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October 31, 2019

Attn: MSB Model Law
Conference of State Bank Supervisors
1129 29th Street NW, 9th Floor
Washington, D.C. 20036

RE: MSB Model Law Request for Comments

On October 01, 2019, the Conference of State Bank Supervisors (“CSBS”) issued a press release requesting public comment on the Draft Model Language and seeks feedback on specific questions that will help inform State regulators as they continue to streamline Money Services Business (“MSB”) regulation.

Comment and Feedback to Specific Questions

Executive Summary - Policy & Outstanding Questions

Outstanding Question: How should the states bifurcate the applicability of the model law language and existing law? Options include:

1. The model law language is adopted as an overlay of existing state law, allowing those interested to transition from a current state license to a multistate license.
2. The model law language is inserted into existing state laws as an alternative means of compliance.
3. The model law language replaces existing state laws, but states retain their preexisting regulatory requirements for small or single state companies.

Feedback: Option number two (2) gives applicants and licensees the most flexibility. Some business models may be better suited for pre-existing state by state money transmission laws, while others will be better suited for the new alternative uniform approach. It gives states the freedom to offer two license packages (Single State & MultiState) with pre-set guidelines and the ability to provide superintendent discretion to offer hybrid packages.

Executive Summary - Activity Definitions

Outstanding Question: How should the states ensure consistent interpretation of definitions?

Feedback: To conform with the principle of uniformity and the commitment of Vision 2020, all interpretations should be issued by the Working Group on behalf of all states and the process should be overseen by CSBS. Adoption of interpretations must be a mandate of the MSB Model Law for respective



state regulatory agencies. Otherwise, the MSB Model Law will not evolve into a uniform nationwide standard.

Executive Summary - Exemptions

Comment: One of the FIAP-Identified Exemptions included is that of an “Insured Prepaid Card” because “Consumer funds are insured immediately”.

Should this exemption be instead labeled as the “Insured Prepaid Account” exemption? In practice, many programs provide Prepaid Accounts or Prepaid Access as defined by the Consumer Financial Protection Bureau (“CFPB”) and the Financial Crimes Enforcement Network (“FinCEN”) respectively, and do not have a Prepaid Card as a component of the program. Instead, some programs have prepaid access / stored value that is FDIC insured and do not involve a card, and/or involve a payment instrument that is configured to a Debit Bank Identification Number (“BIN”) instead of a Prepaid BIN. The latter is happening for several reasons:

1. BIN availability within the payment card networks.
2. Revenue models.
3. Acceptance. Many merchants do not accept payments from cards associated with a Prepaid BIN.

Changing the term “Prepaid Card” to “Prepaid Account” throughout the MSB Model Law, and defining the term “Prepaid Account” will provide more consistency between the MSB Model Law uniformity and other federal regulations that apply to the industry.

Executive Summary - Control

Outstanding Question: How can states leverage the multistate licensing agreement to remove repetitive licensing practices that do not address a corresponding risk?

Feedback: The state background check requirement should be applied on a person by person basis and should only be required in those state(s) where the control person has resided according to the information provided in their NMLS MU-2. The NMLS MU-2 disclosure questions, FBI criminal background checks and third-party background checks - when required - provide the necessary information to mitigate relevant risks.

Executive Summary - Financial Condition - Alternative 1: The Three-Legged Stool, Permissible Investments

Comment: While items can be calculated in accordance with GAAP according to the MSB Model Law, the term “Cash” should be changed to “Cash and Equivalents” when it is being presented in the MSB Model Law as either: (i) an allowable permissible investment under the Three-Legged Stool model; or (ii) an allowable treasury item under the Suspension Bridge model. According to GAAP, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value due to changes in interest rates, can be recognized



as cash. Some of these cash equivalents may be A-AAA rated investments that according to the model law are subject to haircuts.

Executive Summary - Financial Condition - Alternative2: The Suspension Bridge, Safeguarding Customer Funds - Prohibition on Commingling

Comment: From a consumer protection perspective, prohibition on commingling of funds should be a standard under any financial condition / safety and soundness model. Prohibition of commingling should be defined and uniform in its interpretation.

Draft Model MSB Law Language by Topic - Activity Definitions

Comment: A definition or a uniform interpretation for the terms “issuing” and “issuer” should be provided in order to clarify (at a national level under the MSB Model Law) whether activity only falls under the regulatory umbrella of an issuing bank only or whether it is expected to be reported and treated as regulatory activity to the states by a licensed “Provider” of Prepaid Access or Prepaid Accounts where a Bank acts as an issuer. Providers of Prepaid Access are regulated MSB’s under FinCEN regulations and Prepaid Accounts are covered accounts under CFPB regulations. An alternative is to make the terms consistent to those used federally and replace the terms “issuing” and “issuer” in the MSB Model Law with the terms “providing” and “provider” to further promote uniformity across MSB regulation, and having a company acting as the Provider of Prepaid Access or Provider of Prepaid Accounts to be subject to the regulation unless available exemptions are applied, specifically the FDIC insurance or bank agent / service provider exemption. Some programs are established with passthrough FDIC insurance, while the program manager may act as the Provider or Prepaid Access or Prepaid Accounts under federal regulation. Further clarity or uniform interpretation on this topic may be appropriate.

Draft Model MSB Law Language by Topic - Control

Comment: For change of control, the turnaround time according to the proposal is 120 days and the per state processing fee is \$2,000.00. There will be situations where a licensee and/or acquiror will need the process expedited, as delays may impair the company’s ability to raise capital and/or ability to maintain business continuity. Should an expedited option subject to an additional fee be made available? Licensees and/or acquirors that need the process expedited will be willing to pay a higher processing fee.

Draft Model MSB Law Language by Topic - Financial Condition, Surety Bonding, “(f) The [superintendent] may increase the amount of security required to a maximum of \$7,000,000.”

Comment: It should be clarified that this is only possible when the licensee’s outstanding money transmission liabilities in a state exceed the dollar amounts presented in the table.

Draft Model MSB Law Language by Topic - Appendix A, Passive Investor Attestation Form



Comment: This is a positive development for venture backed applicants and licensees. An Attestation of No Material Change Form would also be helpful for control persons who must submit personal financials.

Defining a Control Person

Comment: The definition adopted is aligned with the definition and/or practices by some of the stricter states on this topic. This is a positive development if it is adopted by all states to allow for the uniform process to be implemented.

The Suspension Bridge, Safety & Soundness Alternative Proposal

Comment: The ratio based suspension bridge will pose a challenge for certain legacy business models and it will take time for the industry to adapt. However, it is a far better long term option that offers a higher level of consumer protection (e.g. adding restrictions on commingling of funds and providing a buffer to absorb short-term losses and/or illiquidity) while offering a greater level of flexibility to industry entrants. It also provides companies that operate, or seek to operate, in both American and European markets the opportunity to implement similar business practices throughout. Long term, the Suspension Bridge model is the best option for the industry.

Statements in slide 19: (i) The Fintech Industry Advisory Panel has consistently pushed for letters of credit to count for permissible investments; and (ii) Letters of credit are typically heavily conditioned by banks, requiring an “out” to avoid regulatory scrutiny.

Comment (as a personal opinion): While it might appear to disadvantage certain business models, letters of credit should not qualify as “permissible investments” to cover for outstanding member liabilities. Under the suspension bridge model, conforming letters of credit issued by investment grade banks can be an asset type allowed into the calculation of the 5-15% buffer.

Question asked in Slide 19: Is a corporate source of strength a competitive advantage without a significant added amount of consumer protection?

Feedback: Yes. A “corporate source of strength” will not substitute for minimum suspension bridge requirements.

Additional items the MSB Model Law should cover

The following list of items require significant resource allocation for nationwide applicants and licensees and should be considered in the MSB Model Law:

- State regulatory and call reporting: All states should adopt the same schedule and reporting format.
- Annual renewals: Licenses issued under the MSB Model Law should be perpetual. For any states that decline to issue perpetual licenses, a uniform license renewal application should apply.



- Receipts and consumer disclosures: The MSB Model Law should adopt a uniform regulatory requirement. For example, aligning with Electronic Funds Transfer Act (“EFTA”) requirements of CFPB. Adopting a uniform “sample receipt” which aligns with the regulatory requirements of other federal regulatory agencies will make a positive impact even if it heightens the requirements in certain states.
- Innovation: Moving to a digital economy and addressing privacy concerns should be considered. When drafting the MSB Model Law, give consideration to situations where sender and recipient do not know each other and do not desire to share personal information.

End of comments and feedback.

This public comment was submitted by Luis Trujillo, Chief Compliance & Risk Officer at Mezu (NA), Inc.

Should the Working Group have questions or require clarification, I may be contacted at luis.trujillo@mezu.com.