YOUR **TRAVEL PAYMENT** COMPANY.

AirPlus INTERNATIONAL

April 12, 2019

Via Electronic Mail (modelpaymentslaw@csbs.org)

Attn: Emerging Payments Task Force
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, D.C. 20036

Re: AirPlus International, Inc. – Comments on the Recommendations of the Payments Subgroup of the Fintech Industry Advisory Panel

Dear Conference of State Bank Supervisors:

Thank you for the opportunity to provide comments on the Recommendations of the Payments Subgroup of the Fintech Industry Advisory Panel. AirPlus International, Inc.[1] ("AirPlus") provides commercial entities ("customer") in the United States and Canada with business travel management services, including a service to facilitate payment for flights, rail networks, hotels, car rentals, and other travel-related business expenses of customer employees.

At a high level, our support of our customers' payment obligations has caused some states to view us as a money transmitter notwithstanding the fact that we believe we are not now, nor have we ever been, engaged in money transmission in any state. AirPlus' strong compliance culture and need for certainty in light of unclear and undefined terms and concepts across disparate state laws caused us to seek confirmation from all states and the District of Columbia.

With little consistency in rationale or application of law, eight states have taken the position that AirPlus is providing money transmission and is unable to avail itself of applicable exemptions, while the balance of 43 jurisdictions concurred with our conclusions that AirPlus is not engaged in money transmission.

Our situation highlights the practical realities of inconsistent application of money transmission laws across jurisdictions. These inconsistencies cause considerable uncertainty and necessitate substantial expense outlays if a company, like AirPlus, seeks to ensure and maintain

[1] Wholly owned subsidiary of Lufthansa AirPlus Servicekarten GmbH ("LASG") which is a registered payment institution as per the Payment services - Directives (EU) 2015/2366.

AirPlus International Inc
225 Reinekers Lane, Suite 500
Alexandria, VA 22314 USA

compliance in all jurisdictions. For these reasons and other reasons shared below, we write this letter to emphasize our support for this initiative to (a) harmonize money transmission laws in the United States; (b) make the scope of money transmission regulation more transparent; and (c) ease the burden of compliance through harmonized, coordinated, and consistent regulation.

Harmonization of State Money Transmission Definitions and Exemptions

As you are aware, the current regulatory framework for money transmission is fragmented and fundamentally non-uniform across states. Each state, with the exception of Montana, has an independent state statute generating its own regulatory regime and state-specific standards. Many fundamental features of money transmission laws, such as the definition of money transmission itself, differ significantly from state to state, making it difficult for companies to ascertain where their activities are regulated and the standards which apply.

From the perspective of a business that has been deemed to be engaged in money transmission in a few select states, but otherwise not engaged in such activity in most others, harmonization of money transmission laws presents the compelling possibility of eliminating the uncertainty associated with state regulation, thereby allowing businesses to accurately forecast and appropriately plan and budget for regulatory costs and considerations. It would also allow companies to design business models with knowledge of regulatory consequences and thus spur greater innovation, utilize emerging technologies, and prosper economically, all while knowing exactly what activities trigger licensure and the specific requirements which apply.

As a company, we have visibility in global approaches to similar activities. Under the current fragmented regime and from a regulatory compliance perspective, the United States is an inherently less attractive location to operate a money services or payments business. Harmonizing state money transmission laws would allow the United States to compete on par with the European Union, for example, which adopted a passporting scheme requiring a common minimum set of regulatory rules for payments businesses across multiple jurisdictions. We believe it is absolutely paramount that uniformity start with a single definition for what constitutes money transmission across all jurisdictions and consistency with regard to exemptions and how such exemptions are interpreted and applied.

1. **Money transmission should apply exclusively to activity for consumer purposes; business-to-business transactions should not be within scope of regulation.**

Many states acknowledge that a primary goal of money transmission regulation is to protect the interests of consumers.[2] Money transmitters are temporary custodians of consumer funds and state money transmission laws were enacted to protect those consumers from risk of loss should the funds being transmitted not reach their intended recipient. Despite the general consensus that all such laws were enacted with the protection of consumers in mind, only a few states have drafted their money transmission laws to expressly reflect this purpose, perhaps

[2] *See e.g.*, Cal. Fin. Code § 2001(d) (Expressly stating that money transmission law exists "[to protect the interests of consumers of money transmission businesses].")

because it was so obvious it need not be expressly stated. Nevertheless, North Carolina, for example, now defines money transmission, in relevant part, to mean:

> To engage in the business of any of the following: (1) Sale or issuance of payment instruments or stored value primarily for personal, family, or household purposes; or (2) Receiving money or monetary value for transmission or holding funds within the United States or to locations abroad by any and all means, including payment instrument, stored value, wire facsimile, or electronic transfer, primarily for personal, family, or household purposes.[3]

Similarly, Indiana defines money transmission, in relevant part, to mean activity that involves "the sale or issuance of payment instruments primarily for personal, family, or household purposes" or "engaging in the business of (i) receiving money for transmission from; or (ii) transmitting money to any location and by any means ... primarily for personal, family, or household purposes."[4] Wyoming is another state that expressly narrows the scope of its money transmission law to apply only to activity for personal, family, or household purposes.[5]

We strongly support a uniform definition that excludes business-to-business transactions and applies only to transactions for personal, family, or household purposes. Defining the scope of money transmission in this way maintains consumer protections while promoting commercial activity.

2. All states should provide an explicit exemption from money transmission for agents of a payee.

As stated above, the purpose of state laws requiring licensure for money transmitters is to protect consumers from financial loss where they give their funds to a third party for transmission. Money transmitter licensure and supervision protects consumers from an unlicensed money transmitter misappropriating or failing to properly transmit funds. However, where an entity receives money from a person for payment for goods or services to a third party, and the consumer making payment is at no risk of loss once he or she makes payment (i.e., agent of payee relationship), there is no longer a need to protect the consumer making payment and a state's money transmission laws should not apply.

This is a position many states have taken by amending their money transmission laws to include an "agent of payee exemption" or through specific opinion letters. For example, California provides that an entity that receives money from a person for payment for goods or services to a third party does not need to obtain a money transmitter license if (i) the entity is an "agent of the payee pursuant to a preexisting contract;" and (ii) "delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee."[6]

In other states, regulators have opined that if a payor has no risk of loss, the transaction is out of scope from regulation, even in the absence of an explicit exemption in the state statute.

---

3 N.C. Gen. Stat. § 53-208.42(13).
4 Ind. Code § 28-8-4-13.
5 *See* Wyo. Stat. § 40-22-103.
6 Cal. Fin. Code § 2010(l).

To our knowledge, at least 20 states recognize the "agent of payee" exemption, whether formally or informally. It would create consistency and reduce assessment and compliance costs without exposing consumers to additional risk if all states regulating money transmission exempt this type of transaction where there is no risk of loss to the payor.

3. **All states regulating money transmission should follow federal regulations that exempt any person that accepts and transmits funds only as an integral part of the sale of goods or the provision of services, other than money transmission services.**

As set forth in the Bank Secrecy Act ("BSA") and associated implementing regulations of Treasury's Financial Crimes Enforcement Network ("FinCEN"), a money transmitter is a financial institution for purposes of requiring a compliance program designed to detect and prevent money laundering, terrorist financing, and other illicit activities. BSA rules also require money transmitters to register with FinCEN.

By regulation, FinCEN excludes certain activities that would otherwise meet the definition of money transmitter.[7] FinCEN's regulations specifically exclude any person that accepts and transmits funds only as an integral part of the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting funds.[8] FinCEN described this exemption further:

> Persons that sell goods or provide services other than money transmission services, and only transmit funds as an integral part of that sale of goods or provision of services, are not money transmitters. For example, brokering the sale of securities, commodity contracts, or similar instruments is not money transmission notwithstanding the fact that the person brokering the sale may move funds back and forth between the buyer and seller to effect the transaction. Similarly, this limitation would apply to a debt management company that made payments to creditors as the conduit for a negotiated schedule of payments from the debtor to its creditors. The person who is accepting and transmitting the funds is offering a service other than money transmission services which could not be provided without transmitting funds.[9]

This is an exclusion that all states should adopt. It allows for businesses to conduct activity, sell goods, and provide services in the states without uncertainty as to whether the movement of funds that is necessary for that activity inadvertently or unknowingly triggers money transmission requirements. Using FinCEN's example, we are not aware that securities brokers are licensed as money transmitters in any state but are also aware that many states do not explicitly exclude them. Presumably, this is because the service provided by brokers with respect to the purchase and sale of securities is not money transmission even though it involves the receipt of funds from a buyer for transmission to a seller. Clear, consistent, and uniform confirmation at the state level that money transmission excludes transactions that are integral to the sale of goods or the provision of services would avoid uncertainty and inconsistent application of state laws.

---

7 31 C.F.R. § 1010.100(ff)(5).
8 31 C.F.R. § 1010.100(ff)(5)(ii)(F).
9 76 Fed. Reg. 43594 (July 21, 2011) (internal citations to prior FinCEN opinions omitted).

Consistent Prudential Requirements

Prudential requirements such as permissible investments, net worth, and surety bond requirements vary widely from state to state. Licensees maintain the burden of coping with inconsistent prudential requirements and, in some cases, reporting requirements (e.g., permissible investments). A uniform, principles-based approach to prudential regulations would streamline requirements and could still cater to unique business models of varying scope and size. This approach, similar to that taken by the European Union, could work on a passporting basis and impose a common set of prudential regulatory rules for money transmitters. The Uniform Law Commission's Model Uniform Money Services Act and Uniform Regulation of Virtual Currency Businesses Act could serve as model guidelines, ensuring coverage of both fiat and digital currency. Such an approach would greater decrease time and expense of managing and reporting distinct requirements on a state-by-state basis, excluding certain assets in one state while including it in another given their inconsistent definitions and requirements.

The uniform approach should also include a "sandbox" program where novel businesses that may otherwise be required to be licensed can negotiate with the supervisory agency for flexible regulatory treatment during their start-up, formative years. For example, the Financial Conduct Authority, the financial regulatory body in the United Kingdom, has created a financial technology "sandbox" which provides an opportunity for innovative financial technology companies to manage and comply with a reduced regulatory landscape. Under the sandbox approach, companies with innovative business models can petition a regulator to either be exempt from the traditional regulatory standards or held to a new standard catered to particular product or service risks. This enhanced flexibility would allow for consumer protection while preventing overly burdensome regulation for financial innovators that do not meet the traditional money transmission business model. The possibility of flexibility in regulation would increase the chance that novel financial services businesses choose to open the lines of communication with regulators before engaging in unlicensed activity and trigger fines or enforcement actions. This practical approach addresses the fact that current money transmission captures varying types of business models, some of which may require individualized regulation to properly protect consumers from financial crime and other transaction risks.

Coordinated Supervision

Money transmitter supervision can be improved by requiring all states to utilize the same Money Services Businesses Call Report developed by the Nationwide Multistate Licensing System (NMLS). By consolidating and harmonizing reporting requirements, the states can ease the burden on licensees by eliminating repetitive and duplicative reports. The function of NMLS could be further expanded to include a single examination guidebook for licensees. States could pool resources for examinations and include regulators from various states on each examination team to ensure impartiality and fairness. By publishing a guidebook on the examination process, exams would be more efficient and less costly because companies could better prepare for exams. In addition, state agencies would conserve resources by avoiding the need for individual and duplicative examination of licensed entities under their regulatory oversight.

For the reasons stated above, we support the commitment by state regulators to drive toward an integrated, 50-state licensing and supervisory system that is more efficient, consistent, and uniform than the current system.

Sincerely,

Diane Laschet
CEO, AirPlus Inc.

AirPlus International Inc
225 Reinekers Lane, Suite 500
Alexandria, VA 22314 USA