MEMORANDUM

To: Drafting Committee and Observers
Proposed Act on Money Services Business (formerly the Proposed Act on Nondepository Providers of Financial Services)
National Conference of Commissioners on Uniform State Laws (NCCUSL)

From: Anita Ramasastry, Reporter

Re: Fifth Draft of Proposed Act

Date: October 4, 1999

Please find attached the Fifth Draft of the Proposed Uniform Money Services Business Act ("UMSBA"). The Drafting Committee presented the fourth draft of the UMSBA at the annual meeting of the National Conference of Commissions held in Denver Colorado in July 1999. The changes contained in the Fifth Draft reflect comments and suggestions made during the first reading of the UMSBA. This memorandum sets forth the changes that have been made and also outlines recent developments concerning the regulation of money services businesses (MSBs)

I. Changes in the Fifth Draft

- Confidentiality of Applicant Information

Section 608 of the UMSBA sets forth the conditions under which information that is supplied by a licensee may be disclosed to other government entities including law enforcement officials and other regulators. At the annual meeting, some concern was voiced about whether this provision was too restrictive. Section 608 (Alternative 1) states that records relating to licensees and authorized delegates are not public records and may only be disclosed under specific circumstances.

The Fifth Draft contains a second alternative, which states that "financial information not normally available to the public that is submitted on a confidential basis" shall be kept confidential. This alternative provision provides mechanisms for protecting proprietary information of licensees while still allowing access to other information. This may provide a better balance between the public interest in permitting access to regulatory information while also protecting confidential financial data of licensees.

- Exemption for Certain Non-bank Entities that Issue Stored Value

In Section 104 of the Fourth Draft (which lists exemptions from the scope of the act), stored value issuers would be excluded if they are:

> engaging in the business of issuing, selling, or redeeming stored-value instruments subject to regulation, supervision, and examination by a federal or state banking agency which does not issue, sell, or redeem stored-value instruments to or from individuals.

This exclusion was based on the fact that such entities would be subject to supervision by a banking regulator and also would not be dealing directly with consumers and as such would not pose safety and soundness concerns for state regulators.

The Fifth Draft contains a revised exclusion. Based on recommendations from the American Bar Association's Task Force on Stored Value, the Committee decided to refine the exclusion to cover:

> a person engaging in the business of issuing, selling, or redeeming stored-value instruments and which is subject by a state or federal banking supervisor to a safety and soundness regime that addresses investment and capital requirements.

See Letter from American Bar Association Task Force on Stored Value to David S. Willenzik, ABA Advisor to the UMSBA Drafting Committee (March 23, 1999) (copy on file with NCCUSL). The Committee felt that entities that were already subject to regulatory oversight by a banking regulator and which had to comply with safety and soundness requirements would not pose a risk with respect to consumers. Furthermore, the concern about having information about the entity and its delegates for purposes of prevention and detection of money laundering would similarly be fulfilled because of oversight from banking regulators.

II. Recent Developments Concerning Money Services Businesses

In September 1999, the Secretary of the Treasury, Lawrence H, Summers, and United States Attorney General Janet Reno presented the National Money Laundering Strategy to Congress. As noted in this document, Goal 3 of the Strategy is the "Strengthening Partnerships with State and Local Governments to Fight Money Laundering Throughout the United States." Objective 4 under Goal 3 is to "Encourage Comprehensive State Counter-Money Laundering and Related Legislation."

This objective reads:

> At last count, 17 states still have not made money laundering a state crime. That gap in coverage should be speedily closed. State money laundering statutes are essential if state are to be full partners in the national counter-money laundering effort. . . . . Experts at the Departments of Treasury and Justice will assist states that are considering enacting or revising statutes dealing with money laundering or financial reporting and recordkeeping. Assistance can take the form of producing information about the patterns of money laundering encountered in a state, or providing drafting or related advice about the terms of the necessary statutes themselves or related legal issues. The Administration also will encourage states to enact legislation licensing and regulating appropriate money services businesses and those engaged in the business of transporting currency.

- Money Services Business Registration Requirement

In August 18, 1999, the Financial Crimes Enforcement Network ("FinCEN") of the United States Department of Treasury ("Treasury") issued a final rule requiring that MSBs register with Treasury. (64 Fed. Reg. 45438). This rule is based on a proposed rule that was published on May 21, 1997 (62 Fed. Reg. 27890). The registration requirement was mandated by Congress as part of the Money Laundering Suppression Act of 1994.

The registration requirement applies to five types of MSBs (also referred to as non-bank financial institutions or nondepsoitory providers of financial services):

a) currency dealers or exchangers;

b) check cashers;

c) issuers of traveler's checks or money orders;

d) sellers or redeemers of traveler's chuckles or money orders; and

e) money transmitters.

At present, these categories of MSBs are required to register with the Department of Treasury and to renew their registration every two years. Additionally, MSBs will be required to update the list of agents annually. Agents of MSBs will not have to register unless they operate as an MSB on their own behalf. At present, stored value issuers and sellers will not be required to register with Treasury. Treasury also notes that a rule, which will require MSBs to file suspicious activity reports, is still under consideration. Suspicious activity reporting will not commence, however, until the registration process is complete.

III. Issues That Need to Be Considered at the October Meeting

- Treatment of Internet "Scrip" within scope of UMSBA

It is still an open question as to whether the definition of "money transmission" contained in subsection (20) includes new internet or on-line payment mechanisms that are operated by non-bank entities such as the use or transmission of electronic currency or on-line "scrip." For example, a non-bank entity might offer consumers the opportunity to buy internet scrip. A consumer would buy this scrip from an issuer and this notational value would be stored on the hard drive of a computer and transferred to merchants for purchases over the internet. The merchant would redeem the internet scrip or exchange it for value by redeeming the scrip at the non-bank issuer. Some commentators have noted that the transfer of value or funds over the internet is akin to money transmission. This issue needs to be more clearly considered by the Committee. To the extent that internet scrip or on-line currency providers are covered by this Act, the Committee will need to consider the consequences of requiring an entity which may have a virtual (as opposed to physical) presence in many jurisdictions to obtain a license.

In a 1996 report on emerging electronic methods for retail payments, the United States Congressional Budget Office noted that:

> [T]he supervision and regulations covering depository institutions safeguard the safety and soundness of those institutions. Lacking those safeguards, an electronic payment method issued by an unregulated institution is more likely to fail. Such a failure could undermine consumers' confidence in other issuers. Thus, the best interest of the payment system may be served by having safeguards in place to protect it from consequences of the failure of individual institutions

See **Emerging Electronic Methods for Making Retail Payments, Congressional Budget Office (June 1996), at 42).**

The Committee needs to balance concerns of safety and soundness with the goal of facilitating the growth of new payment systems. Furthermore, many of these new technologies are just beginning to be tested and utilized and therefore the potential risks associated with on-line payment systems has yet to be determined, especially in the context of money laundering.

- Further refinement of requirements for money transmitters pursuant to Section 202

At the annual meeting, some questions were raised as to the type of information which money transmitters who are applying for licenses need to submit to the regulator as part of an

initial application. For example, it was noted that partnerships or non-publicly held corporations might not need to submit the same type of data and information as larger publicly held companies.

At present, there are two categories of applicants that are addressed in Section 202 of the UMSBA: corporate and non-corporate applicants. Furthermore, there are additional requirements for corporate applicants who are publicly held and who are wholly owned subsidiaries of publicly held corporations.

The Committee will need to consider whether any additional categories of applicants should be created in Section 202. Alternatively, the Committee might consider paring down the application requirements for some applicants.