

November 1, 2019

Matt Lambert
Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, D.C. 20036

Re: CSBS Model State Law – Money Services Businesses (“MSB”)

Dear Mr. Lambert:

The Electronic Transactions Association (“ETA”) appreciates the opportunity to provide comments on behalf of the payments and FinTech industry. ETA encourages states to work together to harmonize requirements for money transmitters and urges all system participants including regulators, policymakers, and money transmitters to move towards a regulatory framework that can promote innovation rather than hamper it. The regulatory framework must allow for innovation and changing expectations of consumers brought on by technology while protecting consumers, providing stability of transactions, and guarding against fraud. Furthermore, ETA encourages CSBS to coordinate with all parts of the policymaking system including legislative bodies and regulatory agencies at the state and federal level to ensure more expedient adoption of a harmonized money transmitter regulatory framework.

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include financial institutions, mobile payment service providers, mobile wallet providers, money transmitters, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives.

Money Transmission Activities & Exemptions

Overview

Money transmitters provide critical services for a large section of the United States population including consumers and small businesses. The services provided by money transmitters help underserved and underbanked consumers have access to financial services through a variety of products including peer-to-peer payments, bill payment services, and mobile wallets.

Technology is changing customers’ expectations of financial services and companies are looking for the best way to provide those services in all 50 states. However, the current patchwork of state laws, regulations, guidance, and regulatory expectations limits innovation and provides a significant obstacle for both incumbents and new entrants into the market.

Despite many similarities of state money transmission laws, each state defines and interprets money transmission and its exemptions differently. As a result, a significant amount of time and money is spent by stakeholders interpreting how money transmission is defined. These costs - in the form of additional financial spend or in some cases the inability to provide certain services in some states - are ultimately borne by consumers. Uniform adoption of exemptions and definitions across 50 states can help to provide clarity for industry participants and alleviate regulatory burdens.

Definition of Money Transmission

The scope of coverage should recognize that coverage under the act may depend on facts and circumstances. For example, federal law recognizes this and provides, "Whether a person is a money transmitter as described in this section is a matter of facts and circumstances." 31 C.F.R. § 1010.100(ff)(5). We recommend that the model law include mechanisms where the bank commissioner may determine by regulation or order or upon written request whether an activity is covered under the Act and that such determination would be consistent with the shared goals of (1) protecting consumers from harm (especially protecting consumer funds); (2) maintaining a regulatory system that prevents bad actors from entering the money services industry; and (3) preserving the public confidence in the financial services sector ("Shared Goals"). Specifically, we recommend that the Shared Goals to be incorporated into the legislative intent of the Act and to form a basis of any interpretations the bank commissioner makes with respect to the Act.

Exemptions

In Section 201(a)(3), for avoidance of doubt, it should be clarified that persons that are excluded from the Model Law under Section 103 are not required to obtain licenses. This would provide additional clarity for all parties. Additionally, an official comment could be added stating that if an entity or its activities qualify for one of the exemptions outlined in the statute, entities should not be obligated to request a waiver or exemption from the requirements imposed on money transmitters.

Agent of the Payee

ETA supports the conclusions of the FinTech Industry Advisory Panel which recommend that the Agent of the Payee exemption be recognized and harmonized across states. The states' disparate views on the "Agent of Payee" exemption has resulted in significant efforts in both time and resources spent working with state regulators and legislators on changes and clarifications.

An Agent of Payee exemption should be adopted in each state because it is consistent with the goals of state money transmission frameworks. State Money Transmission licensure at its core was created to protect the consumers of each respective state. There is no need for consumer protection-focused regulation to apply where there is no likelihood of consumer harm or risk of loss. Accordingly, when determining whether to require a company to obtain a money transmission license, the appropriate question to ask is whether there is material risk of consumer harm. As many regulators have consistently recognized, there is no risk of loss in cases where all consumer

obligations are discharged upon receipt of funds by an agent of the payee. Derived from the common law of agency present across the United States, this “Agent of Payee” exemption recognizes that there is no need to apply a consumer-focused regulatory framework to situations where a seller of goods and services or other payee has appointed a third-party agent to collect money on its behalf and has agreed that agent has all authority to bind it as the principle. This Agent of Payee structure discharges all obligations on the buyer upon the agent’s receipt of funds and protects consumers from any risk of loss the money transmission framework was intended to prevent. This fundamental principle does not change even when the number of payees or subpayees increase, nor when the types of goods or services sold increase.

In order to allow entities operating in the increasingly important inter-state and international spaces to offer services to customers in all states, it is crucial not just that each state recognize the Agent of Payee exemption, but that each state similarly define and interpret. An increasing number of states are or have considered limiting the applicability of Agent of Payee to specific industries, prescribed contractual language, limited geographies, and more.¹ However, considering agency law and that the objective of Agent of Payee is to prevent regulatory resources from being expended where there is no risk of customer harm, acceptable payment models for the Agent of Payee exemption can include payment processing for any services or offerings when the payment recipient is acting as an agent of a merchant. That includes instances of multiple entities serving as simultaneous agent of the merchant. Under accepted principles of agency law, sub-agents and co-agents can represent the principal in the same manner as the original agent.² Agency law applied to parties involved with money transmission dictates that payments made to a sub-agent/co-agent satisfy the payor’s obligation to the payee as if the payment was made directly to the principal – in other words, making a payment to one counts as a payment to all. Just as the payee and the agent collapse into a single party in the transaction (agent stands in the shoes of the principle), so too do co-agents and sub-agents collapse into one. Moreover, an agent-of-payee exemption commensurate to the bounds of agency law does not detract from the goals of a licensure law because consumer protection concerns are satisfied when the consumer’s debt is extinguished upon payment to the agent(s).

Given the importance of providing a clear roadmap for industry and the regulators ETA recommends that exemptions for Agent of the Payee be provided through statute, however, if state legislatures are not willing to harmonize their laws, regulators could provide written guidance that makes explicitly clear that agent of the payee exemption be adopted and done so in a uniform fashion across states.

¹ See e.g., Washington regulatory guidance December 2016, limiting it to cases outside the marijuana context, BSA-regulated clearance and settlement systems, and requiring certain timing for funds disbursement between agent and payee; Pennsylvania limiting applicability in the case of non-profit organizations and requiring 7 specific contractual provisions; Kansas, limiting applicability in the case of non-profit institutions; California’s recent suggestion that certain types of goods or services should be omitted.

² See Rest. (Third) of Agency § 1.04 (“In a relationship of co-agency, neither agent is the other’s agent ... Each coagent owes duties to the common principal.”).

Payment processing

Currently, payment processors must lean on various exemptions, whether established by law or by regulatory interpretation, including, but not limited to exemptions of agents of banks, agents of payees, payment processors, and operators of a payment system. This is not a system that is appropriate for a modern, competitive, innovative, and nationally operating ecosystem. In the interest of clarity and harmonization, it is imperative that states provide for a specific payment processing exemption from money transmission licensure.

This sentiment is succinctly stated by the FinTech Industry Advisory Panel when they stated “...one area where all the states may be able to clarify a uniform position based on the existing regulatory landscape and industry practice...concerns certain payment processing activities.” A uniform position across the states is important to ensure that the regulatory framework of the states is open for innovation.

The proposed language in Section 103 (i) is an attempt to provide a specific exemption for payment processors. ETA recommends that additional guidance or commentary be provided that explicitly states that this exemption is designed to ensure that payment processors are not required to be licensed as money transmitters.

Insured prepaid card

Clear guidance and exemptions on state regulatory oversight of bank issued prepaid cards are important. Generally, if these prepaid cards are issued by a chartered financial institution, these products are already under significant regulatory oversight and therefore should be exempt from money transmitter licensing requirements.

Closed loop prepaid access

Many, but not all, states have an express exemption from the definition of payment instrument (or similar term) for payment instruments issued and redeemed by the issue of goods or services. ETA recommends that all states adopt an express exemption from the definition of payment instrument (or similar term) for payment instruments issued and redeemed by a closed network of parties.

Agents and service providers of banks

Banks and other financial institutions are some of the most regulated entities in the world on the federal and states levels. Their agents, through agency law, and their service providers by contract and regulatory requirements are also subject to much of the same regulation. As such, states should adopt express exemptions for agents and service providers of financial institutions.

This is addressed through proposed language that states that the act does not apply to an insured depository financial institution or agent of a depository financial institution. ETA supports this concept in the proposal, but if the intent is to cover service providers, the proposed language needs to be modified to include “agents of or service providers overseen by...”

Business to business activities

The proposal lacks an exemption for business to business activities. The rationale included in the executive summary states that the working group believes that business to business activities should not be exempt because payments between businesses are a crucial underpinning to state economies. ETA respectfully disagrees with the working group that being an underpinning to a state economy in this instance is justification enough for including business to business activities in a significant licensing regime.

Instead, ETA sites the recommendations of the FinTech Industry advisory panel and supports including an exemption for business to business activities in the final model state law.

Operator of a Payment System

Section 103 of the proposal includes an exemption for operators of a payment system. This is an important exemption which ETA supports, but which we believe should be clarified to better fit the modern payments infrastructure.

The exemption should also include systems in which persons licensed under the Model Law participate, and agents of banks and licensees, because licensees, like banks, and their agents are already subject to regulations designed to protect consumers. Additionally, the exemption should be clarified to apply when the payment system handles virtual currency transfers in addition to fiat currency transfers.

Additional Exemptions

There are a number of exemptions for “money transmitter” that can be adopted at the state level to better increase harmonization with federal regulation and provide clarity that they do not fall within the definition of “money transmission.” Specifically, there are number of exemptions in 31 C.F.R. §§ 1010.100(ff)(5)(ii)(D-F) which are not currently included elsewhere in the model language:

- Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation;
- Provides prepaid access;
- Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.

Section 103 Charity Exemption

Consistent with California law, ETA proposes adding an exception for charities.

Suggested Language:

A nonprofit which has received recognition of tax exemption under Internal Revenue Code Section 501(c)(3).

Definition of Payment Instrument

In order to ensure that there are no overlaps between definitions and that the definition of payment instrument does not capture items included elsewhere or items purposefully excluded from other definitions we believe some additional clarity is required. The model law should clearly exclude anything covered as money transmission, stored value, or virtual currency or anything purposefully exempt from those definitions. Accordingly, ETA proposes adding this language to the definition:

The term does not include any instrument that can be used only for goods or services in transactions involving a defined merchant, a set of affiliated companies under common ownership, or a location (or set of locations), such as a specific retailer or retail chain, a college campus, a mall, or a subway system. The term does not include any instrument (a) loaded with points, miles, or other nonmonetary value; or (b) distributed as part of a loyalty or rewards program or charitable donation. The term does not include transactions separately covered as prepaid access or stored value, virtual currency, or other types of money transmission.

Definition of Prepaid Access or Stored Value

The same exemptions for closed-loop products and rewards and loyalty programs for payment instrument should apply to stored value and virtual currency. The closed-loop exemptions used for "payment instruments" can be used here. Alternatively, "closed-loop payment instruments" and "closed-loop stored value" could be a defined term and excluded from the terms "payment instrument" and "stored value," as applicable.

The term "issue" and "issuer" should be defined. Currently, there is some ambiguity in various states with respect to which authority a money transmitter uses to sell, load, and reload stored value. Whether the transaction is a money transfer or the sale or issuance of a payment instrument or stored value impacts how a transaction may be reported and what permissible investment requirements apply.

One way to provide specific definitions for "Issue" and "issuer" could be to mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the Uniform Commercial Code and is liable for payment. With regard to stored value, "issue" and "issuer" mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments. Similar to those used in Cal. Fin. Code § 2003(l).

States should consider requirements (such as limitation on agent network and reporting obligations) related to the sale of stored value. Specifically, whether the sale and reload of a stored value card at a retailer is a transfer of money (for example to the bank issuer) or the sale of an electronic payment instrument impacts whether a bank is required to be licensed in order to sell stored value through a retail agent network.

Recommend language [Underlined language is new language]

["Prepaid access" or "Stored value"] means monetary value representing a claim against the issuer stored on an electronic or digital medium, or device (for example a card), and evidenced by an electronic or digital record, intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services.

The term does not include ["prepaid access" or "stored value"] that can be used only for goods or services in transactions involving a defined merchant, a set of affiliated companies under common ownership, or a location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system.

The term does not include any ["prepaid access" or "stored value"] (a) loaded with points, miles, or other nonmonetary value; or (b) not sold to the public but distributed as part of a loyalty or rewards program or charitable donation.

Separate, Newly Proposed Definition of "issue" and "issuer":

"Issue" and "issuer" mean, with regard to a payment instrument, the entity that is the maker or drawer of the instrument in accordance with the [Uniform Commercial Code] and is liable for payment. With regard to stored value, "issue" and "issuer" mean the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Only a licensee may issue stored value or payment instruments.

Definition of Virtual Currency

In order to allow for innovation, the definition of Virtual Currency in Section 102(28) should be clarified that a “virtual currency” does not include distributed ledger technology or blockchain technology used for purposes other than payments.

The definition could be construed as overly broad and could include stored value that is specifically considered or excluded under other aspects of this law. In order to prevent application to excluded or otherwise considered stored values, we recommend the following edit to the definition, based on language from Vermont law, which requires virtual currency be taken out of the system and converted into legal tender or fiat currency in order to satisfy the definition:

Virtual currency means a digital representation of value used as a medium of exchange, a unit of account, or a store of value, that can be exchanged for fiat currency or other convertible virtual currency, but does not have legal tender status as recognized by the United States government.

ETA recommends adding language that payment instruments and stored value be excluded from this definition:

The term is not intended to cover products or transactions separately covered as payment instruments, stored value or prepaid access (or any products or transactions excluded from the definition of stored value or prepaid access), or other types of money transmission.

One way to provide additional clarity could be to move certain exclusion from Section 103 to this section to ensure that it is clear they are excluded from virtual currency: [underlined text is recommended edited language.

- *virtual currency or other store of value redeemable exclusively in goods or services limited to transactions involving a defined merchant, a set of affiliated companies under common ownership, or a location (or set of locations) such as a specific retailer or retail chain, a mall, a college campus, or a rewards program.*
- *a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game network*
- *Other uses of virtual distributed ledger systems to verify ownership or authenticity in a digital capacity when the virtual currency is not used as a medium of exchange*

Definition of Currency Exchange

The definition of Currency Exchange includes a significant expansion of the previous definition. The breadth of this language can raise questions regarding the application of licensing requirements when foreign currency exchange is an ancillary element of another transaction. For example, where dynamic currency conversion is provided in connection with the processing of a purchase of goods or services from a merchant, it is unclear whether this language would apply. ETA recommends that CSBS consider modifying to exclude transactions where the currency conversion is ancillary to another bona fide transaction.

Adding the language including “advertising” and “soliciting” could present a challenge for certain business models where the service is provided by a bank or licensed entity, but a third party may be involved in the marketing and branding of the product. If the regulated entity performs all the otherwise regulated activities related to handling funds, mere involvement in advertising and solicitation should not be sufficient to trigger licensing. Indeed, most substantive requirements of licensees make no sense in the context of an entity that merely advertises a service performed by another entity. The advertising and solicitation language is a carry-over from overbroad language in the Uniform Money Service Act (“UMSA”) that applies more generally to the marketing of money services products. The CSBS should take this opportunity to suggest a revision to that aspect of the UMSA, which is being read in some states to require licensing of entities on the mere basis of advertisement, while a licensed or exempt entity performs the actual money transmission.

Definition of Money / Monetary Value

ETA believes additional commentary should be included that provides clarity around the concept of “medium of exchange.” The official comment to section 102 of the UMSA provides a useful starting point.

- "A medium of exchange needs to be something that is a widely accepted."
- "The term 'medium of exchange' connotes that the value that is being exchanged be accepted by a community, larger than the two parties to the exchange. ... It is possible, therefore, that a certain type of monetary value of stored value might not constitute a medium of exchange when first introduced, but might evolve into a more commonly accepted form of payment and would become a medium of exchange."

"Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

Model statutory language for virtual currency module:

Add to definition of money transmission:

(4) Conducting virtual currency activity.

Create definition of "conducting virtual currency activity." (see Template 17).

Official Comment:

A medium of exchange is something that is a widely accepted. The term 'medium of exchange' connotes that the value that is being exchanged be accepted by a community, larger than the two parties to the exchange. It is possible, therefore, that a certain type of monetary value of stored value might not constitute a medium of exchange when first introduced, but might evolve into a more commonly accepted form of payment and would become a medium of exchange.

Control

Control events including biographical requirements

ETA supports the FinTech Industry Advisory Panel's recommendations that states 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.

Change of control requirements across states offer a very disparate approach to what type of investment constitutes a control event triggering the requirements for notification to regulators including a formal application or notice. For example, for the definition of control, 29 states and

the District of Columbia use 25% control of outstanding voting shares of an entity as the trigger for control, while, 11 other states use 10%. Nevada, Utah, and New York use 20%, Arizona uses 15%, and Hawaii uses 35%.³ The reality of the current disparate landscape serves as a regulatory hurdle not built for the modern marketplace where startup payment companies often and predictably take on outside investment several times in their early years. These are positive actions with which the state of the segmented regulatory landscape makes expensive and time consuming to comply.

One instance of the requirements which are particularly onerous for licensees is the fingerprinting requirements for currently 27 states. Regardless of whether a person has limited or no contact with the state in question, if the company requires licensure in that state, then all control persons subject to biographical requirements must comply. Control persons, including those with only an investment interest must physically appear to fulfill this requirement, creating a significant burden for investment including time, travel, and cost. To help alleviate this burden, universally accepted fingerprinting done through a central depository like the CSBS's Nationwide Mortgage Licensing System and Registry ("NMLS") could provide a mechanism to lower the barrier to entry for investment in money transmission companies.

Control persons (including Foreign Control Persons)

ETA supports the recommendations made by the FinTech Industry Advisory Panel to consider recognizing the distinction between passive ownership and control of the investment made in licensees when a VC firm is involved. Recognition in this distinction will provide a better result for licensees who may be considering investment by venture capital firms.

ETA also supports the recommendation that states should have mechanisms in place to facilitate the employment of the world's best and brightest in the payments space. That includes foreign control individuals that meet the same bar for integrity that we expect of local control persons and that they may be evaluated consistently and uniformly across the country to ensure that bad actors cannot participate anywhere in the system. Additionally, ETA recommends that states seek to identify relevant providers or the equivalent criminal background checks in foreign countries to establish minimum standards to be met of the provision of financial information for cases where credit checks do not have the same utility as in the states. Ultimately, there needs to be a uniform and accessible approach for vetting foreign control persons.

In Section 604(d), ETA would recommend two changes that would expedite the change of control application process.

- First, the timing for review of a change of control application should begin when a state receives the application, rather than on the date on which it is determined to be

³ Those 25% states include: Alabama, Alaska, Arkansas, California, Colorado, D.C., Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, and Wyoming. 10% states include: Connecticut, Georgia, Mississippi, Minnesota, Nebraska, New Hampshire, Maryland, North Carolina, Rhode Island, Wisconsin, West Virginia (which may also require a spouse).

complete. States often do not provide notice that an application has been determined to be complete.

- Second, the period for states to act on a change of control application should be shortened from 120 days to 60 days. The 120-day period is the same length of time provided to states to act upon *de novo* applications. States should have more familiarity with licensees undergoing a change of control than those submitting *de novo* applications.

In Section 604(e), ETA recommends that it should be clarified that a person exempt from prior approval for a change of control must provide notice of the change of control to the superintendent within a period of time after it occurs.

The change of control process is extremely cumbersome for non-US citizens, especially if the individual does not possess a Social Security number. ETA recommends changes be made to NMLS, and the background check process, to make this easier.

ETA recommends that states eliminate the requirement for a state-level background check, I favor of a single national, or incorporate this process into the NMLS fingerprinting process, so that only one set of fingerprints should be captured per control person.

In the interest of uniformity, states should also adopt a common set of forms required of individual control persons.

Finally, we believe that states should be encouraged to transition towards a framework under which prior approval is not required for a licensed money transmitter to obtain control of another licensed money transmitter in any jurisdiction in which the acquiring entity is a licensee in good standing. The acquisition of control approval process is superfluous in the case of a licensee that has already obtained approval from the applicable banking department to engage in regulated money transmission activity. By enabling this type of transaction to proceed without requiring the full approval process licensees will be able to consummate at least some change of control transactions more efficiently.

Prudential Requirements

Net Worth & Surety Bonding

ETA prefers that states adopt a system of uniform surety bond standards. These would help licensees better monitor volumes and agents to determine when bond increases are needed. Additionally, a bonding and net worth cap are important because once a licensee grows more complex, review of other factors like capital and liquidity are required.

The amount of security required in Section 204(b) represents, in some cases, a significant increase per state. Currently, some states have minimum amounts for security as low as \$25,000 and, in one case, \$10,000.

In Section 204(c), the law should require a licensee to post an electronic surety bond in NMLS, which would eliminate the need for paper surety bonds and increase efficiencies for licensees.

In Section 204(f), the law should limit a superintendent's discretion to increase the amount of security required to situations in which the superintendent has determined that the licensee's financial condition requires such an increase or there is other good cause. Absent such a reason, an increase would not serve any practical purpose and would create a boon to the insurance industry at the expense of licensees.

Permissible Investments

It is imperative that states look to harmonize their definitions of permissible investments with a uniform set of principles. Calculation of permissible investments can be difficult when a licensee holds a diverse base of assets. This may also involve moving funds from one account type to another when it really does not impact the safety and soundness of the company. States should align on what is and is not permissible and the percentages of assets that are allowable. This would prevent licensees from constantly having to change their permissible investment portfolio and focus on maintaining adequate balances which should be a priority over which account the funds are held. For example, some states allow FBO funds and others do not. Some states allow the use of MMF funds invested in U.S. treasuries at 100% while other states have 10 or 25% caps. Alignment amongst the states and standardizing of what caps are necessary would also be more beneficial for states. In the current system, where states may require different types of securities, it is difficult for a state to know that its consumers' funds are in the "correct" type of security required by that state. If there were one uniform standard, a state could more easily confirm that all regulated funds were held according to the requirements, and therefore be more assured that its consumers' funds are properly protected. A universal standard would be more beneficial for both the states and licensees and would allow more time to be spent on higher risk areas.

Extinguishing Liabilities and Double Counting

ETA believes that licensees should have certainty on when liabilities are extinguished and no longer necessitate that permissible investments be held against them.

- In the definition of "Outstanding" in Section 102(16), a payment instrument and the associated liabilities should terminate when payment is made to the payee, a licensed financial institution at which the payee has an account with instruction to credit such account in the amount of the funds, or to an intermediary licensed financial institution with instruction to transmit the funds through a central bank-owned or -operated clearinghouse to a licensed financial institution at which the payee has an account for crediting to such account.
 - The same concept should be added to Section 701(a) with respect to the transmission of money.
- In Section 102(19), a money transmitter's obligations as to "prepaid access" or "stored value" should not apply for purposes of permissible investment calculations if money is

received from a payor for future transmission on behalf of and at the instruction of the payor.

- In Section 702(a)(1), the undefined term “bank” should be replaced with the defined term “insured depository financial institution,” which includes banks, savings associations and credit unions.
- Also in Section 702(a)(1), both debit card and prepaid card receivables should be included in addition to credit card receivables because a money transmitter is guaranteed payment for money transmission services regardless of the type of payment card used.
- In Section 702(a)(2), investments in foreign depository institutions or cooperative associations should be permissible investments so long as these institutions and associations are supervised and regulated in a manner similar to U.S. banks and credit unions.
- In Section 702(b), it should be clarified that the 30 percent cap for the permissible investments applies to the aggregate permissible investments of a licensee.
- Section 702(f) should be deleted because the permissible investments in Sections 702(b) and (d) are already subject to separate, individual caps, and introducing an overall cap would render each type of permissible investment less useful.
- The Model Language should address relationships where one licensee provides disbursement services to another licensee in one of two ways. In many ways, the hand-off of a funds transmission from one licensee to another is similar to providing funds to a bank. The licensee that receives the funds is itself supervised and subject to its own permissible investment and related requirements. Accordingly, the payment of obligation of the licensee that accepts funds from a consumer could be deemed extinguished at the same time the obligation is undertaken by the disbursing licensee. Alternatively, the obligation of the disbursing licensee could be treated as a permissible investment of the sending licensee. At least that way there would not be doubling up of the permissible investments for a single transfer.

Suspension Bridge Alternative for Financial Condition

ETA believes that the Suspension Bridge alternative for safety and soundness presents several significance challenges for implementation. The Suspension Bridge approach is overly complex and would create a significant barrier to entry. While this approach promises an expanded list of permissible investments for a licensee, the cost of access to these new types of permissible investments is very high, as they would not be available until a licensee has a large buffer. The Suspension Bridge could result in overcapitalization to an extent that is not practical and is inefficient. There are few examples of large-scale failures of money services businesses that would justify such a significant change. The enhancements to the traditional Three-Legged Stool method

of ensuring safety and soundness could be sufficient to mitigate any perceived increase in risk of failures of multi-state money services businesses.

Supervision

ETA is appreciative of the many improvements instituted by state regulators in their supervision practices in recent years. These are well received efforts; however, ETA also agrees with the FinTech Industry Advisory Panel that a number of additional measures could be instituted to help make the supervision and examination practices more efficient.

First, state regulators should encourage states to use the NMLS tool and encourage full adoption of NMLS to eliminate duplicative tasks and inefficiencies. While investments in improving the tool are necessary to make this work for all states, for example, so that confidential correspondence with one state will not unnecessarily be disseminated to all states, this type of investment would save all states time and resources in the future. Second, states should prescribe unified reporting formats, time frames, and parameters. Third, states should find ways to use reciprocity across states with similar requirements to help save time, effort, and money for licensees and supervisors. Fourth, states should provide mechanisms and incentives for industry participants to have real-time conversations with regulators to help drive a positive collaboration between regulators and the industry.

Section 201 License Required Language

Consistent with California Financial Code Section 2030, we propose amending (a)(1): **is licensed under this article or exempt from licensure under this article**. We also recommend replacing the language from (a)(2) with: **is an agent of a person licensed or exempt from licensure under this article**.

License Renewal

In Section 206, instead of requiring its own form, ETA recommends that the law should require each state to rely on the most recent quarterly Money Services Business Call Report filed by a licensee as well as any Company (MU1) Filings made in NMLS. Together, these filings should contain the information that a state would need to renew a license. Additionally, permitting licensees to use NMLS would streamline the renewal process.

Unauthorized Activities

ETA believes that Section 502 should be clarified such that the agent of an insured depository financial institution is permitted to provide money services on behalf of an insured depository financial institution without licensing under the Model Law.

Reporting

ETA recommends that Section 603 should require a licensee to file reports regarding changes in business with NMLS rather than with each individual superintendent, which would streamline the renewal process.

Conclusion

ETA encourages states to work together to harmonize requirements for money transmitters and urges all participants in the marketplace including regulators, policymakers, and money transmitters to move towards a regulatory framework that can promote innovation rather than hamper it.

* * *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any issues, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully submitted,



PJ Hoffman,
Director of Regulatory Affairs
Electronic Transactions Association
(202) 677-7417
PJHoffman@electran.org