



Attn: MSB Model Law  
Conference of State Bank Supervisors  
1129 20th Street NW, 9th Floor  
Washington, D.C. 20036

Submitted via email to: [modelpaymentslaw@csbs.org](mailto:modelpaymentslaw@csbs.org)

Re: Conference of State Bank Supervisors Model Money Services Businesses Law

To Whom It May Concern:

Blackhawk Network, Inc. and its affiliates (“Blackhawk”) greatly appreciate the opportunity to comment on the Conference of State Bank Supervisors (CSBS) proposal to modernize state regulation of non-banks through a model money services business law (the “Draft Model Law”).

Blackhawk is a leading provider of prepaid and financial payments products for consumers and businesses. We support the physical and digital distribution of a variety of prepaid products, utilizing proprietary technology to provide consumers a wide selection of gift cards and other prepaid products across a global network, with nearly 80,000 stores in the US alone. The company is headquartered in Pleasanton, California and offers products and services in the United States and 25 other countries. We have money transmitter/money services business licenses in 49 jurisdictions.

Blackhawk’s Gift Card Mall reaches more than tens of millions of people each week through an international network of retail outlets – leading grocery, big box, convenience, drug, and specialty stores, and Internet retailers. As a general matter, Blackhawk aims to ensure that gift card products enter the market fairly and efficiently and provide convenient gift-giving opportunities to consumers. In developing its gift card products, Blackhawk starts with consumer needs and preferences. Over the years, it has surveyed consumers, conducted focus groups, and consulted industry reports to learn how prepaid products fulfill the needs of consumers. This means that Blackhawk structures its products based on consumer feedback. In short, consumer input and protection are central to our business.

Our network provides significant benefits to those who purchase the products and services we offer and to our partners who sell those products. For consumers, we provide convenience by offering a broad variety of quality brands and content at retail locations and online. For retail locations, we provide a significant, high-growth and highly productive product category that drives incremental store traffic and customer loyalty. For businesses, we offer the opportunity to forge stronger and longer relationships with their customers, sales channels, and employees through promotions, loyalty incentive programs, and employee recognition. Blackhawk serves in a variety of capacities in the prepaid market, including as a program manager for bank-issued network-branded card products as well as a distributor for both store-specific and network-branded gift cards.

## **Draft Model Law**

Blackhawk commends the CSBS for its efforts to make uniform and consistent the state regulators' approach to money transmission. In particular, we support the efforts to make consistent the exemptions for bank agent and service provider, as well as to streamline and make uniform the rules for change of control. Blackhawk has several other suggestions regarding the Draft Model Law, specifically as it applies to prepaid access, described below.

## **Closed-Loop Prepaid Access**

Blackhawk concurs with the proposal for closed-loop prepaid access to be exempted from the definition of "money transmission" under the Draft Model Law. However, we believe that the exemption is too narrow. As drafted, the definition of closed-loop prepaid access could be interpreted to exclude a card sold by someone other than the issuer or one of its affiliates. As CSBS notes, these products do not present consumer risk. Once the gift card is activated by Blackhawk, the customer can redeem the card at the retail location where the card is sold immediately (or, more likely, give it to a friend or family member as a gift and then that person will redeem it). This ability to immediately redeem the card applies regardless of whether the issuer receives the funds it is owed from the program manager in a timely manner, which, in practice, it nearly always does. As such, there is no additional risk to the cardholder if he or she purchases a gift card from a third-party seller rather than directly from the issuer. This is true whether the closed-loop card is sold by the issuer directly, or if the closed-loop card is sold in a supermarket or other third-party retail establishment.

Based on the lack of any consumer risk, Blackhawk submits that closed-loop prepaid access should be exempt regardless of whether it is issued by the issuer or one of its affiliates or sold by a third-party merchant. The issuer is obligated to honor it as of the moment of sale regardless of who completes the sale. In addition to the lack of consumer risk, closed-loop pre-paid access does not create any additional risk to the market or compliance needs. Accordingly, FinCEN has exempted such products. We suggest that the CSBS adopt a definition of closed loop prepaid access in the Draft Model Law that mirrors the FinCEN definition:

31 CFR Part § 1010.100.

(kkk) *Closed loop prepaid access.* Prepaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system.

Adopting the FinCEN definition as a uniform standard would be a significant improvement to the industry. It would enable the industry to consistently evaluate the products that require licensing approval. It would also enable consistent submission to regulators of required disclosure of agents being used. By having different definitions from state to state and from FinCEN, presently money transmitters must submit different agent disclosures to different regulators based on the products that they sell, and need to parse the differing definitions relating to closed-loop prepaid access to create these disclosures

for both federal and state regulators. A consistent definition that treats all closed-loop prepaid access the same would significantly reduce the burden of these mandated disclosures.

### **Business-to-Business Activities and Prepaid Access**

Under federal law, the Electronic Fund Transfer Act (EFTA) exempts business-to-business products from its regulations governing gift cards:

(D) EXCLUSIONS.—The terms “general-use prepaid card”, “gift certificate”, and “store gift card” do not include an electronic promise, plastic card, or payment code or device that is—

....

- (iii) a loyalty, award, or promotional gift card, as defined by the Bureau;
- (iv) not marketed to the general public; . . .

15 U.S.C. 1693I—1. In addition, business-to-business activity involving prepaid access is already exempt in the vast majority of the states. Accordingly, the Draft Model Law is proposing significant new requirements for products that are largely exempt today, and for which there is no consumer impact. Indeed, in Blackhawk’s 10-year history of being licensed as a money transmitter, no state money transmitter regulator has ever include business to business activity in the scope of its reviews. For these reasons, Blackhawk submits that business-to-business activities should be exempt from the definition of money transmission, at least to the extent that it covers prepaid access.

Blackhawk requests that the working group consider these limited refinements in the treatment of prepaid access products in the Draft Model Law. We would be pleased to meet with you and discuss our comments and recommendations.

### **Definition of Virtual Currency**

The definition for “virtual currency” contained in the Draft Model Law is similar to the definition of that term under the Uniform Regulation of Virtual Currency Businesses Act (URVCBA) crafted by the Uniform Law Commission. That definition is as follows:

*Virtual currency means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, but does not have legal tender status as recognized by the United States government. Virtual currency does not include the software or protocols governing the transfer of the digital representation of value.*

In turn, CSBS includes in its Model Law Language Chart the following optional exemption from the definition of “virtual currency” for rewards/affinity programs:

*This chapter does not apply to:*

*1) virtual currency or other digital representation of value redeemable exclusively in goods or services limited to transactions involving a defined merchant, such as rewards programs.*

This exemption is similar to an exemption for such programs contained in the URVCBA.

As noted in the Overview Template for the Draft Model Law, CSBS is considering (1) utilizing the URVCBA definition for virtual currency, (2) adopting CSBS's similar definition of virtual currency from the model framework, or (3) creating a new definition. It is our view that CSBS should pursue a hybrid of these three options by amending the URVCBA definition of "virtual currency" to explicitly exclude gift cards and other prepaid products from the coverage of such legislation and include the scope provisions contained in § 103 of the URVCBA, which states that the definition of "virtual currency" does not apply to products subject to the EFTA or state laws governing money transmission. We support this approach because prepaid products are already subject to federal and state standards that ensure consumer protection and safety and soundness of the financial system and are distinct from newer virtual currency products/services that jurisdictions are now seeking to regulate.

The URVCBA also includes several specific exclusions of products from the uniform law in Section 103. One such exclusion, contained in § 103 of the Act, describing its scope, states that the Act "does not apply to the exchange, transfer, or storage of virtual currency or to virtual-currency administration to the extent the Electronic Fund Transfer Act of 1978, 15 U.S.C. §§1693 through 1693r...govern[s] the activity." The URVCBA also contains exclusions for certain money services businesses regulated under state law and certain payment system operators, among other exclusions. These exclusions wisely recognize that prepaid products – including gift cards, general-purpose reloadable cards, and loyalty/award/promotional cards – are already regulated at the federal level under the EFTA and its implementing rules at Regulation E (12 C.F.R. part. 1005), as well as under numerous state money transmitter, unclaimed property, and gift card laws.

Unfortunately, state and federal legislation proposed in recent years has removed the already imperfect exemptions portion of the URVCBA's "virtual currency" definition or has amended the scope provisions of the URVCBA by failing to reference the EFTA or other relevant state laws. As such, participants in the value chain for prepaid products are concerned that, if such virtual currency legislation is enacted, state or federal regulators will subject traditional prepaid accounts to regulations otherwise intended for new virtual currencies, even though the use and composition of prepaid products is entirely distinct from commonly accepted conceptions of virtual currency (e.g. bitcoin, blockchain, etc.). Applying this legislation to prepaid products could impose a burdensome and, in some cases, duplicative, new layer of regulation on prepaid products with no attendant consumer or prudential benefits. In turn, such legislation could reduce consumer access to these popular and consumer-friendly products.

Consistent with the concerns, Blackhawk proposes the following amendments to the definition of "virtual currency" in the Draft Model Law:

*“Virtual currency” means a digital representation of value that is used as a medium of exchange, unit of account, or store of value, and is not legal tender, regardless of whether denominated in legal tender. “Virtual currency” does not include:*

*(1) A gift certificate, store gift card, or general-use prepaid card, as those terms are defined in federal Regulation E, 12 CFR §1005.20(a), without considering the exceptions set forth in §1005.20(b); or*

*(2) Any card, code, or other device that can add funds to the products described in subsection (1) above.*

We recommend that CSBS utilize the entirety of this proposed revised definition, to ensure that prepaid products – not just certain prepaid products used in affinity/rewards programs – are explicitly excluded from the coverage of “virtual currency” under the Draft Model Law.

Further, we propose that the Draft Model Law include the language contained in § 103 of the URVCBA related to the scope of the legislation’s coverage. In particular, the scope provisions should explicitly exempt products regulated under the EFTA from the legislation.

These proposed principles are appropriate to ensure that legislation treats virtual currency and prepaid products as entirely different products with entirely distinct purposes. The Draft Model Law should clearly distinguish them by tightening and aligned the definition of “virtual currency” with the carefully constructed federal definitions for such products and by ensuring that the legislation is properly scoped.

\* \* \* \*

Thank you for your consideration of these comments. Blackhawk Network appreciates the opportunity to share our views on these important issues and looks forward to continuing to serve as a resource to CSBS and to regulators and legislators as they attempt to modernize and/or harmonize state money services business law.

Respectfully submitted,



Emily Dunn  
Chief Compliance Officer