

MEMORANDUM

To: Members, Drafting Committee on Uniform Money Services Business Act

From: UMSBA Cyber Payments Working Group

Date: March 8, 2000

Re: Proposed Changes to UMSBA

The Cyber Payments Working Group was formed to review payment systems and mechanisms that currently are being used on the Internet and those that might be used in the future, and to consider whether these payment systems or mechanisms should be included within the scope of the Uniform Money Services Business Act.

The Working Group is composed of Bion M. Gregory, Chair of the Working Group and Member of the Drafting Committee; Sarah Jane Hughes, Professor of Law at University of Indiana Law School; Nicholas Kyrus, President of the Money Transmitters Regulators Association and Deputy Commissioner, Department of Financial Institutions, Virginia; Ezra Levine, Partner in Howrey & Simon and Counsel to Non Bank Funds Transmitter Group; Joseph Sommer, Counsel, Federal Reserve Bank of New York; and Russell B. Stevenson, Jr., General Counsel, Arbros Communications. Anita Ramasastry, Reporter for the Drafting Committee, serves as the Reporter for the Working Group.

The Working Group met for more than 5 hours by conference calls on February 15, February 29, and March 7, 2000, and exchanged electronic communications. The Group based its discussion on a Memorandum, dated January 5, 2000, and prepared by Anita Ramasastry. A copy of that Memorandum is attached.

The Working Group makes the following recommendations and suggested drafting changes.

A. Recommendations

1. The definition of stored value instrument should be changed to stored value to reflect the fact that the relevant matter is the stored value, which is conceptually distinct from the instrument. For example, multiple issuers might provide different value on a single instrument. Alternatively, value might not be stored on any identifiable physical object, but instead by purely cryptanalytic means. Based on the change of term, the definition of payment instrument and the exclusion for certain stored value providers needs to be amended as well.
2. Online payment companies that hold customer's funds for their own account rather than serve simply as clearing agents should fall within the scope of the Act. By contrast, entities that simply transfer money between parties as clearing agents

should clearly fall outside the scope of a safety and soundness statute. The definition of money transmission should be revised to reflect this distinction.

3. The definition of “money” and related definitions should be revised to reflect the fact that certain payment service providers employ a form of value that is not directly redeemable in money, but nevertheless should be appropriately regulated for safety and soundness. Companies such as e-gold (warehouse receipts for precious metals) or “flooze” would fall into this category.
4. To the extent possible, the revised definitions should not encompass entities that engage in pure barter activities but should encompass an issuer of monetary value that could be redeemed by multiple merchants for goods and services (e.g., “flooze”).
5. To the extent that Internet money transmitters choose to engage in money services online, they should be subject to regulatory jurisdiction if they meet the threshold for “engaging in business” with customers domiciled in a particular state. This need not, however, necessitate changes to the existing draft except for language that would state that an entity was required to have a license to engage in money transmission “in this state”.

B. Suggested Drafting Changes

- **"Check cashing"** means accepting a payment instrument in exchange for **money or monetary value** delivered to the presenter of the instrument at the time and place of presentation without any agreement specifying when the payment instrument will be submitted for collection.
- **"Monetary value"** means a medium of exchange, whether or not redeemable in money. This definition does not include value that is only redeemable by the issuer in the issuer's goods and services or is only redeemable within a limited geographic area.
- **"Money transmission"** means to engage, for compensation more than 10 times in twelve consecutive months, in:
 - (a) the sale or issuance of a payment instrument;
 - (b) the sale or issuance of stored value; or

(c) receiving money or monetary value for transmission, within the United States or to locations outside the United States.

- **"Payment instrument"** means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in the issuer's in goods or services.
- **"Stored-value "** means monetary value that is evidenced in an electronic record.

SECTION 103. EXCLUSIONS. This [Act] does not apply to:

(11) a person that engages in issuing, selling, or redeeming stored-value and that is subject to supervision and regulation by the Federal Reserve, the Federal Deposit Insurance Corporation or the Office of the Comptroller of the Currency.

SECTION 104. LICENSE REQUIRED.

(a) A person may not engage in money transmission **in this state** without:

- (1) a license under [Article] 2; or
- (2) being an authorized delegate of a money transmitter

(b) A person may not engage in check cashing or currency exchange **in this state**

without:

- (1) a license under either [Article] 3 or [Article] 4;
- (2) a license as a money transmitter under [Article] 2; or
- (3) being an authorized delegate of a money transmitter.

(c) A person not licensed under this [Act] or not an authorized delegate of a licensee is engaged in providing money services if the person **in this state** advertises those services, solicits to provide those services, or holds itself out as providing those services , or engages in the business.

ARTICLE 2 LICENSING OF MONEY TRANSMITTERS

SECTION 201. LICENSE REQUIRED.

(a) A person licensed under this [article] or who is an authorized delegate of a person licensed under this [article] may engage in money transmission **in this state**.

(b) A person licensed under this [article] may also engage in check cashing in this **state** without obtaining a separate license under [Article] 3 and currency exchange **in this state** without obtaining a separate license under [Article] 4.

Note: Sections 301 and 401 would also be amended accordingly.