TESTIMONY OF

MARK E. PLOTKIN

PARTNER, COVINGTON & BURLING, WASHINGTON, D.C.

ON BEHALF OF

MONDEX USA, SAN FRANCISCO, CALIFORNIA

BEFORE THE

NATIONAL CONFERENCE OF COMMISSIONERS ON

UNIFORM STATE LAWS DRAFTING COMMITTEE

ON THE PROPOSED

"UNIFORM NON-DEPOSITORY PROVIDERS OF FINANCIAL SERVICES ACT"

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Crowne Plaza Hotel, Washington, D.C.

My name is Mark Plotkin, and I am a partner in the Washington, DC, law firm of Covington & Burling. I am here on behalf of Mondex USA to testify regarding the proposed Uniform Non-Depository Providers of Financial Services Act presently being considered by this Committee.

As a leading developer of stored-value systems, and an active participant in regulatory and Congressional deliberations concerning electronic commerce, Mondex USA has a significant interest in proposed laws affecting stored-value. Mondex USA appreciates this opportunity to testify before this Committee.

By way of background, Mondex USA consists of two affiliated companies, Mondex USA Services and Mondex USA Originator. Mondex USA Services is engaged in promotional activities associated with the planned Mondex stored-value card system, while Mondex USA Originator engages in the manufacture, sale and redemption of Mondex stored-value. Both companies are owned jointly by seven major financial services organizations: Wells Fargo Bank, Chase Manhattan Bank; MasterCard International; AT&T Universal Bancorp; Morgan Stanley, Dean Witter, Discover & Co.; First Chicago NBD; and Michigan National Bank. Because a majority of its owners are national banks, Mondex USA is supervised by the Office of the Comptroller of the Currency.

Mondex USA is developing a stored-value system for use in the United States. Mondex USA plans to manufacture electronic value that can be stored on specially-designed computer chips embedded in a "smart card," as well as transferred from one such chip to another. This value will be called "Mondex dollars," with each Mondex dollar equivalent to a dollar in U.S. currency. Mondex value is intended to serve as an alternative to cash in small transactions – from a few cents to $10 or $20. Mondex value will be transferable from a bank or nonbank licensee of Mondex to a consumer; from one consumer to another; from consumers to merchants;

and from merchants to financial institutions. With limited exceptions Mondex value will not be transferable from merchants to consumers, or from merchants to other merchants.

Mondex USA will not deal directly with consumers, but rather will use licensees and resellers to distribute Mondex value. These licensees and resellers will include financial institutions and also may include a wide variety of merchants, such as fast food outlets, movie theaters, parking garages, and the like. Mondex USA's licensees and resellers will offer to consumers smart cards on which Mondex value either already is stored or is capable of being added by the consumer.

As you may know, Mondex USA's owners are undertaking several limited trials of the Mondex stored-value system, the most significant of which commenced in the Upper West Side of Manhattan earlier this month. That trial is being conducted jointly with Visa, the proprietors of the Visa Cash stored-value product.

At the same time, Mondex – like other stored-value systems of which we are aware – remains a work in progress. Thus, Mondex USA is reviewing proposals and evaluating designs for the various devices – cashless ATMs, "smart" telephones, PC card readers, electronic wallets, point-of-sale units – that will be required to actually put Mondex and similar stored-value systems into everyday use. Some prototype devices have been built and are being tested in the Mondex trials; still more are under development. Mondex USA believes that it will be quite some time before Mondex and its competitors are ready to commence the wide-scale retail implementation of a stored-value system in the United States.

It is within this context that I now turn to the subject matter of my testimony – specifically, whether this Committee can or even should expand the coverage of any Uniform Act relating to non-depository providers of financial services to encompass emerging stored-value systems such as Mondex. From the perspective of Mondex USA, the simple answer is that the Committee cannot and should not do so.

As the Drafting Committee is aware, Section 407 of the Money Laundering Suppression Act of 1994 expresses the sense of Congress that the States should develop, under the auspices of a body such as this Committee, uniform laws for the licensing and regulating of nondepository businesses that provide check cashing, currency exchange, or money transmitting or remittance services, or issue or redeem money orders, travelers' checks, and other similar instruments. Some regulatory agencies and law enforcement officials have expressed the view that stored-value products, such as Mondex value, are encompassed within the Act's reference to other instruments 'similar' to money orders and traveler's checks.

However, Mondex USA believes there is great doubt as to whether stored-value is within the scope of the 1994 Act. In particular, there is no reason to believe that Congress had stored-value in mind in 1994 when it enacted the Money Laundering Suppression Act. The legislative history to the Act reveals that stored-value was never contemplated by Congress during its consideration of the Act. No evidence was introduced demonstrating that stored-value was being used for money-laundering or even posed a potential problem. Nor could any such evidence have been presented because, in the absence of an operating network for the transfer and redemption of stored-value, stored-value products could not be found by Congress to have been misused to

launder funds. No such network existed then or now. In these circumstances, it is impossible to know at present whether stored-value products will be susceptible to money laundering. Clearly, then, there was not in 1994, nor is there today, any basis for finding that stored-value products have been or necessarily will be abused, nor is there any sustainable rationale for including them within the scope of any Uniform Act.

Moreover, in 1994 proponents of stored-value had no opportunity to present their concerns to Congress regarding the possible adverse effects that would flow from regulation of stored-value under the Act – rather, that opportunity was made available to those entities that were Congress' real targets: businesses engaged in the transmission and redemption of money orders, travelers checks and other "similar" paper instruments. Developers of stored-value were not invited to advise Congress whether premature regulation could preclude this legitimate business even from developing.

The Money Laundering Suppression Act reflected a careful balancing by Congress of existing evidence of abuse in money transmitter businesses on the one hand with the burden that the Act would impose on such businesses on the other. Yet Congress plainly did not consider either issue in relation to stored-value. In fact, in the House Banking Committee report on the Act, that Committee stated that it "believes that [money transmitters] are particularly vulnerable to money laundering schemes . . . due to the fact that the level of [Bank Secrecy Act] compliance is generally lower at money transmitters than at depository institutions." But as we know, there was not then nor is there today any evidence whatsoever that "the level of Bank Secrecy Act compliance is lower" with respect to issuers, sellers and redeemers of stored-value since they are not yet in business in any meaningful way. In short, there is no reason to think that Congress intended stored-value to be covered by a Uniform Act for the licensing of check cashing, currency exchange, money transmitting or money remittance businesses.

Further, it is virtually impossible to draw sensible statutory definitions as to whom should be required to be licensed under the stored-value provisions of a Uniform Act. Any model statute inherently will fail to reflect practical experience with stored-value products. Even such deceptively simple terms as "issuer" and "redeemer," when applied to stored-value, can mean vastly different things among the dramatically distinct types of stored-value systems struggling to emerge in the marketplace today; in such circumstances, any definitions will be so highly specific to one or another type of provider as to be meaningless.

Notwithstanding its objections to including stored-value in a Uniform Act, Mondex USA strongly supports the goal of preventing stored-value systems from becoming a vehicle for illegal money-laundering activities, and is working assiduously to prevent just that. Thus, Mondex USA itself is taking significant – and voluntary – steps to minimize the potential for abuse of stored value.

For example, Mondex USA will impose low limits on the amount of value that may be stored on consumer cards; Mondex will render merchant cards incapable of transmitting value they accumulate to anyone other than as a legitimate consumer refund or as a deposit in a bank; Mondex will constantly monitor transaction activity in its system, looking for abnormal patterns or behavior; Mondex will bar the exchange of currencies on its cards; and Mondex will force cards that are overused in consumer-to-consumer transactions to lock up, so that they must be returned to a financial institution for evaluation before they may be used again.

In these circumstances, Mondex USA believes that it is clear that stored-value is not within the purview of the Congressional mandate to this Committee nor is there at this time any reason to be concerned by its omission. Mondex USA accordingly recommends to this Committee that electronic stored-value be excluded from the coverage of any Uniform Act relating to non-depository providers of financial services.

Respectfully submitted,

Mark E. Plotkin
Covington & Burling
Counsel for Mondex USA