

QUESTIONS AND ANSWERS ABOUT THE UNIFORM MONEY SERVICES BUSINESS ACT

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A. The UMSBA, general

• **What is a money-services business?**

Money-services businesses ("MSBs") are nonbank entities that do not accept deposits 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 cards);
- ◆ check cashing; and
- ◆ foreign currency exchange.

MSBs have also been referred to as nonbank financial institutions or nondepository providers of financial services. 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.). MSBs have often been associated with ethnic or immigrant communities in the United States as many of these communities use MSBs in order to send funds to relatives residing overseas. An MSB might be a large national company with offices and sales outlets nation-wide. An MSB might also be small business located in a corner shop in a local community.

• **Why have various types of MSBs been grouped together in the UMSBA?**

One of the first groupings of the range of nonbank entities listed above occurred with the passage of the Annunzio-Wylie Anti-Money Laundering Act of 1992 when the definition of "financial institution" for Bank Secrecy act reporting purposes was expanded to include nonbanks.¹ MSBs have also been grouped together because many of these entities provide more than one of the services listed above. A customer may need a range of services. For

¹ The federal Bank Secrecy act, codified at 12 U.S.C. Section 1829(b), 12 U.S.C. Sections 1951-1959 and 31 U.S.C. Sections 5311-5330, authorizes the Secretary of the Treasury to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the Bank Secrecy act, codified at 31 U.S.C. Sections 5311-5330, appear at 31 C.F.R. Part 103.

example, a customer 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.

MSBs have therefore been grouped together conceptually because (1) they provide an interrelated group of services to the "unbanked" population and (2) the range of 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.²

Most MSBs, however, 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). In particular, 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.

- **What is the purpose of the UMSBA?**

There are several major goals that the Proposed Act seeks to achieve:

- ◆ Placing all MSBs within a single legislative framework (keeping in mind the differences between various types of money services);
- ◆ Providing a strong uniform law addressing safety and soundness that will give regulators an updated means of assessing whether a certain MSB should be permitted to engage in business within a state (and ensuring uniform standards across the country);
- ◆ Creating strong licensing mechanisms that will deter businesses that engage in money laundering and illegal activity from conducting business in a state;
- ◆ Strengthening enforcement and supervisory powers that will permit regulators and attorneys general to take appropriate action in the event of suspected money laundering or other related violations of law;
- ◆ Including new Internet-based money transmission services and cyberpayments within a statutory framework in an effort to create a unified licensing mechanism that will not serve as a barrier to entry for new business entities;
- ◆ Providing industry with a cost-effective manner of complying with various state licensing requirements; and

² The term "money laundering" refers to the need for criminals to somehow disguise the source and origin of illegally obtained cash and to inject it into the legitimate stream of commerce.

- ◆ Providing regulators with the means of reducing administrative costs through cooperation with other states and the sharing and exchange of licensee information.

- **Why is a uniform act desirable?**

There are several reasons why a uniform act is desirable. First, uniformity should create a level playing field with respect to the entry of MSBs into various states. First, uniformity should help create a level playing field with respect to the entry of money -services businesses (MSBs) into various states. Similarly, regulators should be able to share information and to pool resources through the use of joint examinations and reporting. 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 should also serve as a more serious deterrent to money laundering than will a host of varying state laws.

Additionally, 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 that tie together the various types of MSBs in a way that assists regulators and attorneys general in terms of law enforcement and the prevention and detection of money laundering. **The Proposed Act creates a framework that connects all types of MSBs and which clearly sets forth the relationship between a licensee and its delegates.**

The Proposed Act also provides a unique opportunity for states to take a uniform approach to the licensing and regulation of stored value and other Internet payment mechanisms. A uniform approach will provide less of a barrier to competition and growth in these new sectors. For the majority of states, the Proposed Act will provide a new approach to the treatment of stored value and Internet payments 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 under their existing money transmission statutes. **Rather than create a varied and complex regulatory system for these emerging payment mechanisms, the Proposed Act attempts to provide a simple and uniform set of licensing requirements for these new entities.**

- **Is the UMSBA a federally mandated act?**

In 1994, Congress enacted the Money Laundering Suppression Act of 1994 ("MLSA").³ The MLSA recommended that states 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." Congress specifically requested that the States develop uniform legislation under the auspices of the National Conference of Commissioners on Uniform State Laws ("NCCUSL") or the American Law Institute.

NCCUSL commissioned a study committee in the summer of 1995 to examine the need for a uniform act concerning money -services businesses. The Study Committee solicited the

³ Pub. L. N. 103-225.

views of state and federal regulators, state prosecutors, and MSB industry associations as part of its review. The majority of those who responded recommended that NCCUSL undertake such a project. On July 16, 1996, the NCCUSL Executive Committee approved a drafting committee ("Drafting Committee") for the creation of an act related to "nonbank and non-broker dealer providers of financial services."

The origins of the Proposed Act are based upon a **request** from Congress to create a uniform system for the licensing of MSBs. The Drafting Committee has, at all times, acted independently and not received any mandate from the federal government with respect to the content of the Proposed Act. **The drafting of the Proposed Act was done with reference to existing state statutes and with input and guidance from state regulators, state law enforcement representatives and industry representatives.** Additionally, the Drafting Committee has been conscious of the fact that the Proposed Act could impose additional regulatory costs on state regulators. Consequently, the Committee has tried to keep regulatory burdens to a minimum and has tried to focus on efficient and cost-effective structures for the uniform licensing and regulation of MSBs.

- **To what extent have states been consulted during the drafting process?**

The drafting process commenced during the fall of 1997. Prior to producing a first draft, the Drafting Committee held open public hearings concerning the scope and contents of the Proposed Act. During the past several years, the Committee has had the benefit of input from representatives of state law enforcement, state banking and money transmission regulators, industry participants and also academics. During this process, the Drafting Committee has actively sought the input of representative organizations such as the Money Transmitters Regulators Association and the Conference of State Bank Supervisors.

B. The UMSBA, in practice

- **What is different about UMSBA from existing state statutes?**

As noted above, only a few states have attempted to create statutory frameworks that tie together the various types of MSBs in a way that assists regulators and attorneys general in terms of law enforcement and the prevention and detection of money laundering. **The Proposed Act creates a framework that connects all types of MSBs and which clearly sets forth the relationship between a licensee and its delegates.**

The Proposed Act also contains stronger enforcement provisions, which give state regulators greater ability to deal with MSBs that engage in illegal activity or unsafe and unsound activity. Moreover, the Proposed Act includes enforcement provisions and sanctions aimed at licensees as well as authorized delegates in an attempt to create stronger mechanisms for dealing with sales outlets.

The Proposed Act also deals with new types of Internet-based payment mechanisms and new types of electronic payment instruments and creates a simple and uniform way for dealing with new mechanisms within an existing licensing framework.

- **Will states have any choice with respect to enactment of the various licensing sections of the Proposed Act?**

The Proposed Act provides a basic framework for the licensing and regulation of various types of MSBs. The licensing framework creates a menu of options for states with respect to which types of MSBs will be regulated within a given jurisdiction.

The Proposed Act contains separate licensing requirements for distinct types of MSBs. Article 2 of the Proposed Act contains licensing requirements for money transmitters (which includes traditional money transmitters, payment instrument sellers and issuers/sellers of stored value). Article 3 includes licensing requirements for check cashers and Article 4 contains licensing requirements for currency exchangers. Although the requirements for check cashers and currency exchangers are virtually identical, the Proposed Act nonetheless created separate licensing provisions for each. This enables states to choose which MSBs will be regulated.

- **Why are check cashers and currency exchangers subject to less stringent requirements than money transmitters?**

Because the Proposed Act is a state licensing statute, which also has safety and soundness elements, the Drafting Committee has considered the extent to which all MSBs should (or should not) be subject to the same requirements with respect to safety and soundness of the business entries. Requirements related to capital adequacy, permissible investments, net worth and bonding are all tied to the safety and soundness of a business. The requirements prevent a business from becoming insolvent with customers that have outstanding payment obligations (e.g., money orders that have not been redeemed).

The Proposed Act includes separate licensing regime for two distinct groups of MSBs. The first group consists of money transmitters, payment instrument sellers, and stored-value providers (these entities are still grouped together but are more broadly labeled as "money transmitters" for ease of definition). The second group consists of check cashers and currency exchangers.

The Drafting Committee has concluded 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 because they 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 requirements.

Check cashers and currency exchangers are still included within the Proposed Act (albeit in a different manner) because (1) the activity of currency exchange itself (as contrasted to check cashing) may be vulnerable to money laundering; and (2) the role of many check cashers and currency exchangers as authorized delegates of money transmitters means that they are potential vehicles for money laundering with respect to money transmission and the sale of money orders and traveler's checks.

The Drafting Committee has narrowed the extent to which check cashers and currency exchangers are subject to licensing requirements. Check cashers and currency exchangers were required to obtain a license only if they are not authorized delegates of money transmitters, payment instruments sellers, or stored-value providers. Check cashers and

currency exchangers who act as authorized delegates are already identified (for law enforcement purposes) as part of the information supplied to the state regulator by the principal licensee. Additionally, the Proposed Act permits the state regulator to take enforcement actions against both licensees and authorized delegates. Check cashers and currency exchangers are subject to anti-money laundering provisions of the Proposed Act if they are either (1) authorized delegates or (2) licensed separately under the provisions for check cashers and currency exchangers.

- **How does the UMSBA deal with consumer protection issues with respect to check cashers?**

The Proposed Act mandate does not include consumer protection issues such as disclosure and consumer rate and fee regulation for check cashing; therefore the Proposed Act addresses safety and soundness only as it relates to the prevention of money laundering. Nonetheless, the Proposed Act is not meant to replace or supplant existing consumer protection laws relating to check cashing. Instead, **the Proposed Act is meant to coexist with existing state consumer protection laws.**

Furthermore, 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 Proposed Act 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 the Proposed Act and subject to certain enforcement measures.

In some states, the Proposed Act will replace existing licensing laws for money transmitters and potentially for check cashers. For the vast majority of states, the Proposed Act will provide new provisions for dealing with currency exchangers (which are virtually unregulated at the state level). The Proposed Act is not designed, however, to repeal existing consumer protection laws. To the extent that states have existing check casher law that merges licensing with regulation of consumer fees, the Proposed Act is structured to allow states to choose which licensing provisions they wish to adopt. A state could decide not to incorporate the check cashing provisions as part of its new statutory framework.

Alternatively, states might choose to use the Proposed Act as a basic framework that it can supplement with additional consumer-related provisions. A state might choose to supplement the act's check cashing licensing provisions, for example, with its own requirements concerning consumer issues such as fee disclosure and fee setting. It is important to emphasize, however, that the only check cashers that have to obtain licenses under this Proposed Act are check cashers that are NOT also authorized delegates of money transmitters. In reality, the number of check cashers that do not serve as delegates is minimal.

- **Are the states given any choice with respect to some of the regulatory requirements imposed on licensees?**

The current draft of the Proposed Act offers the 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 the Proposed Act.** Similarly, states will retain discretion with respect to important issues such as licensing fees and bonding and net worth requirements.

- **What if a state currently has more stringent requirements for the regulation of MSBs?**

Some states (primarily border states and a handful of states with a much larger volume of MSB activity) currently have laws that are more stringent with respect to the licensing and regulation of MSBs, particularly with respect to law enforcement matters. Those states have laws that address many of the fundamental objectives of the Proposed Act. The Proposed Act is designed for those states that do not have such stringent laws and often do not have acts designed to license currency exchangers or check cashers. The Proposed Act will raise the level of enforcement authority for states lacking more stringent laws and create a uniform and level playing field throughout the country.

- **How does the UMSBA deal with Internet payment services?**

The Proposed Act provides a uniform multi-jurisdictional approach to the licensing and regulation of Internet payment services. The Proposed Act has been revised to incorporate certain Internet payment mechanisms into the existing licensing framework. **However, the Proposed Act does not include new or different licensing regimes for such payment mechanisms. Thus, the proposals contained in the Proposed 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 that (1) Internet payment mechanisms are in many respects the functional equivalent of traditional money transmission and (2) the sale of stored value is in many respects analogous to the sale of traditional payment instruments such as money orders.

The main changes to the Proposed Act involve an expansion of 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 Proposed Act 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, the Proposed Act contains a definition of stored value that is distinct from the definition of a traditional payment instrument.