudential Regulations for Money Transmitters

The Subgroup began its research by endeavoring to understand the goals of the current regulatory framework and its genesis in the context of financial protection. The UMSA commentary was particularly helpful in aiding this understanding.

The UMSA, introduced in the early 2000s, was presented as a state safety and soundness law intended to:

- Enable States to take a consistent approach to the licensing and regulation of money transmission activity; and
- Lower barriers to competition and facilitate growth by promoting uniformity.³²

The UMSA identifies three primary safety and soundness options for States to consider in evaluating the financial safety and soundness of money transmitters. These options are: (i) permissible investments or eligible securities; (ii) net worth; and (iii) surety bonds.³³ Based on the legislative history of the UMSA, there are similar and overlapping rationales for these safety

³⁰ See Nev. Rev. Stat. § 671.055; Nev. Adm. Code § 671.001 (requiring principal officers and directors of a licensee to be "a citizen of the United States or lawfully entitled to remain and work in the United States").

³¹ We note that the UMSA commentary to the change in control provision provides that requiring personal financial information about persons acquiring control of a licensee, such as executive officers of the acquiring company, should not be mandatory especially when the financial well-being of the company would bear no connection to the officer's personal wealth. UMSA at 56.

³² See UMSA.

³³ *Id.*

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and soundness requirements.³⁴ Among these options, permissible investments serve as the primary mechanism for ensuring that licensees can meet their outstanding obligations. The net worth and bonding requirements are intended to serve as a general proxy for financial health of a license applicant and a minimal barrier to entry, thereby ensuring applicants are able to meet basic financial criteria and have viable business models.³⁵ Net worth is, therefore, a supplementary requirement for ensuring that licensees have resources to commence and operate a money transmission business. Thus, the UMSA suggests only a "minimal" net worth requirement is necessary, if at all.³⁶

Unlike the structure set forth in the UMSA, State regulators generally require all three safety and soundness indicators: net worth, surety bond, and permissible investments. While the States generally require all three components, the substantive application of the requirements varies significantly, and sometimes they are not even formally established by statute or regulation. For example, the Subgroup's research indicates that net worth requirements vary greatly across the multi-state regimes, with some statutes being silent on net worth requirements,³⁷ and other States imposing tangible net worth requirements that can range from \$10,000 to \$3 million depending on certain factors.³⁸ Additionally, the Subgroup is aware that some, as a matter of policy or practice, impose a tangible net worth requirement as a percentage of total assets, which could equate to hundreds of millions in net worth depending on the entity.

The minimum surety bond amount required for a license application varies greatly in amount, as well, generally ranging on a state-by-state basis from approximately \$10,000 to at least \$1 million.³⁹ Statutory maximum bond amounts also vary, up to \$2 million in a number of States, \$5 million in other States, and \$7 million in one State.⁴⁰ Twelve States do not impose any statutory maximum on bond amounts.⁴¹ Moreover, the basis for determining the bond varies, with some States using a licensee's volume as the basis for the bond amount (and using different calculations to arrive at the bond amount). Other States use the number of locations of the

³⁴ Relevant commentary indicates that each of the three requirements is intended as a safety and soundness mechanism that States *have the option of "choosing between . . . as prudential measures"* for money transmission licensees; and thus "some states use net worth as part of the safety and soundness mechanisms whereas other states rely on bonding/security and permissible investment requirements instead." *Id.* at 38.

³⁵ The UMSA indicates that requirements should be "balance[d] between the goals of safety and soundness and providing open access to businesses that wish to enter the money transmission market. . . ." *Id.* at 34.

³⁶ *Id.* at 38.

³⁷ *See, e.g.*, N.Y. Bank. Law § 642.

³⁸ *See, e.g.*, Rev. Code Wash. § 19.230.060; Wash. Adm. Code § 208-690-060(1).

³⁹ *See, e.g.*, 32 Me. Rev. Stat. § 6107 (fixed at \$100,000); Col. Rev. Stat. 11-110-108 and 7 Pa. Stat. § 6106 (statutory minimums established at \$1 million).

⁴⁰ *See, e.g.*, Code of Ala. § 8-7A-7 and Ky. Rev. Stat. § 286.11-013 (up to \$5 million each); Cal. Fin. Code § 2037(e) (up to \$7 million).

⁴¹ *See, e.g.*, N.Y. Bank. Law § 643; Mass. Gen. Laws ch. 169, § 2.

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licensee (and its authorized delegates) and/or whether the licensee provides money transmission services through the Internet as factors to calculate the bond amount.⁴²

Finally, the types of assets that may be used as permissible investments vary, as do the extent to which particular types of funds (such as ACH receivables or receivables due from authorized delegates) may be counted toward permissible investments.⁴³ Moreover, there is inconsistency in the formulas used to calculate permissible investments and the manner in which permissible investments may be held.

Based on the foregoing, the Subgroup recommends that State regulators examine the legislative history relative to net worth, surety bonds, and permissible investment safety and soundness requirements and determine whether the intent is for these prudential requirements to be additive. Alternatively, the Subgroup recommends that State regulators identify a principles-based standard for consistent application of any one or more of these safety and soundness requirements.

In addition, the Subgroup recommends that State regulators make the disparate net worth and surety bond requirements more consistent and consider the establishment of one or more national standards for each area.

Finally, in the area of permissible investments, the Subgroup recommends the following:

- Alignment of common definitions for permissible investments, including permissible investment categories, limitations of use for what qualifies for treatment as a permissible investment or eligible security, and when an outstanding money transmission liability is established and extinguished;
- Development of uniform risk-based principles to calculate permissible investments and eligible securities; and
- A defined consistent approach for maintaining the security of permissible investments.⁴⁴

The Subgroup is acutely aware of State regulators' paramount interest in ensuring that industry participants are financially sound and healthy organizations. And in the aftermath of the 2008

⁴² See, e.g., Idaho Code § 26-2908 (\$10,000 minimum, with the amount increased based on number of locations). The official comment to section 204 of the UMSA provides that the director may determine the amount of the surety bond requirement if covered services are provided via the Internet. See also, e.g., Ark. Code § 23-55-204.

⁴³ For example, California permits licensees to count 100% of ACH, credit card, and debit card receivables as eligible securities (known as permissible investments in other States) and such receivables may be reported by the licensee as cash, cash items, cash in transit, due from banks, or ACH and credit/debit card receivables. See Cal. Fin. Code § 2082(b)(12); 10 C.C.R. § 80.5305(f).

⁴⁴ For example, consider a uniform approach with respect to cash, deposits, and debt obligations of foreign banking institutions. See, e.g., Neb. Rev. Stat. § 8-2720; Md. Fin. Inst. Code § 12-401.

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financial crisis, the Subgroup is also cognizant that the regulators seek to ensure that only serious players with the ability to manage customer obligations appropriately participate in the ecosystem. The Subgroup is also sensitive to the fact that given the nature of the alternative financial services provided, we depend on consumer trust and rely on our ability to preserve the reputation of the industry as a whole. Accordingly, we are aligned with the State regulators' approach to ensuring that there are meaningful measures to protect customer funds. However, the aforementioned recommendations reflect the Subgroup's desire to further this goal in a way that is consistent across the States, does not create undue operational challenges, or impose unnecessary costs for licensees, thereby making it difficult for licensees to operate efficiently and to innovate as we strive to meet customers' evolving needs.

III. Supervision

The Subgroup acknowledges and deeply appreciates the significant strides that State regulators have made to improve their supervision practices, namely in the area of exam management. The efforts of the Multi-State MSB Examination Taskforce initiatives, such as increased scheduling coordination, are already helping to improve the supervision experiences of licensees. The Subgroup also acknowledges the ongoing development of the SES examination portal as well as planned exam pilot programs, which are intended to reduce the examination costs. Similarly, efforts to streamline licensing practices have been well received by the payments industry.

Notwithstanding these ongoing improvements, the Subgroup recommends additional measures to help make the supervision and examination practices more efficient. For example, although there has been progress towards the adoption of the NMLS tool, even among the State that have adopted NMLS, many States currently use NMLS inconsistently. Of the 54 States that have money transmission licensing and reporting requirements, 43 of them have adopted at least partial usage of NMLS, whereas 11 States have not adopted NMLS. Of the 43 States that leverage NMLS, only seven fully deploy NMLS' capabilities permitting licensees to provide all relevant information and filings via the tool. Among the remaining States that utilize NMLS, licensees are required to submit additional information and documentation outside of NMLS in order to comply with licensing and reporting requirements. Licensees must conduct critical licensing and reporting activities within the NMLS tool as well as offline. As a result, compliance departments that use NMLS must still perform duplicative tasks and operate inefficiently. Accordingly, the Subgroup recommends that State regulators not only encourage States to use the NMLS tool, but to also encourage full adoption of NMLS.

There are also opportunities for standardization of State requirements for reporting purposes. Currently, licensees are required to submit reports for different States where there are significantly similar or identical data points, but in disparate formats, for different time periods, and, at times, varying level of detail required by each State. The Subgroup recommends that State regulators prescribe unified reporting formats and parameters.

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In addition, licensees are required to submit the same documents via various delivery channels (*e.g.*, state website, email, mail) and are also required to submit the same documentation for the same purpose multiple times, creating process redundancy and duplication for licensees. These inefficiencies are not an effective use of licensees' time and resources and can increase the likelihood of error. The Subgroup recommends that efforts be made to reduce the documentation burden to licensees by leveraging centralized and secured mechanisms, such as NMLS, for the delivery of relevant licensee documentation.

The Subgroup also believes that there are opportunities for the payments industry and State regulators to strengthen their communication beyond the intermittent examination cycles. Specifically, State regulators should consider the benefits of supervision structures that incentivize the payments industry to engage State regulators on a real-time basis to self-report and address issues outside of the formal examination cycle, thereby driving positive collaboration between State regulators and the payments industry, which will ultimately benefit consumers.

IV. Review and Comment Period

The Subgroup believes that dialogue and collaboration between the regulators and the regulated is vital to the advancement of the current system of State financial supervision. With this in mind, the Subgroup encourages State regulators to allow for a comment and review period to precede any official actions State regulators might take in response to the various recommendations and considerations proposed throughout this process.⁴⁵

Similar to the NMLS comment and review period procedure, State regulators could invite the public and payments industry to submit comments on a given regulatory change or policy proposal for a set amount of time. Upon review of the various commentary received during the comment period, the State regulators could then release a summary of the major topics raised in the comments followed by their initial responses. Using the feedback received through this process, the State regulators would ultimately be able to publish a final specification of the changes or revisions that will be implemented. The Subgroup believes this kind of administrative exercise would work to further the quality and effectiveness of future regulation and supervision of money transmission services.

V. Conclusion

The Subgroup appreciates the opportunity to collaborate with the States on this important topic. We urge the adoptions of the above recommendations and strongly support initiatives by State regulators to modernize state regulation, facilitate innovative financial services, enable national

⁴⁵ Any actions taken by State regulators should not supersede any guidance or interpretations that licensees or companies may have received from State regulators.

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scale with as little regulatory friction as necessary, while strengthening the financial system and upholding important consumer protections.

We welcome the opportunity to continue this important dialogue. We hope that this dialogue will result in the accomplishment of our Shared Goals and lead to further innovation and access to financial services. We further expect that a current, coordinated and concerted effort among the regulators at this time will help reduce the demands placed on the regulators in the future, allowing regulatory resources, too, to shift away from redundancies and toward a better allocation of resources. By working together to embrace the future of the payments industry, we believe we can both provide our services to your constituents more efficiently while continuing to ensure that consumer funds are protected.