UNIFORM MONEY SERVICES ACT

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ON UNIFORM STATE LAWS

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IN ALL THE STATES

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UNIFORM MONEY SERVICES ACT

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UNIFORM MONEY SERVICES ACT

PREFATORY NOTE

A. GOALS AND OBJECTIVES

The Uniform Money Services Act ("UMSA" or "Act") is a state safety and soundness law that creates licensing provisions for various types of money-services businesses ("MSBs"). While many States have laws that deal with the sale of payment instruments, state regulation of money transmission, check cashers and currency exchangers is extremely varied. Furthermore, only a few States have attempted to create statutory frameworks which tie together the various types of MSBs in a manner that assists regulators and attorneys general in terms of law enforcement and the prevention and detection of money laundering.

The UMSA creates a framework that connects all types of MSBs and sets forth clearly the relationship between a licensee and its sales outlets. Uniformity should create a level playing field with respect to the entry of MSBs into various States. More generally, the uniformity of the reporting and record keeping requirements should enable industry to comply with multiple state requirements in a uniform and cost-effective manner. Uniform licensing, reporting and enforcement provisions for MSBs will serve as a larger deterrent to money laundering than will a host of varying state laws.

In some States, this Act will replace existing licensing laws for money transmitters and possibly check cashers. For the vast majority of States, this Act will provide new provisions for dealing with currency exchangers (which are virtually unregulated at the state level). Different States may decide to adopt different parts of this Act, which is why this Act has separate licensing chapters for the different types of money services.

The UMSA provides a unique opportunity for States to take a consistent approach to the licensing and regulation of stored value and other forms of emerging Internet and electronic payment mechanisms. A uniform and consistent approach will provide less of a barrier to competition and growth in these new sectors. For the majority of States, this Act will provide a new approach to the treatment of stored value and electronic currency at the state level. A handful of States have begun to license and regulate such diverse entities as nonbank stored-value issuers, Internet bill payment services and Internet money transfer services. Rather than create a varied and complex regulatory system for these emerging payment service providers, the UMSA attempts to provide a simple and consistent set of licensing requirements for these new entities.

B. BACKGROUND

1. What is a money-services business?

MSBs are nonbank entities that do not accept deposits or make loans like traditional banks or financial institutions. Rather, they provide alternative mechanisms for persons to make payments or to obtain currency or cash in exchange for payment instruments. MSBs engage in the following types of financial activities:

- money transmission (e.g., wire transfers);
- the sale of payment instruments (e.g., money orders, traveler's checks, and stored-

value);
- check cashing; and
- foreign currency exchange.

MSBs have also been referred to as nonbank financial institutions ("NBFIs") or nondepository providers of financial services ("NDPs"). The so-called "core" customers of MSBs are "unbanked" consumers or persons that do not maintain formal relationships with banks/depository institutions. MSBs also are attractive to a growing range of customers because they offer a wide range of services under one roof (e.g., consumer financial services, travel-related services, postal and packaging services, etc).

An MSB might be a large national company with offices and sales outlets nationwide. An MSB might also be small business located in a corner shop in a local community. MSBs are not banks. They do not accept what are typically conceived of as deposits and do not make loans. As of 1996, there were approximately 158,000 MSB outlets or sales locations that provided financial services involving approximately $200 billion annually throughout the United States.[1] As noted below, the growth of new types of Internet-based payment services means that new business entities are entering the money services sector.

2. Why have various types of MSBs been grouped together in the UMSA?

MSBs have been grouped together conceptually because they: (1) provide an interrelated group of services (often to the "unbanked" population), and (2) are not regulated in the same fashion as depository institutions. Many MSBs offer more than one of the services listed above. For example, a customer may need a range of services. He may take his paycheck to a check casher to have it converted into cash; he then may need to purchase a money order to pay his bills; finally, he may need to send funds to relatives abroad via a wire transfer.

Additionally, the services offered by MSBs have been identified as vulnerable to money laundering in recent years. As depository institutions have come under increased federal and state oversight with respect to money laundering, the federal government has turned its attention to MSBs as a possible means for transporting illegally obtained money or converting large cash proceeds into more easily portable payment instruments.

Most MSBs have a primary function or business activity from which they derive the majority of their revenue (e.g., check cashing or money transmission) but also offer secondary or ancillary services. Frequently, MSBs serve as authorized vendors or sales agents of another MSB as well (with respect to a secondary or ancillary activity). Money transmitters and payment instrument sellers often rely on a distribution network of sales outlets in order to conduct their business. Very often check cashers or foreign currency exchangers will serve as sales representatives for money transmitters. Consequently, check cashers or currency exchangers will offer money transmission services or sell money orders and traveler's checks **solely as contractors** for money transmitters. **For the sake of consistency, the term "authorized delegate" is used in this Act when referring to the sales outlets.**

3. Expansion of the term MSB to include Internet-related payment mechanisms and "cyberpayments"

[1] Coopers & Lybrand, "Non Bank Financial Institutions: A Study of Five Sectors for the Financial Crimes Enforcement Network," Final Report (February 1990), at 2.

To date, several States have taken the position that the transfer of money over the Internet or the use of an electronic payment instrument is the equivalent of money transmission or the sale of physical payment instruments in the brick and mortar world. Internet payment services can be viewed as the equivalent of traditional money services because they are also nondepository providers of financial services. Furthermore, Internet-related payment companies accept customer funds for transmission to third parties in the same way that traditional money services accept funds either in exchange for sale of a payment instrument or for transmission to a third party. Such Internet payment mechanisms include online bill payment services, Internet funds transfer services as well as stored-value issuers (which sell stored value that can be used online or offline).

4. MSBs and money laundering

There has been concern about the role of MSBs with respect to money laundering. As banks have come under heightened regulation and supervision with respect to money laundering, criminals have had to turn to other types of financial institutions in order to transport their money easily and to convert larger amounts of physical currency into smaller more portable payment instruments. Of course, the majority of MSBs are law-abiding businesses that have anti-money laundering compliance programs and who cooperate with regulatory and law enforcement officials to prevent and detect money laundering.

Customers often have different relationships with MSBs than customers do with depository institutions. Typically, a customer has an ongoing relationship with a financial institution (i.e., his or her bank). This enables a bank to know its customer and to identify a pattern or behavior that may suggest illegal activity. By contrast, customers who utilize MSBs may do so because of the greater anonymity the services provide. One does not need to be an existing "customer" of an MSB as is the case with a bank. A customer can repeatedly use different MSBs to transact business.

Additionally, MSBs are not always subject to the same level of licensing, regulation and state oversight as are depository institutions. Money services are provided a bit differently than financial services in depository institutions. Many money transmitters and payment instrument sellers use networks of independent sales outlets (i.e., authorized delegates) as the sites where business is transacted. These sales outlets are operated under contract with a money transmitter and hence are not directly supervised by the money transmitter. The role of the authorized delegates with respect to money laundering has come under heightened scrutiny. State oversight of these delegates varies greatly, especially with respect to law enforcement. This Act attempts to clarify the relationship of a money transmitter licensee with the various delegates with which it contracts. This Act also provides regulators with greater enforcement powers with respect to the delegates.

How do MSBs serve as vehicles for money laundering? In some instances MSBs may assist clients to evade federally mandated reporting requirements with respect to currency transactions in excess of a certain dollar amount. For example, delegates of money transmitters might accept illicit funds from a customer and then transfer the funds overseas in smaller amounts in order to evade federal currency reporting requirements.

Additionally, MSBs may serve as another "layer" in a chain of funds transfer. In other words, a customer may use an MSB in order to mask his or her identity. A currency exchange house, for example, might accept cash from a customer, which it will then deposit in its own bank account at a commercial banking institution. The origin or source of the funds would be "disguised" because the bank will attribute ownership to the currency exchange business.

Similarly, a wire transfer service may accept funds from a customer and wire them through its own commercial bank for a small commission. Again the source of funds can be masked. The use by money launderers of money orders, whether issued by the United States Postal Service or by private companies, and traveler's checks, has also been documented. The ease with which these payment instruments can be redeemed or negotiated may make them attractive tools for money laundering. For example, money orders are negotiable, may be made out to "cash," and operate as a cash substitute.

While new or emerging payment systems may not yet pose a money laundering threat, such technologies pose potential risks. As the Financial Action Task Force (FATF) has noted: "[e]lectronic purse systems would present a laundering risk in the future if their upper limits were to be raised substantially or removed altogether."[2] FATF has also noted that electronic purse systems such as stored-value cards pose increased risks for money laundering when they are utilized for cross border purposes. Electronic currency or cyberpayments also may create risks, if they do not include mechanisms for leaving an audit trail when value is changed from one holder to another. Additionally, FATF has noted that the new payment technologies have features similar to traditional systems of electronic funds transfer: rapidity of execution, dematerialization, and the potential magnitude of the transactions.

5. Existing regulation of MSBs

In 1994, Congress enacted the Money Laundering Suppression Act of 1994 ("MLSA"). The MLSA is Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. No. 103-325, 108 Stat. 2160, 2243). The MLSA recommended that States enact uniform laws to regulate MSBs. The MLSA also called upon the Treasury to promulgate a registration rule for MSBs. The registration requirement is also meant to educate MSBs about their requirements under the federal Bank Secrecy Act ("BSA")[3].

The MLSA urged States to enact uniform laws to "license and regulate" MSBs including "businesses which provide check cashing, currency exchange or money transmitting or remittance services, or issue or redeem money orders, traveler's checks and other similar instruments."[4] Congress specifically requested that the States develop uniform legislation under the auspices of either NCCUSL or the American Law Institute. Section 407 of the MLSA also

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[2] FATF is an "inter-governmental body which develops and promotes policies, both nationally and internationally, to combat money laundering." *<http://www.oecd.org/fatf/>* (visited June 15, 2001). *See also <http://www.oecd.org/fatf/FATDocs_en.htm#Trends>*.

[3] The federal Bank Secrecy Act is a short name for The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970. Title II of the BSA, Records and Reports on Monetary Instruments Transactions is codified at 31 U.S.C. Section 5311 – 5322. *See also* 31 C.F.R. Part 103.11 *et. seq.*

[4] Congress recommended that a proposed Uniform Act would include:

(1) licensing requirements for MSBs;

(2) licensing standards for MSBs that focus on:

(a) the business records and capital adequacy of the MSB; and

(b) the competence and experience of the directors and officers of the MSB;

(3) reporting requirements concerning disclosure of fees for services offered to consumers;

(4) procedures to comply with federal currency transaction reporting requirements; and

(5) criminal penalties for the operation of an MSB business without a license.

called for the States to enact civil or criminal penalties for MSBs who fail to comply with the currency reporting requirements of the federal BSA.

Direct oversight of MSBs occurs at the state level through state licensing laws. State licensing, regulation and oversight of MSBs vary greatly from State to State. Because state legislation focuses on licensing and safety and soundness, the UMSA also focuses on these issues. The sale of payment instruments and money transmission is the most regulated activity with more than 44 States having some form of law that regulates the sale of checks and other payment instruments and/or money transmission. States vary to the extent in which they regulate both payment instrument sellers and money transmission – with some States regulating money transmission, others the sale of payment instruments and still others a combination of the two activities.

Far fewer States regulate the check cashing industry. Approximately 24 States currently have specific check cashing legislation. Check cashers are often licensed but are subject to less oversight than check sellers. This is due, in part, to a perception that check selling poses a greater risk to consumers that check cashing. Check cashers also offer services such as wire transfers or the sale of money orders as authorized delegates. Net worth requirements are typically less stringent for check cashers. These businesses are also examined less frequently (if at all) by the state banking authority or other supervisory body. Currency exchange is the least regulated with approximately 8 States regulating this activity.

The existing state laws vary in terms of detail and the requirements imposed on MSBs, the type of enforcement mechanisms and records available to regulators, and the nature of penalties for non-compliance with relevant state laws. The Money Transmitters Regulators Association ("MTRA"), an association of state regulators that deal with certain aspects of money services, has developed a model legislation outline that lists some of the core elements of a state licensing law. Some of the common elements of existing state law include:

- licensing and registration of MSBs (with more detailed requirements for payment instrument sellers and money transmitters than for check cashers or currency exchangers);
- bonding, collateral, and net worth requirements;
- examination of MSBs;
- record keeping requirements;
- reporting requirements;
- enforcement powers; and
- civil and/or criminal penalties.

C. SCOPE OF THE LICENSING PROVISIONS WITHIN THE UMSA

The Act has two separate licensing regimes. The first is for money transmitters (consisting of money transmitters, payment instrument sellers, and certain types of Internet payment services). The second is for check cashers and currency exchangers. The difference in licensing regimes is due to the fact that check cashers and currency exchangers do not pose the same type of safety and soundness concerns for state regulators as other types of MSBs. This is because check cashers and currency exchangers do not accept funds from consumers for obligations that might remain unpaid. Rather, both check cashers and currency exchangers immediately provide customers with funds. There is no risk that customers may lose their money (unlike the risk posed by purchasing a money order that might not be redeemed). Therefore,

check cashers and currency exchangers are subject to different types of reporting and record-keeping requirements and similarly are exempt from bond and net worth requirements.

1. Money transmission under the UMSA

In order to engage in money transmission, a person must first obtain a license under Article 2 of this Act. Money transmitters that obtain a license pursuant to Article 2 of this Act are also permitted to engage in check cashing and currency exchange without obtaining a separate license for those activities. The licensing requirements for money transmission are greater than for check cashing or currency exchange. Therefore, it is possible for an Article 2 money transmitter to engage in check cashing and currency exchange without obtaining a separate license. This is because the regulator will have obtained sufficient information under Article 2 to satisfy the requirements for check cashing and currency exchange licenses. The reverse is not true. A licensed check casher or currency exchanger **may not** engage in money transmission on its own behalf without first obtaining an Article 2 license.

Entities that serve as authorized delegates (i.e., sales agents) for money transmitters are allowed to engage in money transmission without obtaining a separate money transmission license so long as they do not engage in money transmission outside of the scope of their contract with the principal transmitter. In other words, if the authorized delegate starts to offer money transmission on its own behalf, then it needs to obtain its own license.

2. Check cashing under the UMSA

Normally, a person who wishes to engage in check cashing will have to obtain a license under Article 3 of the Act. There are several exceptions to the licensing requirement. First, check cashers that are authorized delegates of money transmitters are not required to obtain a separate license for check cashing so long as they remain authorized delegates of a money transmitter licensed under Article 2. Some States may opt to amend this requirement so that all check cashers need to be licensed under Article 3. Persons that engage in a small amount of check cashing that is incidental to their primary line of business are also excluded. This is achieved by stating that only persons that receive at least $500 within a 30-day period from check cashing activity, must obtain a license.

Money transmitters who are licensed under Article 2 are also permitted to engage in check cashing and currency exchange without an additional license. As noted above, by satisfying the greater licensing requirements imposed by Article 2, the regulator will have sufficient information about money transmitters to allow them to also engage in currency exchange and check cashing. Similarly, a currency exchanger who has an Article 4 license may also engage in check cashing. The information required of both an Article 3 licensee and an Article 4 licensee is virtually identical. Therefore, one application under either Article 3 or 4 will provide the regulator with sufficient information about the applicant.

3. Currency exchange under the UMSA

Normally, a person who wishes to engage in currency exchange will have to obtain a license under Article 4 of the Act. There are several exceptions to the licensing requirement. First, currency exchangers that are authorized delegates of money transmitters are not required to obtain a separate license for currency exchange so long as they remain authorized delegates of a money transmitter licensed under Article 2. Some States may opt to amend this requirement so that all currency exchangers need to be licensed under Article 4. Persons that engage in a small

amount of currency exchange, which is incidental to their primary line of business, are also excluded. This is achieved by requiring only those persons that receive revenues equal or greater than five percent of total revenues from check cashing to obtain an Article 4 license.

Money transmitters who are licensed under Article 2 are also permitted to engage in check cashing and currency exchange without an additional license. As noted above, by satisfying the greater requirements imposed by Article 2, the regulator will have sufficient information about money transmitters to allow them to also engage in currency exchange and check cashing. Similarly, a check casher who has an Article 3 license may also engage in currency exchange. The information required of both an Article 3 licensee and an Article 4 licensee is virtually identical. Therefore, one application under either Article 3 or 4 will provide the regulator with sufficient information about the applicant.

4. Specific features of the UMSA licensing requirements

The UMSA does not deal with issues such as consumer rate and fee regulation for check cashing. The scope of this Act pertains solely to safety and soundness as that relates to the prevention of money laundering. Nonetheless, the UMSA is not meant to replace or supplant existing consumer protection laws relating to check cashing. Instead, **the UMSA is meant to coexist with existing state consumer protection laws**.

Additionally, the licensing provisions for check cashing are separable to the extent that States have existing laws that combine licensing provisions with consumer protection provisions. As noted above, the UMSA requires only those check cashers that are not authorized delegates to become licensed. Relatively few check cashers offer check cashing exclusively without offering an ancillary service of money transmission on behalf of another licensed money transmitter. Thus, the majority of check cashers will be authorized delegates under this Act and subject to certain enforcement measures rather than a full fledged licensing scheme.

The UMSA offers States some flexibility with respect to their regulatory and supervisory practices. For example, the requirements that a licensee file an annual renewal form have been bracketed. This is because some States examine a licensee annually rather than require the filing of an annual report. Other States by contrast, prefer to utilize annual reports in lieu of examinations. **States thus have a menu of options presented within the uniform framework of this Act.** Similarly, States will retain discretion with respect to important issues such as licensing fees and bonding and net worth requirements.

D. INTERNET PAYMENT MECHANISMS AND STORED VALUE

T**he UMSA takes the approach that certain cyberpayment mechanisms pose the same safety and soundness concerns as their brick and mortar counterparts.** The UMSA incorporates certain Internet payment mechanisms into the statute's licensing framework. However, the Act does not include new or different licensing regimes for such payment mechanisms. The cyberpayment licensing requirements set forth in this Act are not complex and cumbersome. Rather, they are simple and meant to apply the existing licensing frameworks to new technologies. Existing definitions have been expanded **slightly** to take into account the fact that (1) Internet payment mechanisms and are in many respects the functional equivalent of traditional money transmission, and (2) that the sale of stored value is in many respects analogous to the sale of traditional payment instruments such as money orders.

This Act expands upon our traditional concept of "money". With the advent of the

Internet and new microchip technology it is possible to exchange value that is not "money" in the traditional sense. The UMSA consequently provides a new definition of "monetary value". Like money, monetary value can be transmitted. Similarly issuers need not sell a physical tangible payment instrument in order to issue value to consumers. It is possible for consumers to purchase redeemable value that may only exist in a computerized format. Hence, this Act contains a definition of stored value that is distinct from the traditional payment instrument. Listed below are examples of some of the new types of payment mechanisms that potentially fall within the scope of the Act.

1. Stored value

Stored-value products are a recent innovation in payment systems technology. Stored-value products possess certain basic characteristics. According to the Federal Reserve, stored-value products share three attributes: "(1) [a] card or other device electronically stores or provides access to a specified amount of funds selected by the holder of the device and available for making payments to others; (2) the device is the only means of routine access to the funds; and (3) the issuer does not record the funds associated with the device as an account in the name of (or credited to) the holder."[5]

Stored-value cards are also known as "smart" cards, prepaid cards, or value-added cards. These cards record a balance on a computer chip that is debited at a point-of-sale terminal when a consumer or individual makes a purchase. Typically, a consumer will pay a bank or other provider money in exchange for a card that is loaded with value. The value can evidence the provider's promise (typically to pay money), or can evidence the promise of a trustworthy third party. The consumer uses the card rather than paper currency to purchase goods and services. Merchants who accept smart cards can typically transfer the value of accumulated credits to their bank accounts. A smart card is not typically used for transactions over the Internet, although this may be changing with the advent of new credit-card products that include a stored-value component. Several new services, however, provide for remote payments to be made by electronic currency that is stored on the hard drive of a person's computer.

Several States have begun to include stored value within their existing money transmission law. Connecticut, for example, has defined stored value as a form of "electronic payment instrument."[6] This term would also include electronic traveler's checks. West Virginia defines "currency transmission" or "money transmission" to include "the transmission of funds through the issuance and sale of stored-value cards which are intended for general acceptance and use in commercial or consumer transactions."[7] Other States, such as Texas, have included stored-value providers by interpretation. The Texas Banking Department has explained, for example, its rationale for requiring nonbank issuers of open system stored-value cards to obtain a license under the Texas Sale of Checks Act:

> Stored-value cards issued by nonbanks for use in "open" systems (i.e., to purchase goods and services offered by vendors other than the issuer of the card) will generally be subject to regulation under the Sale of Checks Act because the nonbank issuer is holding the funds of third parties. Consumers are relying on the nonbank issuer that the card will be honored when presented by the purchaser of goods and

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[5] Electronic Funds Transfers (Regulation E), 61 Fed. Reg. 19, 696 (1996).
[6] CONN. GEN. STAT. ANN. Section 36a-596 (West Supp. 2001). Connecticut defines electronic payment instrument as stored value, not the reverse.
[7] W. VA. CODE Section 32A-2-1(6) (West 1999).

services at diverse locations.[8]

Oregon is another State that has included a provision for the regulation of stored value. Section 2 of the Sale of Checks Act includes a definition of electronic instrument which "means a card or other tangible object . . . for the storage of information, that is prefunded and for which the value is decrement upon each use."[9] The term excludes "a card or other tangible object that is redeemable by the issuer in the issuer's goods and services."[10]

2. E-money and Internet payment mechanisms

New types of cyberpayments or Internet payment mechanisms have been referred to by regulators and commentators by a host of different names including electronic cash, digital cash, electronic currency, and Internet or on-line scrip ("E-money"). E-money refers to money or a money substitute that is transformed into information stored on a computer chip or a personal computer so that it can be transferred over information systems such as the Internet. Technology permits the transmission of electronic value over networks that link personal computers (PCs) and the storage of electronic cash on the hard drives of personal computers.

The first type is through use of a traditional payment mechanism such as Automated Clearing House ("ACH") or a credit card. The Internet serves as a mode of communication only. The second type of Internet payment mechanisms involves "E-money." One type of Internet-based E-money system has been described as a token or notational system. These computer-based systems involve a customer purchasing electronic tokens, which serve as cash substitutes for transactions over the Internet. With this type of system, "money" or "value" is purchased from an issuer (who may be a bank or a nonbank). The value is then stored in a digital form on a consumer's personal computer and the notational value is transferred over the Internet.

The "coin" is merely a notational series of numbers or other symbols that are transmitted over the Internet to a merchant. The merchant must then redeem the "coin" with an issuer that will verify that the coin has not been spent previously. The issuer of the Internet E-money is obligated to redeem these payments when received from the merchant. For example, Company A issues a certain type of E-money – Internet "cash" cards with unique personal identification numbers ("PINs"). These cash cards are purchased from vendors who are sales representatives. A consumer uses his PIN when transacting with a merchant on-line.

Commentators have noted that state money transmission statutes may, by implication, include or regulate Internet payment systems such as the notational systems described above. Others have suggested that in the future might be a source of prudential regulation for nonbank entities engaged in this activity. For example, the United States Consumer Electronic Payments Task Force has noted:

> Many commentators have informed the Task Force that they were concerned that e-money issuers would become insolvent, and that consumers would not be informed of their rights in the event of such an insolvency. ****

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[8] See Remarks of Catherine A. Ghiglieri, Texas Department of Banking to the PULSE EFT Assoc. Member Conference (October 11, 1996) (visited June 15, 2001) located at <*http://www.banking.state.tx.us/exec/speech10a.htm*>.

[9] OR. REV. STAT. Section 717.200(7) (West 1999).

[10] *Id.*

> Other nonbank issuers may be subject to state regulatory oversight; however, the extent of this supervision is unclear. Clarification by state regulators and legislatures of the applicability of their laws to e-money could be beneficial.[11]

In addition to token or notational systems, there are also "account-based" E-money systems. Account-based systems involve a consumer purchasing "E-money" by debiting an existing bank account or using a credit card to buy "coins". The value is then stored on the issuer's records and the consumer might access the records. The merchant who accepts the E-money ultimately redeems the account-based E-money with a bank or credit card company.

3. Internet scrip

Stored value cards, token or notational systems as well as account-based systems may all involve exchange of value that is not redeemable in money. The term "scrip" has been used to refer to value that may be exchanged over the Internet but which may not be redeemable for money. Scrip is more analogous to coupons or bonus points that can be exchanged by a consumer for goods or services but have no cash redemption value. Scrip can be used by merchants to sell access to value-added web pages on a per-access basis or a subscription basis. They can also use scrip to provide promotional incentives to users. Scrip can represent any form of currency, points in a frequent user program, access rights, etc.

At present, there are new micropayments systems being developed that allow customers to either earn reward points on line or to purchase points or "value" that is redeemable for goods and services rather than for money. One such example is Company B, which issues its own gift "money." Company B issues what are essentially online gift certificates. A customer opens an account and purchases a certain amount of Company B's reward "dollars." Then, the person can send the dollars to anyone with an email address (along with a card). The recipient, upon receipt, opens an account and then can spend the gift "dollars" at any participating store that accepts the "dollars." What is not apparent from the website is whether Company B's "dollars" are redeemable in cash or merely in goods and services.

Another company, Company C, offers online points that are billed as web "currency." Company C's "points" are units that consumers may earn when visiting various websites, filling out surveys or engaging in other online activities for which merchants seek to reward consumers. The points accrue and are stored in an online "account" that a customer may access to redeem his or her "points" for various goods and services. The points are not redeemable for money, and the company states that it may discontinue the service at any point. Company C is offering an account-based payment system that issues non-redeemable points.

4. Internet funds transfer

New payment services offered by banks and nonbanks will transfer money over the Internet. One such service, offered by Company D, will transfer money over the Internet to anyone who has an email address. Consumers who wish to send money via the Internet must first establish an online account with Company D. A consumer can fund his or her account with payments from a credit card, a debit from his bank account, or by sending in a money order or check. Company D holds the consumer's money until it receives a request to transfer the funds to a recipient. A transfer is effectuated by sending an email to the recipient. The recipient then has

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[11] United States Consumer Electronic Payments Task Force, 44 (April 1998) (visited June 15, 2001) <*http://www.occ.treas.gov/emoney/ceptfpap.htm*>.

several options for receiving payment ranging from establishing his or her own online account with Company D, having the funds transferred to an existing bank account, or, if the customer has no bank account, receiving a check from Company D.

5. Gold/precious metals transfer and payment

Somewhat similar to an Internet funds transfer system is a system whereby customers transfer precious metal via accounts on the Internet. For example, with Company E, rather than having an "account" with E-money denominated in U.S. dollars, a customer sets up an online account and buys gold, silver, platinum, or palladium. The customer then has "x" grams or troy ounces of the precious metal. One can only send money to or purchase items from an existing customer of Company E. The advantage, Company E claims, is the stability of precious metals relative to currency. Customers can utilize their precious metal accounts to buy goods and services, to receive payment from third parties, and to pay bills.

6. Internet bill payment services

Banks and nonbank have began to offer Internet bill payment services. For a fee, electronic bill payment services pay certain bills for consumers, after receiving authorization from a consumer. The customer accesses the service via the Internet. Bill payments may subsequently be made for the consumer electronically. Typically, the service provider will use an automated clearinghouse (ACH) transfer to effectuate payment. However, if the designated payee does not accept electronic payment, the bill-payment service will print and mail a check on behalf of its customer. When a nonbank service is involved, the nonbank has no contractual relationship with the consumer's bank. Instead, the consumer's bank will transfer money to the bill-payment service company. The bill-payment service will, in turn, deposit the funds into its own bank account. The bill-payment service will then issue a payment instrument payable on its own account to the designated payee.

The Texas Department of Banking has required at least one bill-payment service to obtain a license under its Sale of Checks Act.[12] Texas made this decision based on the fact that the bill-payment service was holding the money of consumers in its own account and issuing payment instruments to merchants payable on the same account. The Texas Sale of Checks Act defines a check to include "an instrument for the transmission or payment of money, including a draft, traveler's check, or money order. The term also includes an instrument for the transmission or payment of money in which the purchaser or remitter of the instrument appoints or purports to appoint the seller as its agent for the receipt, transmission, or handling of money, regardless of who signs the instrument."[13] California has also required an Internet bill-payment service to obtain a license under its relevant statute.[14] By implication, Internet bill-payment services may already be included within various sale of payment instruments or money transmission statutes.

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[12] TEX. FIN. CODE ANN. Section 152.001-152.508 (West Supp. 2001).
[13] TEX. FIN. CODE ANN. Section 152.002(1) (West Supp. 2001).
[14] State of California, Department of Financial Institutions (visited June 15, 2001) <*http://www.sbd.ca.gov/*>.

UNIFORM MONEY SERVICES ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Money Services Act.

SECTION 102. DEFINITIONS. In this [Act]:

(1) "Applicant" means a person that files an application for a license under this [Act].

(2) "Authorized delegate" means a person a licensee designates to provide money services on behalf of the licensee.

(3) "Bank" means an institution organized under federal or state law which:

(A) accepts demand deposits or deposits that the depositor may use for payment to third parties and engages in the business of making commercial loans; or (B) engages in credit card operations and maintains only one office that accepts deposits, does not accept demand deposits or deposits that the depositor may use for payments to third parties, does not accept a savings or time deposit less than $100,000, and does not engage in the business of making commercial loans.

(4) "Check cashing" means receiving compensation for taking payment instruments or stored value, other than traveler's checks, in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value at the time and place of delivery without an agreement specifying when the person taking the payment instrument will present it for collection.

(5) "Control" means:

(A) ownership of, or the power to vote, directly or indirectly, at least 25 percent of a class of voting securities or voting interests of a licensee or person in control of a licensee;

(B) power to elect a majority of executive officers, managers, directors, trustees, or

other persons exercising managerial authority of a licensee or person in control of a licensee; or

(C) the power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(6) “Currency exchange” means receipt of revenues from the exchange of money of one government for money of another government.

(7) “Executive officer” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(8) “Licensee” means a person licensed under this [Act].

(9) “Limited station” means private premises where a check casher is authorized to engage in check cashing solely for the employees of the particular employer or group of employers specified in the check casher's license application.

(10) “Mobile location” means a vehicle or a movable facility where check cashing occurs.

(11) “Monetary value” means a medium of exchange, whether or not redeemable in money.

(12) “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.

(13) “Money services” means money transmission, check cashing, or currency exchange.

(14) “Money transmission” means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission. The term does not include the provision solely of delivery, online or telecommunications services, or network access.

(15) “Outstanding,” with respect to a payment instrument, means issued or sold by or for the licensee and reported as sold but not yet paid by or for the licensee.

(16) “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 goods or services.

(17) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(18) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(19) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this State.

(20) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Stored value" means monetary value that is evidenced by an electronic record.

(22) "[Superintendent]" means the [state superintendent of banks or other senior state regulator].

(23) "Unsafe or unsound practice" means a practice or conduct by a person licensed to engage in money transmission or an authorized delegate of such a person which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the interests of its customers.

Comment

1. "**Authorized delegate**." The ability of a state superintendent to regulate the conduct of authorized delegates is of vital importance to the prevention and detection of money laundering. It is important, therefore, to clearly define the outlets through which a money-services business ("MSB"), primarily a money transmitter, conducts its business. The term "authorized delegate" has been used rather than "agent" to avoid confusion as to the nature of the legal relationship between a money transmitter and the sales outlets through which it transacts business. Sales outlets provide money transmission on behalf of a money transmitter on a contractual basis.

Although the delegates are not defined as "agents" of a money transmitter, there are circumstances under which the superintendent may take enforcement action against a licensed money transmitter on the basis of actions of its delegates. This Act does impose some statutory obligations on the licensee with respect to the conduct of its delegates. Additionally, the superintendent has the authority to take action directly against the delegate. *See* Section 801.

2. **"Bank."** The definition of bank is based on the definition of bank contained in the Federal Reserve Act (12 U.S.C. Section 221 (Supp. V. 1999)). It does not include unlicensed firms that engage in money services and make commercial loans, because the payment obligations of the MSB are not "deposits" in the traditional banking sense of the term. It is intended to include partnerships regulated as banks, even though they are not technically "organized" under United States law. The definition also includes nonbank banks such as credit card banks that do not engage in traditional deposit taking and commercial lending activity. Credit card banks are insured financial institutions with the primary business of making credit card loans. Credit card banks are chartered as commercial banks, but their activities are limited to credit card operations by the federal Competitive Equality Banking Act of 1987 (Pub. L. No. 100-86, 101 Stat. 552).

3. "**Check cashing**." The definition of check cashing builds on traditional definitions of check cashing to include the exchange of a payment instrument not only for money but also for other forms of value including stored value or another payment instrument. In order to be engaged in the business of check cashing, an entity must receive some sort of fee or service charge as compensation for the check cashing service provided. The definition of "check cashing" specifically excludes entities that provide deferred deposit services for a fee. Such services are often referred to as "payday loans" whereby a customer receives money in exchange for a check that will be submitted for collection at a specified time in the **future**. The check is often to be presented at the time of the customer's next pay period (hence the reference to "payday"). It is believed that such services do not constitute check cashing but are rather a related service often regulated by separate statute. This Act, therefore, is not meant to repeal or replace other legislation that deals with payday lending.

Article 3 of this Act sets forth the licensing requirements for check cashers. Section 301 excludes businesses that may offer a small amount of check-cashing services incidental to their primary business from licensing requirements. Hotels, for example, which cash checks as a courtesy for their guests, would likely be excluded from licensing. The exemption reflects an aggregate level of fees over a 30-day period, rather than relying on a daily level of business. In order for a business to qualify as an entity engaged in check cashing, it would have to cash more than $16,666 worth of checks within a 30-day period in order to receive revenues of more than $500. This figure was derived using a three-percent fee for each check cashed (which is the average fee charged within the check cashing industry). On an annual basis, a business would be able to cash up to $200,000 worth of checks without having to obtain a license.

4. "**Control**." The definition of control is derived from the definition contained in the federal Bank Holding Company Act, 12 U.S.C. Section 1842(a)(2) (Supp. V 1999) and Federal Reserve Regulation Y, 12 C.F.R. Section 225.2(e)(1) (2001). The definition is flexible and allows for a broader interpretation of the concept of control. Subpart (c), which refers to the power to exercise, directly or indirectly, a controlling influence over the management of policies of a licensee or a person in control of the licensee, is a broader more flexible category that allows the superintendent to determine whether a person exercises control, albeit not by pure ownership of shares. The notion of controlling influence is also derived from the Federal Bank Holding Company Act and Regulation Y, cited above.

5. "**Currency Exchange**" Section 401 excludes businesses that may offer a small amount of currency exchange incidental to their primary business, from licensing requirements. An exemption is provided for persons that receive revenues less than or equal to five percent of total revenues.

6. "**Limited station**." This definition refers to sites where check-cashing services are solely offered to employees of one or several employers. Specifically, employers have arranged with a check casher to provide check cashing in connection with payroll checks. It was necessary to define this type of location because check casher licensees are required to list all of their locations (including limited stations) on their license applications and their renewal reports.

7. "**Mobile location**." Mobile locations are movable locations (normally motor vehicles such as vans) from which check cashing or currency exchange services are provided to members of the public. This term is defined because check casher and currency exchange licensees are required to report these locations on their license applications and subsequent renewal reports.

8. "**Money services**." The term money services is used to define a group of entities that engage in any of the following activities: money transmission, sale of payment instruments (i.e., money orders, traveler's checks or stored value), check cashing and currency exchange. The definition focuses on the activities engaged in rather than the entity that engages in these activities. This Act incorporates an activity-based definition because different money services may engage in one or more of these money services activities. The term originally was used by the Financial Crimes Enforcement Network of the United States Department of Treasury in its proposed rulemaking concerning money-services businesses. *See, e.g.,* 62 Fed. Reg. 27,890 (1997).

9. "**Money transmission**." Money transmission subsumes several activities or functions: the transmission of funds as well as the sale or issuance of payment instruments and the sale or issuance of stored value. Stored value, as defined in this Act, is treated similarly to payment instruments, although some kinds of stored value are irredeemable in money. The grouping of funds transmission and the sale or issuance of payment instruments and stored value is consistent with existing state practice.

Internet payment services that hold customer's funds or monetary value for their own account rather than serve simply as clearing agents should fall within the definition of money transmission. By contrast, entities that simply transfer money between parties as clearing agents should clearly fall outside the scope of a safety and soundness statute. Similarly, the definition excludes entities that solely provide delivery services (e.g., courier or package delivery services) and entities that act as mere conduits for the transmission of data such as Internet service providers.

10. "**Monetary value**." The definition of "money" has been expanded to reflect the fact that certain payment service providers employ a form of value that is not directly redeemable in money, but nevertheless (1) serves as a medium of exchange and (2) places the customer at risk of the provider's insolvency while the medium is outstanding. The same safety and soundness issues pertinent to redeemable forms of value apply to these irredeemable forms of value. Consequently, a new definition of "monetary value" has been included in this Act.

Monetary value is defined as "a medium of exchange, whether or not redeemable in money." 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. Hence, bilateral units of account, such as university payment cards, would not constitute "monetary value" for purposes of this Act. A university payment card that was also accepted by a few local pizzerias could be at the borderline. A university payment card accepted by most local merchants would likely be "monetary value." The definition of monetary value, to some extent, must remain flexible to allow regulators to deal with emerging forms of monetary value and Internet "scrip" on a case-by-case basis. 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.

The European Union has taken a similar approach through its electronic money directive to the regulation of electronic money. The European Union *Directive on the Taking up, Pursuit of and Prudential Supervision of the Business of Electronic Money Institutions* ("E-money Directive") defines electronic money as "monetary value as represented by a claim on the issuer which is: (i) stored on an electronic device; (ii) issued on receipt of funds of an amount not less in value than the monetary value issued; [and] (iii) accepted as means of payment by undertakings other than the issuer." The E-money Directive, therefore, also recognizes the concept of monetary value.

Furthermore, the E-money Directive ties its licensing and safety and soundness requirements to monetary value that constitutes a medium of exchange. Article 8 of the E-money Directive allows member states of the European Union to provide a waiver for electronic money institutions where: "electronic money issued by the institution is accepted as payment only by a limited number of undertakings, which can be clearly distinguished by: (i) their location in the same premises or other limited local area; or (ii) their close financial or business relationship with the issuing institution, such as a common marketing or distribution scheme." In effect, the E-money directive allows regulators to exclude from regulation electronic money schemes that do not constitute a medium of exchange. *See* Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit of and prudential supervision of the business of electronic money institutions *Official Journal of the European Communities L 275, 27/10/2000 p. 0039 – 0043.*

The term "monetary value" is defined in such a manner as to exclude pure barter or activities where the "value" that is being exchanged is used for exchange with a single issuer or merchant or within a small geographic radius. Of course, regulators will have discretion with respect to which entities are engaged in the transmission or issuance of monetary value. Some States, such as Texas, for example, require the issuer of mall gift certificates that can be redeemed at multiple issuers to become licensed.[15]

With Internet payments, the regulators will also have to make the same type of determination as to when a certain type of monetary value has become widely accepted as to constitute a medium of exchange. For Internet payment systems that involve Internet scrip or points (e.g., frequent flier or bonus points), regulators will need to grapple with how widely circulating such points are, whether they are redeemable, and whether they can be used to purchase or acquire a wide range or products and services. Certain types of bonus points are now donated to charities, for example, who can then sell them or auction them to individuals for a profit. The wider the use and the greater the circulation of a certain type of value, the more it replicates a medium of exchange.

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[15] Opinion 98-11 (February 19, 1998) of the Texas State Banking Commissioner (visited June 15, 2001) <*http://www.banking.state.tx.us/legal/opinions/98-11.htm*>.

There has been some question, however, as to whether certain types of local or community based "currencies" are included within the scope of the Act. One example of this type of local currency is Ithaca hours, which are described as "local currency, a legal form of paper money which can only be used in the Ithaca area." The Ithaca Hours website notes that "this regional boundary helps keep local wealth recirculating within the community." *See* <*http://www.ithacahours.org*> (last visited June 15, 2001).

The local currency, Ithaca Hours, was introduced to keep local money circulating locally, to encourage local farmers and businesses, and to provide an income for local people. One Ithaca "hour" is worth one hour of basic labor or $10. Hours are accepted by a range of local businesses and by financial institutions. Local currency programs are sometimes based on earning the local "dollars" in exchange for labor or service. Whether local currencies constitute media of exchange is a question that is left to the regulators. The limited geographic reach or circulation of the currency is one reason why regulators might choose to exempt such schemes from licensing under this Act. Some concern has been raised about the ability of such community based schemes to comply with certain prudential requirements, to post bonds and maintain permissible investments. State regulators, therefore, might consider whether certain local currency programs should be exempted from the scope of the Act.

11. "**Payment instrument**." The definition of payment instrument excludes any reference to stored value. This Act provides a separate definition of stored value that is not tied to a tangible instrument. Because stored value is no longer related to a physical instrument, it is defined separately.

The definition of payment instrument specifically excludes credit cards, vouchers, letters of credit, or instruments that are redeemable by the issuer in goods and services. These excluded payment mechanisms are regulated under separate legislative provisions. Additionally, coupons and gift vouchers are excluded as they are considered instruments "redeemable by the issuer in goods and services."

12. "**Stored value**." The definition of a stored-value instrument is a simplified definition of stored value because the instrument in which the stored value is embedded is not conceptually relevant. Any definition that conflates the two ideas may lead to confusion. Multiple issuers of stored value might provide different value on a single instrument. For example, a fast food restaurant, a department store and a bank might all issue different forms of stored value that can be loaded onto a single card but redeemed at several different issuers. The instrument is unitary, but the stored value is not. Alternatively, value might not be stored on any identifiable physical object, but instead stored by purely cryptanalytic means.

Because monetary value is defined as "a medium of exchange, whether or not redeemable in money," only stored value that consists of a **medium of exchange** evidenced in electronic record would qualify as stored value for purposes of regulation. A medium of exchange needs to be something that is a widely accepted. Closed-end systems, as mere bilateral units of account, therefore would be excluded from regulation.

13. "**Unsafe or unsound practice.**" Under this Act, the superintendent possesses the authority to take action against a money transmitter or its authorized delegates in the event that the money transmitter engages in an unsafe or unsound practice. The term unsafe and unsound is a general concept that has been used in state and federal banking and financial law. Unsafe and unsound practices are ones that may pose financial risk to a financial institution. This Act provides a definition of unsafe and unsound that applies solely to money transmitters. Money

transmitters that engage in unsafe or unsound activity may leave consumers with unredeemed money orders or uncollected funds transfers. The superintendent is able to take protective action in the event that a money transmitter engages in an unsafe or unsound activity. This prevents the dissipation of licensee assets that should be used to fulfill obligations to customers.

Unsafe and unsound practices relate solely to the risk of financial loss posed by this Actions of the money transmitter. Currency exchangers and check cashers do not engage in an unsafe or unsound practice with respect to their check cashing or currency exchange activity because they provide their customers with funds immediately. To the extent that a check casher or currency exchanger dissipates its assets or becomes insolvent, it will typically have to cease business. However, this will not directly harm consumers as they will not be left with unpaid obligations. Furthermore, if a check casher or currency exchanger engages in an unsafe activity with respect to money transmission, this will not have any direct impact on or harm to individual consumers. This is because the check casher or currency exchanger may only conduct money transmission as an authorized delegate. The money transmitter will remain liable to the holders of its money orders, even if an authorized delegate sells them. Because the money transmitter bears ultimate financial responsibility to customers, check cashers and currency exchangers are not considered to engage in unsafe or unsound practices.

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

(1) the United States or a department, agency, or instrumentality thereof;

(2) money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service;

(3) a state, county, city, or any other governmental agency or governmental subdivision of a State;

(4) a bank, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Corporation Act [12 U.S.C. Section 1861-1867 (Supp. V 1999)], or corporation organized under the Edge Act [12 U.S.C. Section 611-633 (1994 & Supp. V 1999)] under the laws of a State or the United States if it does not issue, sell, or provide payment instruments or stored value through an authorized delegate that is not such a person;

(5) electronic funds transfer of governmental benefits for a federal, state, [county,] or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or a State or governmental subdivision, agency, or instrumentality thereof;

(6) a board of trade designated as a contract market under the federal Commodity Exchange Act [7 U.S.C. Section 1-25 (1994)] or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board;

(7) a registered futures commission merchant under the federal commodities laws to the extent of its operation as such a merchant;

(8) a person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from such registration granted under the federal securities laws to the extent of its operation as such a provider;

(9) an operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers; or

(10) a person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

Comment

1. Exemptions are provided liberally to reduce the cost of this Act to a minimum both in terms of administration and in terms of regulation. This list should be modified to match a State's existing regulatory categories and terminology as appropriate. The entities listed in paragraphs (1) through (5) are exclusions normally included in relevant state licensing statutes for money transmitters.

2. Many of the new exclusions apply to organizations that provide clearing and settlement services (which do involve the transmission of money). Clearing and settlement often involves the transfer of funds from one participating financial institution's bank account to another (e.g., the debiting and crediting of accounts of various participants in a trading system or credit card consortium). The clearing and settlement organizations listed in the exemptions are already subject to supervision by other federal or state regulators.

3. The exclusion involving boards of trade excludes regulated entities that are already subject to regulation by the U.S. Securities and Exchange Commission (“SEC”) and the U.S. Commodities and Futures Trading Commission.

4. The proposed exclusion for broker-dealers arises from the fact that broker-dealers are already subject to federal Bank Secrecy Act reporting requirements with respect to currency reporting requirements and also suspicious activity reports and are highly regulated by the SEC.

ARTICLE 2

MONEY TRANSMISSION LICENSES

SECTION 201. LICENSE REQUIRED.

(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

(1) is licensed under this [article]; or

(2) is an authorized delegate of a person licensed under this [article].

(b) A license under this [article] is not transferable or assignable.

Comment

1. In order to engage in money transmission, a person must first obtain a license under Article 2 of this Act. Money transmitters that obtain a licensing pursuant to Article 2 of this Act are also permitted to engage in check cashing and currency exchange without obtaining another license. The licensing requirements for money transmission are greater than for check cashing or currency exchange. Therefore, it is possible for an Article 2 money transmitter to engage in check cashing and currency exchange without obtaining a separate license. This is because the regulator will have obtained sufficient information under Article 2 to satisfy the requirements for check cashing and currency exchange licenses. The reverse is not true. A licensed check casher or currency exchange **may not** engage in money transmission on its own behalf without first obtaining an Article 2 license.

2. Entities that serve as authorized delegates (i.e., sales agents) for money transmitters are allowed to engage in money transmission without obtaining a separate money transmission license so long as they do not engage in money transmission outside of the scope of their contract with the principal transmitter. In other words, if the authorized delegate starts to offer money transmission on its own behalf, then it need to obtain its own money transmission license.

3. The licensing requirements refer to money transmission that takes place within a particular State. What constitutes "engaging in the business" within a particular State is typically defined through case law relating to that State. For businesses that transact over the Internet, factors such as whether an entity targets customers from a State, receives money for transmission will be relevant in determining whether an entity is engaged in the business of money transmission. Different courts have developed and applied new criteria for what constitutes a sufficient jurisdictional nexus for an Internet-based business. Common factors have included whether a website targets a specific jurisdiction and/or whether a person within a particular jurisdiction transacts with the merchant. For a useful overview of Internet jurisdictional issues *see* American Bar Association Section of Business Law Global Cyberspace Jurisdiction Project Cyberspace Law Committee, Section of *Achieving Legal and Business Order in Cyberspace: A Report on Global Jurisdiction Issues Created by the Internet.* <http://www.abanet.org/buslaw/cyber/initiatives/jurisdiction.html> (visited June15, 2001).

SECTION 202. APPLICATION FOR LICENSE.

(a) In this section, "material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records.

(b) A person applying for a license under this [article] shall do so in a form and in a medium prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(2) a list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the [10]-year period next preceding the submission of the application;

(3) a description of any money services previously provided by the applicant and the money services that the applicant seeks to provide in this State;

(4) a list of the applicant's proposed authorized delegates and the locations in this State where the applicant and its authorized delegates propose to engage in money transmission or provide other money services;

(5) a list of other States in which the applicant is licensed to engage in money transmission or provide other money services and any license revocations, suspensions, or other disciplinary action taken against the applicant in another State;

(6) information concerning [any bankruptcy or receivership proceedings affecting the licensee];

(7) a sample form of contract for authorized delegates, if applicable, and a sample form of payment instrument or instrument upon which stored value is recorded, if applicable;

(8) the name and address of any bank through which the applicant's

payment instruments and stored value will be paid;

(9) a description of the source of money and credit to be used by the applicant to provide money services; and

(10) any other information the [superintendent] reasonably requires with respect to the applicant.

(c) If an applicant is a corporation, limited liability company, partnership, or other entity, the applicant shall also provide:

(1) the date of the applicant's incorporation or formation and State or country of incorporation or formation;

(2) if applicable, a certificate of good standing from the State or country in which the applicant is incorporated or formed;

(3) a brief description of the structure or organization of the applicant, including any parent or subsidiary of the applicant, and whether any parent or subsidiary is publicly traded;

(4) the legal name, any fictitious or trade name, all business and residential addresses, and the employment, in the [10]-year period next preceding the submission of the application of each executive officer, manager, director, or person that has control, of the applicant;

(5) a list of any criminal convictions and material litigation in which any executive officer, manager, director, or person in control of, the applicant has been involved in the [10]-year period next preceding the submission of the application;

(6) a copy of the applicant's audited financial statements for the most recent fiscal year and, if available, for the two-year period next preceding the submission of the application;

(7) a copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two-year period next

preceding the submission of the application;

(8) if the applicant is publicly traded, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m (1994 & Supp. V 1999)];

(9) if the applicant is a wholly owned subsidiary of:

(A) a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the federal Securities Exchange Act of 1934 [15 U.S.C. Section 78m (1994 & Supp. V 1999)]; or

(B) a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(10) if the applicant has a registered agent in this State, the name and address of the applicant's registered agent in this State; and

(11) any other information the [superintendent] reasonably requires with respect to the applicant.

(d) A nonrefundable application fee of [$2,000] and a license fee of [$2,000] must accompany an application for a license under this [article]. The license fee must be refunded if the application is denied.

(e) The [superintendent] may waive one or more requirements of subsections (b) and (c) or permit an applicant to submit other information in lieu of the required information.

Comment

1. This Act contains separate licensing provisions for money transmitters (which includes payment instrument sellers and stored-value issuers and sellers) as distinct from check cashers and currency exchangers. Check cashers and currency exchangers pose less safety and soundness concerns because customers who exchange currency or cash checks are provided with cash immediately. There are no unpaid obligations and check cashers and currency exchangers do not hold a customer's money but provide an immediate exchange.

As set forth in Articles 2, 3, and 4, separate licensing requirements are established for

money transmitters and for check cashers/foreign currency exchangers. The superintendent's supervisory and enforcement powers, however, are the same for all MSBs. The licensing requirement promotes one of the main goals of this Act: to create an appropriate regulatory framework to deter and eliminate the use of MSBs as potential vehicles for money laundering.

2. Only a handful of States have attempted to create a framework that links all MSBs together within a statute, while recognizing the differences inherent in the various activities concerned. Florida and Arizona, for example, are two States that have enacted statutes that have uniform enforcement and penalty provisions for all MSBs, while retaining separate licensing and record keeping provisions for each type of money service activity. *See* Arizona Revised Statutes, Title 6, Banks and Financial Institutions, Chapter 12, Transmitters of Money (Title 6, Banks and Financial Institutions; Chapter 12, Transmitters of Money, [2000]); and Florida Money Transmitters' Code (Title 16A, Regulation of Trade, Commerce, Investments, and Solicitations, Chapter 560, Money Transmitters' Code [2001] located at <*http://www.dbf.state.fl.us/licensing/Ch560.html*>). This Act takes this approach because, for law enforcement purposes, the state superintendent and the state attorney general need general enforcement powers with respect to each of the different entities as a means of prevention and detection of money laundering. Therefore, this Act contains uniform enforcement provisions and different licensing requirements for each type of money service.

3. The license application is the first point at which the State may protect the public by prohibiting entry by those persons that would bring discredit on the industry, and the first source of information for investigators and regulators in the event that there is misconduct by a licensee. The information requested from money transmitter applicants in Section 202 is the type of information recommended by MTRA in Section IV of its Model Legislation Outline and also in the Model Act Regulating Money Transmitters prepared by the Non-Bank Funds Transmitters Group. The information concerning criminal convictions and employment histories, as well as the identity of executive officers, controlling persons, managers, directors, and responsible individuals is designed to assist the superintendent in determining whether the license applicant is a reputable business or whether there are any suggestions that the business might be used for illegal purposes. Additionally, information relating to the applicant's financial position (including information about net worth) is necessary in order to determine whether an applicant will be able to make payment on any outstanding obligations it might have (in connection with the sale of money payment instruments and stored value).

4. Section 202(c) includes corporations as well as other forms of business organizations such as limited liability companies and partnerships. The information required by legal persons that are not publicly held corporations would include the date of the applicant’s formation (as opposed to incorporation), a certificate of good standing (if applicable), and a brief description of the structure of the applicant rather than the “corporate” structure of the applicant. The license application will also require information about managers of an application in addition to executive officers, directors, and controlling persons.

5. In Section 202(c)(8), as an alternative to the requirement that publicly traded corporations submit all filings made to the SEC, the corporate applicant is required to submit a copy of its most recent 10-K report filed with the SEC. This report is required pursuant to the federal Securities and Exchange Act of 1934 for exchange-traded securities and contains financial information and other details concerning the status of a publicly held company. Applicants that are wholly owned subsidiaries of publicly traded corporations are required to submit a copy of the parent’s audited financial statement or its most recent 10-K report filed with the SEC or if it is a foreign corporation, any similar filings made with the foreign regulator of the corporation. *See* 15 U.S.C. Section 78m (1994 & Supp. V 1999); *See also* MTRA Model

Legislation Outline Section IV(C)(5).

SECTION 203. SECURITY.

(a) Except as otherwise provided in subsection (b), a surety bond, letter of credit, or other similar security acceptable to the [superintendent] in the amount of [$50,000] plus [$10,000] per location, not exceeding a total addition of [$250,000], must accompany an application for a license.

(b) Security must be in a form satisfactory to the [superintendent] and payable to the State for the benefit of any claimant against the licensee to secure the faithful performance of the obligations of the licensee with respect to money transmission.

(c) The aggregate liability on a surety bond may not exceed the principal sum of the bond. A claimant against a licensee may maintain an action on the bond, or the [superintendent] may maintain an action on behalf of the claimant.

(d) A surety bond must cover claims for so long as the [superintendent] specifies, but for at least five years after the licensee ceases to provide money services in this State. However, the [superintendent] may permit the amount of security to be reduced or eliminated before the expiration of that time to the extent the amount of the licensee's payment instruments or stored-value obligations outstanding in this State is reduced. The [superintendent] may permit a licensee to substitute another form of security acceptable to the [superintendent] for the security effective at the time the licensee ceases to provide money services in this State.

(e) In lieu of the security prescribed in this section, an applicant for a license or a licensee may provide security in a form prescribed by the [superintendent].

(f) The [superintendent] may increase the amount of security required to a maximum of [$1,000,000] if the financial condition of a licensee so requires, as evidenced by reduction of net worth, financial losses, or other relevant criteria.

Comment

The bond and net worth requirements are safety and soundness measures designed to protect the public, but also to deter companies that have questionable solvency or business practices from entering the market. The bond requirement serves as a barrier to entry for financially unstable companies. Alternatives to the bond requirement, however, are provided in the form of cash or letters of credit. Licensees may also be permitted to deposit specified liquid assets in the amount of the bond. This Act, and Section 203, attempt a balance between the goals of safety and soundness and providing open access to businesses that wish to enter the money transmission market, recognizing that decisions as to the final dollar amounts will need to reflect the particular fiscal needs and concerns of different States. Section 203(e) provides the superintendent with the flexibility to allow for other forms of security that the superintendent deems acceptable.

The term location, as used in Section 203, refers to physical locations within a State. For licensees that provide money services via the Internet (as opposed to through physical locations), the superintendent will need to assess the required amount of security based on other criteria such as the volume of business with residents of a State, for example. This is permitted by Section 203 (f).

SECTION 204. ISSUANCE OF LICENSE.

(a) When an application is filed under this [article], the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article] if the [superintendent] finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Sections 202[,][and] 203[, and 206]; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission;

(b) When an application for an original license under this [article] is complete, the [superintendent] shall promptly notify the applicant in a record of the date on which the

application was determined to be complete and:

(1) the [superintendent] shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the [superintendent] shall issue the license under this [article], to take effect as of the first business day after expiration of the period.

(c) The [superintendent] may for good cause extend the application period.

(d) An applicant whose application is denied by the [superintendent] under this [article] may appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Comment

1. Many States have mandatory time frames in which the superintendent must respond to license applications. The MTRA Model Legislation Outline recommends a 120-day time period. The superintendent is required to make a determination concerning the application within120 days after the license application is determined to be complete. This provides some finality to the application process. If the superintendent does not respond within the 120-day period, the application is deemed approved. At the same time, regulators must be provided with some flexibility and the ability to extend the application period for "good cause".

2. It is customary for regulators to set examination fees by administrative rule. Those fees are often capped or structured in such a manner to provide the applicant with a clear picture of the potential costs of an investigation.

SECTION 205. RENEWAL OF LICENSE.

(a) A licensee under this [article] shall pay an annual renewal fee of [$2,000] no later than [30] days before the anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the [superintendent]. The renewal report must state or contain:

(1) a copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the licensee's most recent audited consolidated annual financial statement;

(2) the number and monetary amount of payment instruments and stored-value sold by the licensee in this State which have not been included in a renewal report, and the monetary amount of payment instruments and stored value currently outstanding;

(3) a description of each material change in information submitted by the licensee in its original license application which has not been reported to the [superintendent] on any required report;

(4) a list of the licensee's permissible investments and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in Sections 701 and 702;

(5) proof that the licensee continues to maintain adequate security as required by Section 203; and

(6) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in money transmission or provides other money services.

(c) If a licensee does not [file a renewal report or] pay its renewal fee by the renewal date or any extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days after the notice is sent, the licensee's license is suspended 10 days after the [superintendent] sends the notice of suspension. The suspension must be lifted if, within 20 days after its license is suspended, the licensee:

(1) [files the report and] pays the renewal fee; and

(2) pays [$100] for each day after suspension that the [superintendent] did not receive [the renewal report and] the renewal fee.

(d) The [superintendent] for good cause may grant an extension of the renewal date.

Comment

1. A license will expire if not renewed in a timely fashion and the superintendent is required to send out a notice of license expiration, which provides for a 30-day cure period. The licensee, however, will have 30 days to cure its failure to renew its license. As part of the renewal process, Article 2 licensees are required to submit additional information to the superintendent as a means of appraising the safety and soundness of the business.

2. Subsections (b) and (c) have been bracketed because some States conduct annual examinations of a licensee in lieu of requiring an annual report from each licensee. Conversely, some States utilize annual reports in lieu of annual examinations. States use a combination of supervisory examinations and annual reports to maintain current information concerning the safety and soundness of a licensee.

3. The MTRA, in cooperation with industry representatives, has developed a uniform renewal form that may be used by licensees as an alternative to the myriad forms that have been created by the various States. A copy of the uniform renewal form is located on the MTRA website, located at <*http://www.mtraweb.org/uaf.html*> (visited June 15, 2001). The creation of a uniform renewal form will allow licensees who engage in money transmission in multiple jurisdictions, to complete one standard for annually rather than a series of different forms. This will provide greater convenience and efficiency for licensees and also for regulators who can more easily share information. Regulators, through the use of such a uniform form may also be able to store such forms in a centralized computer database.

[SECTION 206. NET WORTH. A licensee under this [article] shall maintain a net worth of at least [$25,000] determined in accordance with generally accepted accounting principles.**]**

Comment

1. Net worth requirements, in combination with bonding/security and permissible investment requirements, are a means of ensuring that a money transmitter has sufficient resources to honor its obligations to customers. Only Article 2 licensees are subject to net worth requirements. Check cashers and currency exchangers provide funds immediately to customers; therefore there is no risk of non-payment. Net worth requirements are a means of screening an applicant, at the time of their initial entry into the money-services business, as to their ability to meet their obligations.

2. Only a minimal net worth requirement has been suggested because net worth is used as an additional requirement to make sure that license applicants and licensees have some resources for commencing and operating a money transmission business. Section 206 has been bracketed because some States use net worth as part of the safety and soundness mechanisms whereas other States rely on bonding/security and permissible investment requirements instead. This Act gives States the option of choosing between a combination of security, net worth and permissible investment requirements as prudential measures for Article 2 licensees.

ARTICLE 3

CHECK CASHING LICENSES

SECTION 301. LICENSE REQUIRED.

(a) A person may not engage in check cashing or advertise, solicit, or hold itself out as providing check cashing for which the person receives at least $500 within a 30-day period unless the person:

(1) is licensed under this [article];

(2) is licensed for money transmission under [Article] 2;

(3) is licensed for currency exchange under [Article] 4; or

(4) is an authorized delegate of a person licensed under [Article] 2.

(b) A license under this [article] is not transferable or assignable.

Comment

1. Normally, a person who wishes to engage in check cashing will have to obtain a license under Article 3 of this Act. There are several exceptions to the licensing requirement. First, check cashers that are authorized delegates of money transmitters are not required to obtain a separate license for check cashing so long as they remain authorized delegates of a money transmitter licensed under Article 2. Some States may wish to amend this requirement so that all check cashers need to be licensed under Article 3.

2. Money transmitters who are licensed under Article 2 are also permitted to engage in check cashing and currency exchange without additional licenses. As noted above, by satisfying the greater requirements imposed by Article 2, the regulator will have sufficient information about money transmitters to allow them to also engage in currency exchange and check cashing. Similarly, a currency exchanger who has an Article 4 license may also engage in check cashing. This is because the information required of both an Article 3 licensee and an Article 4 licensee is virtually identical. Therefore, one application under either Article 3 or 4 will provide the regulator with sufficient information about the applicant. *See also* Comment accompanying Section 201.

3. Section 301 also excludes businesses that may offer a small amount of check-cashing services incidental to their primary business from licensing requirements. Hotels, for example, which cash checks as a courtesy for their guests, fall into this excluded category. The exemption reflects an aggregate level of fees over a 30-day period, rather than relying on a daily level of business. In order for a business to qualify as an entity engaged in check cashing, it would have to cash more than $16,666 worth of checks within a 30-day period in order to receive revenues of more than $500. This figure was derived using a three- percent fee for each check cashed (which is the average fee charged within the check cashing industry). On an annual basis, a business would be able to cash up to $200,000 worth of checks without having to obtain a license.

SECTION 302. APPLICATION FOR LICENSE.

(a) A person applying for a license under this [article] shall do so in a form and in a medium prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in check cashing or currency exchange, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the [superintendent] reasonably requires with respect to the applicant, but not more than the [superintendent] may require under [Article] 2.

(b) A nonrefundable application fee of [$2,000] and a license fee of [$2,000] must accompany an application for a license under this [article]. The license fee must be refunded if the application is denied.

Comment

1. This Act treats check cashers differently than money transmitters with respect to licensing, bonding and, in particular, net worth. Because check cashers and currency exchangers provide customers with funds immediately, they do not need the same type of bond or security requirements. Existing state law makes a distinction between check cashers and money transmitters with respect to information provided to superintendents (e.g., audited as contrasted to unaudited financial statements are requested and bond and net worth requirements are not imposed).

2. A provision has been included to require that check cashers provide a superintendent with information about the source of their funds. State superintendents and law enforcement officials want to ensure that the cash used in such a business is not derived from money laundering or other illegal activity. The Comment accompanying Section 202 discusses the reasons why certain types of information are requested from Article 2 applicants during the application process.

SECTION 303. ISSUANCE OF LICENSE.

(a) When an application is filed under this [article], the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article] if the [superintendent] finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 302; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in check cashing.

(b) When an application for an original license under this [article] is complete, the [superintendent] shall issue the license under this [article], to take effect as of the first business day after expiration of the period.

(c) The [superintendent] may for good cause extend the application period.

(d) An applicant whose application is denied by the [superintendent] under this [article] may appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Comment

See Comment accompanying Section 203.

SECTION 304. RENEWAL OF LICENSE.

(a) A licensee under this [article] shall pay a biennial renewal fee of [$2,000] no later than [30] days before each biennial anniversary of the issuance of the license or, if the last day is

not a business day, on the next business day.

[(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the [superintendent]. The renewal report must state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the [superintendent] on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in check cashing or currency exchange, including limited stations and mobile locations.]

(c) If a licensee does not [file a renewal report or] pay its renewal fee by the renewal date or any extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days after the notice is sent, the licensee's license is suspended 10 days after the superintendent sends the notice of suspension.

(d) The [superintendent] for good cause may grant an extension of the renewal date. The suspension must be lifted if, within 20 days after its license is suspended, the licensee:

(1) [files the report and] pays the renewal fee; and

(2) pays [$100] for each day after suspension that the [superintendent] did not receive [the renewal report and] the renewal fee.

Comment

Check cashers and currency exchangers are required to renew their licenses biennially rather than annually. Because check cashers and currency exchangers pose no safety and soundness concerns, the superintendent does not have a need to examine renewal reports on an annual basis for these businesses. The superintendent, however, will have the authority to conduct an on-site examination if the check casher or currency exchanger engages in money laundering activity or violates a provision of this Act. For a general discussion of the purposes of renewal reports *see* Comment accompanying Section 205.

ARTICLE 4

CURRENCY EXCHANGE LICENSES

SECTION 401. LICENSE REQUIRED.

(a) A person may not engage in currency exchange or advertise, solicit, or hold itself out as providing currency exchange for which the person receives revenues equal or greater than [five percent] of total revenues unless the person:

(1) is licensed under this [article];

(2) is licensed for money transmission under [Article] 2;

(3) is licensed for check cashing under [Article] 3; or

(4) is an authorized delegate of a person licensed under [Article] 2.

(b) A license under this [article] is not transferable or assignable.

Comment

1. Normally, a person who wishes to engage in currency exchange will have to obtain a license under Article 4 of the UMSA. There are several exceptions to the licensing requirement. First, currency exchangers that are authorized delegates of money transmitters are not requited to obtain a separate license for currency exchange so long as they remain authorized delegates of a money transmitter licensed under Article 2. Some States may opt to amend this requirement so that all currency exchangers need to be licensed under Article 4.

2. Money transmitters who are licensed under Article 2 are also permitted to engage in check cashing and currency exchange without additional licenses. As noted above, by satisfying the greater requirements imposed by Article 2, the regulator will have sufficient information about money transmitters to allow them to also engage in currency exchange and check cashing. Similarly, a check casher who has an Article 3 license may also engage in currency exchange. This is because the information required of both an Article 3 and an Article 4 licensee is virtually identical. Therefore, one application under either Article 3 or 4 will provide the regulator with sufficient about an applicant. *See also* Comment accompanying Section 201.

3. Section 401 also excludes businesses that may offer a small amount of currency exchange incidental to their primary business from licensing requirements. An exemption is provided persons that receive revenues less than or equal to five percent of total revenues.

SECTION 402. APPLICATION FOR LICENSE.

(a) A person applying for a license under this [article] shall do so in a form and in a medium prescribed by the [superintendent]. The application must state or contain:

(1) the legal name and residential and business addresses of the applicant, if the applicant is an individual or, if the applicant is not an individual, the name of each partner, executive officer, manager, and director;

(2) the location of the principal office of the applicant;

(3) complete addresses of other locations in this State where the applicant proposes to engage in currency exchange or check cashing, including all limited stations and mobile locations;

(4) a description of the source of money and credit to be used by the applicant to engage in check cashing and currency exchange; and

(5) other information the [superintendent] reasonably requires with respect to the applicant, but not more than the [superintendent] may require under [Article] 2.

(b) A nonrefundable application fee of [$2,000] and a license fee of [$2,000] must accompany an application for a license under this [article]. The license fee must be refunded if the application is denied.

Comment

1. This Act contains a different Article for the licensing of check cashers and currency exchangers. Although the provisions contained in Articles 3 and 4 are almost identical, this Act provides States with the option to include less than all of the Articles in an MSB licensing statute. Thus, each of the licensing parts of this Act is separable. At present, very few States have licensing requirements for currency exchangers. At the same time, the activity of currency exchange (exchanging larger amounts of one currency for smaller denominations in another, for example) has been identified by law enforcement officials as vulnerable to money laundering (as contrasted with check cashing).

2. For a general discussion of the main differences between Article 2 and Articles 3 and 4 see Comment to Section 202 (which also explains the rationale for separate licensing requirements for different types of MSBs) and Section 302. The Comment to Section 202 also discusses the reasons why certain types of information are requested from applicants during the application process.

SECTION 403. ISSUANCE OF LICENSE.

(a) When an application under this [article], the [superintendent] shall investigate the applicant's financial condition and responsibility, financial and business experience, character,

and general fitness. The [superintendent] may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The [superintendent] shall issue a license to an applicant under this [article] if the [superintendent] finds that all of the following conditions have been fulfilled:

(1) the applicant has complied with Section 402; and

(2) the financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the executive officers, managers, directors, and persons in control of, the applicant indicate that it is in the interest of the public to permit the applicant to engage in currency exchange.

(b) When an application for an original license under this [article] is complete, the [superintendent] shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) the [superintendent] shall approve or deny the application within 120 days after that date; or

(2) if the application is not approved or denied within 120 days after that date:

(A) the application is deemed approved; and

(B) the [superintendent] shall issue the license under this [article], to take effect as of the first business day after expiration of the period.

(c) The [superintendent] may for good cause extend the application period.

(d) An applicant whose application is denied a license by the [superintendent] under this [article] may appeal, within [30] days after receipt of the notice of the denial, from the denial and request a hearing.

Comment

See Comment accompanying Section 203.

SECTION 404. RENEWAL OF LICENSE.

(a) A licensee under this [article] shall pay a biennial renewal fee of [$2,000] no later than [30] days before each biennial anniversary of the issuance of the license or, if the last day is not a business day, on the next business day.

[(b) A licensee under this [article] shall submit a renewal report with the renewal fee, in a form and in a medium prescribed by the [superintendent]. The renewal report must state or contain:

(1) a description of each material change in information submitted by the licensee in its original license application that has not been reported to the [superintendent] on any required report; and

(2) a list of the locations in this State where the licensee or an authorized delegate of the licensee engages in currency exchange or check cashing, including limited stations and mobile locations.]

(c) If a licensee does not [file a renewal report and] pay its renewal fee by the renewal date or any extension of time granted by the [superintendent], the superintendent shall send the licensee a notice of suspension. Unless the licensee [files the report and] pays the renewal fee before expiration of 10 days after the notice is sent, the licensee's license is suspended 10 days after the superintendent sends the notice of suspension.

(d) The [superintendent] for good cause may grant an extension of the renewal date.

Comment

Check cashers and currency exchangers are required to renew their licenses biennially rather than annually. Because check cashers and currency exchangers pose no safety and soundness concerns, the superintendent does not have a need to examine renewal reports on an annual basis for these businesses. The superintendent, however, will have the authority to conduct an on-site examination if the check casher or currency exchanger engages in money laundering activity or violates a provision of this Act. *See* Comment accompanying Section 204.

ARTICLE 5

AUTHORIZED DELEGATES

SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND AUTHORIZED DELEGATE.

(a) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(b) A contract between a licensee and an authorized delegate must require the authorized delegate to operate in full compliance with this [Act]. The licensee shall furnish in a record to each authorized delegate policies and procedures sufficient for compliance with this [Act].

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate.

(d) If a license is suspended or revoked or a licensee does not renew its license, the [superintendent] shall notify all authorized delegates of the licensee whose names are in a record filed with the [superintendent] of the suspension, revocation, or non-renewal. After notice is sent or publication is made, an authorized delegate shall immediately cease to provide money services as a delegate of the licensee.

(e) An authorized delegate may not provide money services outside the scope of activity permissible under the contract between the authorized delegate and the licensee, except activity in which the authorized delegate is authorized to engage under [Article] 2, 3, or 4. [An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission.]

Comment

The sections included in Article 5 are meant to further delineate the nature of the authorized delegate's relationship with the licensee and to further clarify the delegate's responsibilities and obligations. Similarly, this section also sets forth some of the general obligations that the licensee has with respect to providing the delegate with a contract and making the delegate aware of relevant laws and rules.

SECTION 502. UNAUTHORIZED ACTIVITIES. A person may not provide money services on behalf of a person not licensed under this [Act]. A person that engages in that activity provides money services to the same extent as if the person were a licensee.

Comment

This section provides that an authorized delegate may only be a delegate for a licensee. Should the licensee lose its license, the delegate will be considered to act in its own capacity as if the delegate were a licensee itself. This section may trigger potential civil and criminal liability pursuant to Sections 805 and 806.

ARTICLE 6

EXAMINATIONS; REPORTS; RECORDS

SECTION 601. AUTHORITY TO CONDUCT EXAMINATIONS.

(a) The [superintendent] may conduct an annual examination of a licensee or of any of its authorized delegates upon 45 days' notice in a record to the licensee.

(b) The [superintendent] may examine a licensee or its authorized delegate, at any time, without notice, if the [superintendent] has reason to believe that the licensee or authorized delegate is engaging in an unsafe or unsound practice or has violated or is violating this [Act] or a rule adopted or an order issued under this [Act].

(c) If the [superintendent] concludes that an on-site examination is necessary under subsection (a), the licensee shall pay the reasonable cost of the examination.

(d) Information obtained during an examination under this [Act] may be disclosed only as provided in Section 607.

Comment

1. Section 601 provides the superintendent with general authority to conduct on-site supervisory exams of licensees and their authorized delegates. This provision is essential to ensure the safety and soundness of licensees and enable the superintendent to examine a licensee's books and records in the event that it is suspected of money laundering or any other violation of this Act.

2. Subsection (a) allows the superintendent to waive an annual on-site examination for licensees. It gives the superintendent flexibility in dealing with reputable licensees. For example, if a licensee has been licensed for several years, has maintained adequate financial resources, and has been cooperative with regulators, the superintendent may determine that annual examinations are not necessary. The waiver also conserves financial resources of the superintendent Subsection (b) permits the superintendent to examine a licensee or its delegates without advance notice if the licensee is engaging in an unsafe or unsound practice or has violated or is violating a provision of this Act.

SECTION 602. JOINT EXAMINATIONS.

(a) The [superintendent] may conduct an on-site examination of records listed in Section 605 in conjunction with representatives of other state agencies or agencies of another State or of the federal government. Instead of an examination, the [superintendent] may accept the

examination report of an agency of this State or of another State or of the federal government or a report prepared by an independent licensed or certified public accountant.

(b) A joint examination or an acceptance of an examination report does not preclude the [superintendent] from conducting an examination as provided by law. A joint report or a report accepted under this subsection is an official report of the [superintendent] for all purposes.

Comment

The use of joint examinations is an important feature of this Act that will reduce some of the increased costs that may be incurred as a result of licensing and regulation. Many States already engage in joint examinations of major MSBs or allow the submission of reports generated by another regulator in lieu of an on-site examination. This is another provision designed to conserve financial resources.

SECTION 603. REPORTS.

(a) A licensee shall file with the [superintendent] within [15] business days any material changes in information provided in a licensee's application as prescribed by the [superintendent].

(b) A licensee shall file with the [superintendent] within 45 days after the end of each fiscal quarter a current list of all authorized delegates, responsible individuals, and locations in this State where the licensee or an authorized delegate of the licensee provides money services, including limited stations and mobile locations. The licensee shall state the name and street address of each location and authorized delegate.

(c) A licensee shall file a report with the [superintendent] within one business day after the licensee has reason to know of the occurrence any of the following events:

(1) the filing of a petition by or against the licensee under the United States Bankruptcy Code [11 U.S.C. Section 101-110 (1994 & Supp. V. 1999)] for bankruptcy or reorganization;

(2) the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

(3) the commencement of a proceeding to revoke or suspend its license

in a State or country in which the licensee engages in business or is licensed;

(4) the cancellation or other impairment of the licensee's bond or other security;

(5) a [charge or] conviction of the licensee or of an executive officer, manager, or director of, or person in control of, the licensee for a felony; or

(6) a [charge or] conviction of an authorized delegate for a felony.

Comment

1. Reports are essential to the proper regulation of problem delegates or licensees. Although on-site examinations are authorized, the reporting requirements provide a cost efficient mechanism for superintendents and industry members alike. Certain significant events must be reported immediately, including a money-laundering allegation against a delegate. This Act only calls for quarterly reporting was only necessary with respect to changes in authorized delegates. Furthermore, annual audited financial statements are only required for Article 2 licensees (as this relates once again to the safety and soundness of money transmitters and their financial solvency). All licensees are required to file renewal reports pursuant to Articles 2, 3 and 4.

2. Section 603(a) requires a licensee to report on any changes that occur in information supplied in a license application within 15 days after the change has occurred. This provision ensures that the superintendent has current and accurate information in the time between the filling of an initial application and the submission of a renewal report.

SECTION 604. CHANGE OF CONTROL.

(a) A licensee shall:

(1) give the [superintendent] notice in a record of a proposed change of control within [15] days after learning of the proposed change of control;

(2) request approval of the acquisition; and

(3) submit a nonrefundable fee of [$2,000] with the notice.

(b) After review of a request for approval under subsection (a), the [superintendent] may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information must be limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application.

(c) The [superintendent] shall approve a request for change of control under subsection

(a) if, after investigation, the [superintendent] determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the public interest will not be jeopardized by the change of control.

(d) When an application for a change of control under this [article] is complete, the [superintendent] shall notify the licensee in a record of the date on which the request was determined to be complete and:

(1) the [superintendent] shall approve or deny the request within 120 days after that date; or

(2) if the request is not approved or denied within 120 days after that date:

(A) the request is deemed approved; and

(B) the [superintendent] shall permit the change of control under this section, to take effect as of the first business day after expiration of the period.

(e) The [superintendent], by rule of order, may exempt a person from any of the requirements of subsection (a) (2) and (3) if it is in the public interest to do so.

(f) Subsection (a) does not apply to a public offering of securities.

(g) Before filing a request for approval to acquire control of a licensee or person in control of a licensee, a person may request in a record a determination from the [superintendent] as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the [superintendent] determines that the person would not be a person in control of a licensee, the [superintendent] shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of subsections (a) through (c).

Comment

1. Section 604 requires all persons who wish to acquire a controlling interest in a licensee (as broadly defined in Section 102) to obtain approval from the superintendent prior to obtaining control. Prior notification is important for safety and soundness reasons, as well as for the superintendent to properly assess the background of the persons who wish to acquire control (in order to evaluate whether such persons pose any risks in terms of potential illegal activity). The superintendent retains discretion to request additional information from an applicant (e.g., personal financial information) that might assist the superintendent in evaluating the application.

2. It is not mandatory for applicants to provide personal financial information under Section 604 about persons that have control of a licensee, such as executive officers of the acquiring company. Many executive officers at larger publicly traded companies would object to such a requirement as an unnecessary invasion of privacy, because the financial well-being of the company would bear no connection to the officer's personal wealth. The superintendent retains the discretion to request such information for smaller entities where the superintendent needs more information to make an assessment of net worth and financial capability (i.e., individual proprietors who wish to acquire control of an MSB).

SECTION 605. RECORDS.

(a) A licensee shall maintain the following records for determining its compliance with this [Act] for at least [three] years:

(1) a record of each payment instrument or stored-value obligation sold;

(2) a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) records of outstanding payment instruments and stored-value obligations;

(5) records of each payment instrument and stored-value obligation paid within the [three]-year period;

(6) a list of the last known names and addresses of all of the licensee's authorized delegates; and

(7) any other records the [superintendent] reasonably requires by rule.

(b) The items specified in subsection (a) may be maintained in any form of record.

(c) Records may be maintained outside this State if they are made accessible to the

[superintendent] on [seven] business-days' notice that is sent in a record.

(d) All records maintained by the licensee as required in subsections (a) through (c) are open to inspection by the [superintendent] pursuant to Section 601.

Comment

1. This section combines the more general reporting provisions of the Florida Money Transmitter's Code Section 560.310, FLA. STAT. ANN. Section 560.310 (West Supp. 2001), and the more detailed reporting requirements contained in Section 15 of the Model Act Regulating Money Transmitters. This Act keeps the statutory prescription for record keeping to a minimum. Additional books and records might be required by rule, if needed. The reporting requirements contained in Section 605 pertain mainly to money transmitters (with respect to the sale of payment instruments). Most check cashing and currency exchange laws simply state that the licensee must maintain books and records as required by rule. The three-year record retention period also reflects existing state practice. Subsection (d) clarifies that the records maintained by the licensee are subject to inspection pursuant to a regulatory examination as set forth in Section 601.

2. State recordkeeping requirements do not go to the identity of the buyer of the instrument. The recordkeeping requirement is designed to require issuers to maintain records of what has been sold and what remain outstanding. A licensee must have records of its "outstanding" instruments in order to determine the level of permissible investments, among other things.

3. The data retained depends on the product. Data for traditional products such as traveler's checks and stored value cards that are anonymous would only include items needed to process the payment transaction, such as place/date of sale, amount purchased, data and place of use or encashment, amount of funds remaining (if it's a stored value card), but no personally identifiable data is retained.

[SECTION 606. MONEY LAUNDERING REPORTS.

(a) A licensee and an authorized delegate shall file with the [attorney general] all reports required by federal currency reporting, record keeping, and suspicious transaction reporting requirements as set forth in 31 U.S.C. Section 5311 (1994), 31 C.F.R. Section. 103 (2000) and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report required under subsection (a) with the appropriate federal agency is compliance with the requirements of subsection (a), unless the [superintendent] notifies the licensee that the [attorney general] has notified the [superintendent] that reports of this type are not being regularly and comprehensively transmitted by the federal

agency to the [attorney general].]

Comment

1. MSBs are required to file relevant reports as mandated by federal or state law with respect to suspected money laundering. Section 606 is meant to achieve two purposes. First, it requires licensees and their authorized delegates to comply with federal and state anti-money laundering reporting requirements. By making this requirement explicit in a state statute, money services will be put on notice of their reporting obligations. Second, the superintendent has a basis for taking enforcement action against non-compliant licensees and delegates.

2. Subsection (b) permits licensees to comply with state reporting requirements by filing the appropriate federal anti-money laundering reports as required by the federal BSA, and thereby avoid duplicative filing. FinCEN provides state law enforcement authorities access to these reports via its Gateway computer system. Through Gateway, state enforcement agencies have on-line access to records filed under the BSA. Every State, as well as the District of Columbia and Puerto Rico has access to the Gateway system.

3. Approximately ten States require that an MSB comply with all federal and state money laundering and currency transaction reporting laws. State laws typically replicate the federal law and require that cash transactions in excess of $10,000 be reported to a state authority, as well as to the U.S. Treasury. Most of the state reporting law does not specifically address MSBs (but may apply to MSBs by implication). Several States, including Colorado, Connecticut, Idaho, Indiana and Oklahoma, require financial institutions to file suspicious activity reports concurrently with federal and state authorities. Arizona has its own suspicious activity form for financial institutions. Suspected money laundering activities are reported to Arizona's Attorney General on a one-page form. Georgia provides that each financial institution must keep a record of currency transactions in excess of $10,000 and that those reports must be filed with the State within 15 days of the transaction.

SECTION 607. CONFIDENTIALITY.

(a) Except as otherwise provided in subsection (b), all information or reports obtained by the [superintendent] from an applicant, licensee, or authorized delegate and all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the [superintendent], or financial statements, balance sheets, or authorized delegate information, are confidential and are not subject to disclosure under [this State's open records law].

(b) The [superintendent] may disclose information not otherwise subject to disclosure under subsection (a) to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information; or the [superintendent] finds that the

release is reasonably necessary for the protection of the public and in the interests of justice, and the licensee has been given previous notice by the [superintendent] of its intent to release the information.

(c) This section does not prohibit the [superintendent] from disclosing to the public a list of persons licensed under this [Act] or the aggregated financial data concerning those licensees.

Comment

Section 607 is an important confidentiality provision that protects the business or proprietary financial information that may be submitted by a license applicant or licensee. It is important to provide licensees and license applicants with an appropriate degree of protection for certain information, especially business and proprietary information, that is contained in applications and reports filed with state regulators. In the absence of such protections, information concerning an applicant's receivables, for example, could be used to reconstruct the market share of a particular MSB.

ARTICLE 7

PERMISSIBLE INVESTMENTS

SECTION 701. MAINTENANCE OF PERMISSIBLE INVESTMENTS.

(a) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with generally accepted accounting principles of not less than the aggregate amount of all of its outstanding payment instruments and stored value obligations issued or sold and money transmitted by the licensee or its authorized delegates.

(b) The [superintendent], with respect to any licensees, may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money and certificates of deposit issued by a bank. The [superintendent] by rule may prescribe or by order allow other types of investments that the [superintendent] determines to have a safety substantially equivalent to other permissible investments.

(c) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments and stored value obligations in the event of bankruptcy or receivership of the licensee.

Comment

Money transmitters are required to maintain a certain level of investments that are equal to the value of their outstanding obligations as a means of protecting individual consumers. This is another safety and soundness requirement designed to safeguard funds received from consumers.

SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.

(a) Except to the extent otherwise limited by the [superintendent] pursuant to Section 701, the following investments are permissible under Section 701:

(1) cash, a certificate of deposit, or senior debt obligation of an insured depositary institution, as defined in Section 3 of the Federal Deposit Insurance Act [12 U.S.C. Section 1813 (1994 & Supp. V. 1999)];

(2) banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank;

(3) an investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;

(4) an investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a State or a governmental subdivision, agency, or instrumentality thereof;

(5) receivables that are payable to a licensee from its authorized delegates, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection if the aggregate amount of receivables under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not hold at one time receivables under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(6) a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose portfolio is restricted by the management company's investment policy to investments specified in paragraphs (1) through (4).

(b) The following investments are permissible under Section 701, but only to the extent specified:

(1) an interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments

under this paragraph in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(2) a share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission under the Investment Companies Act of 1940 [15 U.S.C. Section 80a-1-64 (1994 & Supp. V 1999)], and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;

(3) a demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

(4) any other investment the [superintendent] designates, to the extent specified by the [superintendent].

(c) The aggregate of investments under subsection (b) may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with Section 701.

Comment

1. Money transmitters have to maintain investments that are equal to the aggregate face amount of all their outstanding funds transfers and payment instrument obligations (on a dollar for dollar basis). The list of permissible investments contained in Section 702 reflects exiting industry practice – based in some part on the nature of the money transmission business. Section

702, however, places certain limitations on the percentages of holdings in many of the investment categories. Certain permissible investments are riskier than others – especially in the absence of any limitations or caps on percentage of the licensee's portfolio invested in any of these items.

Certain investments that may post a greater degree of risk include:

- shares in a money market mutual fund, interest-bearing bills or notes or bonds, debentures or stock traded on any national securities exchange or on a national over-the counter-market, or mutual funds primarily composed of one or more investments as described in this section;

- a demand borrowing agreement made to a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange; and

- receivables that are due to a licensee from its authorized delegates pursuant to a contract that are not past due or doubtful of collection.

2. The current list of permissible investments is an attempt to balance the concerns of regulators for safety and soundness and of industry participants who have concerns about their ability to properly conduct business. The categories of investments listed in Section 702(b) permit the type of investments that had previously raised concerns. The main difference between Section 702(b) and current practice is that the aggregate cap on such investments is set at 20 percent of the licensee's portfolio. Additionally, the licensee may not invest in more than 10 percent of any one person with respect to these same investment categories. This balances the need to allow licensees to have flexible and diverse options for investment, but also limits the aggregate amount that a licensee can invest in these riskier categories.

3. Receivables, in particular, is one category that might pose concern for a state superintendent. There is, however a practical reason for including receivables as a category of permissible investments. For money transmitters, the practice of including receivables as permissible investments had become a necessity due to the use of automated money order dispensers. Typically, money orders are sold at sales outlets through automated dispensers. The automated dispenser immediately records the sale of the money order and notifies the money transmitter. This real-time “notification” immediately triggers the obligation of a money transmitter to retain permissible investments for the money order sold on a dollar for dollar basis. However, while the obligation to maintain investments is triggered at the time of sale, there is a lag of time until the sales outlet actually remits funds to the money transmitter. For the time period between sale and remittance of the funds that the sales outlet has received, the money transmitter needs to treat those “receivables” as part of its permissible investment portfolio. Previously, authorized delegates had notified a money transmitter of the number of money orders sold at the same time that it remitted a check for the funds received.

ARTICLE 8

ENFORCEMENT

SECTION 801. SUSPENSION AND REVOCATION [; RECEIVERSHIP].

(a) The [superintendent] may suspend or revoke a license [, place a licensee in receivership,] or order a licensee to revoke the designation of an authorized delegate if:

(1) the licensee violates this [Act] or a rule adopted or an order issued under this [Act];

(2) the licensee does not cooperate with an examination or investigation by the [superintendent];

(3) the licensee engages in fraud, intentional misrepresentation, or gross negligence;

(4) an authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this [Act], as a result of the licensee's willful misconduct or willful blindness;

(5) the competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, or responsible person of the licensee or authorized delegate indicates that it is not in the public interest to permit the person to provide money services;

(6) the licensee engages in an unsafe or unsound practice;

(7) the licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(8) the licensee does not remove an authorized delegate after the [superintendent] issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this [Act].

(b) In determining whether a licensee is engaging in an unsafe or unsound practice, the [superintendent] may consider the size and condition of the licensee's money transmission, the

magnitude of the loss, the gravity of the violation of this [Act], and the previous conduct of the person involved.

Comment

1. Section 801 sets forth the circumstances pursuant to which the superintendent may take disciplinary actions against a licensee. This is an important mechanism for the prevention of money laundering. The issuance of a cease and desist order and suspension and revocation of a license may only occur after a hearing in accordance with the state's administrative procedure act. Licensee violation of state money laundering prohibitions is specified on the list. Section 801 also specifics the circumstances under which the superintendent may take action against the licensee for the authorized delegate's conduct. Pursuant to Section 801 (a)(4), the superintendent is authorized to take action against a licensee for a delegate's violations of money laundering prohibitions or any act done as a result of a course of the willful misconduct or willful blindness of the licensee The concept of "willful blindness," a legal principle that is often applied by courts in construing the law's "knowledge" requirement, is deemed to be the equivalent of "actual knowledge" of the illicit origin of the funds in the subject transactions in a laundering case. Willful blindness is defined by the courts as "deliberate avoidance of knowledge of the facts." *See, e.g. United States v. Antzoulatos,* 962 F.2d 720, 724 (7thCir.), cert. denied, 506 U.S. 919 (1992). A willful misconduct standard has been chosen because a strict liability standard may result in consequences disproportionate to the social harm involved from the delegate's activity.

2. Some States provide more detailed standards for when a cease and desist order becomes effective. Texas' Currency Exchange Transportation or Transmission provisions of the Texas Finance Code provide that a cease and desist order takes effect on issuance if the Banking Commissioner finds a threat of immediate and irreparable harm to the license holder or the public. If no immediate or irreparable harm is found, the order is not effective before 10 days after the order is received. *See* TEX. REV. FIN. STAT. ANN. Section 153.407 (West Supp. 2001). Other state laws enumerate separate and specific grounds for the denial of a license or for revocation, suspension or restriction of a previously granted license. Florida, for example, lists a material misstatement of fact in an initial or renewal application, the loss of license in another jurisdiction (due to fraud or dishonest dealing) and criminal convictions involving fraud or dishonest dealing as grounds for license denial, suspension or non-renewal. *See* Florida Money Transmitter's Code Section 560.114(1)(a)-(v), FLA. STAT. ANN. Section 560.114(1)(a)-(v) (West Supp. 2001).

SECTION 802. SUSPENSION AND REVOCATION OF AUTHORIZED DELEGATES.

(a) The [superintendent] may issue an order suspending or revoking the designation of an authorized delegate, if the [superintendent] finds that:

(1) the authorized delegate violated this [Act] or a rule adopted or an order issued under this [Act];

(2) the authorized delegate did not cooperate with an examination or investigation by the [superintendent];

(3) the authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(4) the authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(5) the competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money services; or

(6) the authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the [superintendent] may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this [Act] or a rule adopted or order issued under this [Act], and the previous conduct of the authorized delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the [superintendent].

Comment

1. Section 802 complements Section 801. Section 802 sets forth the circumstances pursuant to which the superintendent may take direct action against the authorized delegate. This is another important enforcement and regulatory tool for the prevention of money laundering. Because authorized delegates may be potential sites for money laundering activity (due to a lesser degree of supervision and oversight and also the large number of delegates that may exist for a given licensee), the superintendent needs to have authority to take action against the delegate directly.

2. Section 802(a) focuses solely on the conduct of the authorized delegate. As noted in Section 801, under certain circumstances, a licensee may lose its license or be subject to other action by the superintendent if a delegate engages in violations of this Act or of related money laundering statutes and regulations as a result of the licensee's willful misconduct or willful blindness.

SECTION 803. ORDERS TO CEASE AND DESIST.

(a) If the [superintendent] determines that a violation of this [Act] or of a rule adopted or

an order issued under this [Act] by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the [superintendent] may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(b) The [superintendent] may issue an order against a licensee to cease and desist from providing money services through an authorized delegate that is the subject of a separate order by the [superintendent].

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Section 801 or 802.

(d) A licensee or an authorized delegate that is served with an order to cease and desist may petition the [appropriate court], for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to Section 801 or 802.

(e) An order to cease and desist expires unless the [superintendent] commences an administrative proceeding pursuant to Section 801 or 802 within [10] days after it is issued.

Comment

Section 803 provides the superintendent with limited authority to issue orders to cease and desist without prior notice and hearing procedures. The superintendent, however, must have a reasonable belief that the licensee or its authorized delegate is engaging in an unsafe or unsound activity or is violating a provision of this Act, before invoking temporary powers. Subsections (c) and (e) require the superintendent to begin an enforcement proceeding pursuant to Section 801 or 802 rather than relying solely on the cease and desist order as an enforcement tool.

SECTION 804. CONSENT ORDERS. The [superintendent] may enter into a consent order at any time with a person to resolve a matter arising under this [Act] or a rule adopted or order issued under this [Act]. A consent order must be signed by the person to whom it is issued or by the person's authorized representative, and must indicate agreement with the terms contained in

the order. A consent order may provide that it does not constitute an admission by a person that this [Act] or a rule adopted or an order issued under this [Act] has been violated.

Comment

Section 804 gives the superintendent the ability to enter into a negotiated settlement with an MSB with respect to alleged violations of this Act and potential disciplinary proceedings. The use of consent orders provides the superintendent with a flexible means of achieving enforcement goals while minimizing the administrative and fiscal burden of lengthy administrative proceedings and hearings.

SECTION 805. CIVIL PENALTIES. The [superintendent] may assess a civil penalty against a person that violates this [Act] or a rule adopted or an order issued under this [Act] in an amount not to exceed [$1,000] per day for each day the violation is outstanding, plus this State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

Comment

In addition to the ability to take disciplinary action against an MSB or its authorized delegates for violations of this Act, civil penalties provide another enforcement mechanisms aimed at deterring money laundering. Civil penalties may be the preferred enforcement mechanism due to the commercial nature of this Act.

SECTION 806. CRIMINAL PENALTIES.

(a) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this [Act] or that intentionally makes a false entry or omits a material entry in such a record is guilty of a [reference to state classification] felony.

(b) A person that knowingly engages in an activity for which a license is required under this [Act] without being licensed under this [Act] and who receives more than [$500] in compensation within a 30-day period from this activity is guilty of a [reference to state

classification] felony.

(c) A person that knowingly engages in an activity for which a license is required under this [Act] without being licensed under this [Act] and who receives no more than [$500] in compensation within a 30-day period from this activity is guilty of a [reference to state classification] misdemeanor.

Comment

General criminal penalties for all violations are typical of regulatory codes. False statements and other misrepresentations are at the core of the regulatory process and therefore are listed separately. Subsections (b) and (c) provide varying criminal penalties in the form of a felony and a misdemeanor. The inclusion of the misdemeanor provision suggests that the felony provision should be used only for serious violations of this Act.

SECTION 807. UNLICENSED PERSONS.

(a) If the [superintendent] has reason to believe that a person has violated or is violating Section 201, 301, or 401 the [superintendent] may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of Section 201, 301, or 401.

(b) In an emergency, the [superintendent] may petition the [appropriate court] for the issuance of a temporary restraining order exparte pursuant to the rules of civil procedure.

(c) An order to cease and desist becomes effective upon service of it upon the person.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to Sections 901 and 902.

(e) A person that is served with an order to cease and desist for violating Section 201, 301, or 401 may petition the [appropriate court] for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to Sections 901 and 902.

(f) An order to cease and desist expires unless the [superintendent] commences an administrative proceeding within [10] days after it is issued.

Comment

This Act provides the superintendent with specific enforcement and regulatory authority with respect to unlicensed persons. In addition to enforcement powers against licensees and delegates, it is equally important that regulators have the ability potentially to issue a cease and desist order in the event that the unlicensed person's activities pose a serious risk to the public.

ARTICLE 9

ADMINISTRATIVE PROCEDURES

SECTION 901. ADMINISTRATIVE PROCEEDINGS. All administrative proceedings under this [Act] must be conducted in accordance with [the state administrative procedure act].

Comment

This Act should generally conform to the Model State Administrative Procedure Act.

SECTION 902. HEARINGS. Except as otherwise provided in Sections 205(c), 304(c), 404(c), 803, and 807, the [superintendent] may not suspend or revoke a license, [place a licensee in receivership,] issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard. The [superintendent] shall also hold a hearing when requested to do so by an applicant whose application for a license is denied.

Comment

Except for the automatic lapse of licenses that are not renewed and the issuance of cease and desist orders pursuant to Sections 803 and 807, the superintendent is required to provide notice and have a hearing before taking any disciplinary or enforcement actions against a licensee or its authorized delegates. Section 802 has been also been extended further to include cease and desist authority and the ability to assess civil penalties.

ARTICLE 10

MISCELLANEOUS PROVISIONS

SECTION 1001. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among States that enact it.

SECTION 1002. SEVERABILITY CLAUSE. If any provision of this [Act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [Act] which can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.

SECTION 1003. EFFECTIVE DATE. This [Act] takes effect ..... .

SECTION 1004. REPEALS. The following Acts and parts of Acts are repealed:

(1) .....

(2) .....

(3) .....

Comment

Existing state licensing laws that govern payment instrument sellers (check sellers) money transmitters, currency exchanger and check cashers should be repealed.

SECTION 1005. SAVINGS AND TRANSITIONAL PROVISIONS.

(a) A license issued under [name of existing money services licensing statutes repealed under Section 1004] that is in effect immediately before [effective date of this Act] remains in force as a license under [name of existing money services statutes repealed under Section 1004]

until the license's expiration date. Thereafter, the licensee is deemed to have applied for and had received a license under this [Act] and must comply with the renewal requirements set forth in this [Act].

(b) This [Act] applies to the provision of money services on or after the effective date of this [Act]. This [Act] does not apply to money transmission provided by a licensee who was licensed to provide money transmission under [name of existing money transmission statutes repealed under Section 1004] and whose license remains in force under this section. This [Act] does not apply to check cashing provided by a licensee who was licensed to provide check cashing under [name of existing check cashing statutes repealed under Section 1004] and whose license remains in force under this section. This [Act] does not apply to currency exchange provided by a licensee who was licensed to provide currency exchange under [name of existing currency exchange statutes repealed under Section 1004] and whose license remains in force under this section.

Comment

Existing licensees should be grandfathered in under this Act and have their existing licenses (which are in force prior to the effective date of this Act) to remain in force under the previous money services statutes. Thus, for some time the previous statutes will govern existing licensees whereas this Act will govern newly created licenses. At the time that previously-granted licenses expire, those licensees will be treated as if they had applied for and received a new license under the this Act and will be required to submit renewal information rather than a do novo license application.