

D R A F T
FOR APPROVAL

UNIFORM MONEY-SERVICES BUSINESS ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-NINTH YEAR
ST. AUGUSTINE, FLORIDA
JULY 28 – AUGUST 4, 2000

UNIFORM MONEY-SERVICES BUSINESS ACT

WITH PREFATORY NOTE AND REPORTER'S NOTES

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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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1

UNIFORM MONEY-SERVICES BUSINESS ACT

2

PREFATORY NOTE

3

1. HISTORY AND BACKGROUND

4

A. Background on Money-Services Businesses

5

(i) What is a Money-services business?

6

Money-services businesses (“MSBs”) are non-bank 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:

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- money transmission (e.g., wire transfers);

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- the sale of payment instruments (e.g., money orders, traveler’s checks, and stored-value cards);

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- check cashing; and

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- foreign currency exchange.

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MSBs have also been referred to as non-bank 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). 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.

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As of 1996, there were approximately 158,000 MSB outlets or sales locations that provided financial services involving approximately \$200 billion

1 annually throughout the United States.¹ Approximately seven large entities account
2 for the majority of MSB activity conducted within the United States. This group is
3 comprised of large firms that are publicly traded on major securities exchanges with
4 significant capitalization. A far larger group of smaller enterprises compete with the
5 seven larger firms. A smaller MSB might also be a travel agent or a grocery or
6 liquor store. Smaller MSBs tend to operate in niche markets. For example, smaller
7 companies often service a particular immigrant neighborhood within a certain
8 metropolitan area.

9 **(ii) Why have various types of MSBs been grouped together?**

10 MSBs have been grouped together conceptually because (1) they provide an
11 interrelated group of services to the “unbanked” population and (2) the range of
12 services offered by MSBs have been identified as vulnerable to money laundering in
13 recent years. As depository institutions have come under increased federal and state
14 oversight with respect to money laundering, the federal government has turned its
15 attention to MSBs as a possible means for transporting illegally obtained money or
16 converting large cash proceeds into more easily portable payment instruments.²

17 The range of non-bank entities listed above were first grouped together with
18 the passage of the Annunzio-Wylie Anti-Money Laundering Act of 1992 when the
19 definition of “financial institution” for Bank Secrecy Act (“BSA”) reporting
20 purposes was expanded to include non-banks.³ MSBs have also been grouped
21 together because many of these entities provide more than one of the services listed
22 above. A customer may need a range of services. For example, a customer may
23 take his paycheck to a check casher to have it converted into cash; he then may need
24 to purchase a money order to pay his bills; finally, he may need to send funds to
25 relatives abroad via a wire transfer.

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

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.

³ 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.

1 Most MSBs, however, have a **primary** function or business activity from
2 which they derive the majority of their revenue (e.g., check cashing or money
3 transmission) but also offer secondary or ancillary services. Frequently, MSBs serve
4 as authorized vendors or sales agents of another MSB as well (with respect to a
5 secondary or ancillary activity). In particular, money transmitters and payment
6 instrument sellers often rely on a distribution network of sales outlets in order to
7 conduct their business. Very often check cashers or foreign currency exchangers
8 will serve as sales representatives for money transmitters. Consequently, check
9 cashers or currency exchangers will offer money transmission services or sell money
10 orders and traveler’s checks **solely as contractors** for money transmitters. **For the**
11 **sake of consistency, the term “authorized delegate” is used in these notes and**
12 **in the UMSBA when referring to the sales outlets.**

13 **(iii) Expansion of the term MSB to include Internet-related payment**
14 **mechanisms and “cyberpayments”**

15 When the drafting committee (“Drafting Committee”) commenced its work
16 in the fall of 1997, Internet-based payment mechanisms and stored value were new
17 innovations that had not gained widespread market penetration in the United States.
18 As the Drafting Committee progressed with its work, however, these mechanisms
19 and technologies have become more prevalent. Several States have taken the
20 position that the transfer of money over the Internet or the use of an electronic
21 payment instrument is the equivalent of money transmission in the brick and mortar
22 world. In other words, Internet payment services are the equivalent of money
23 services in that they are nondepository providers of financial services and accept
24 customer funds for transmission to third parties. Such Internet payment mechanisms
25 include online bill payment services, Internet funds transfer services as well as
26 stored-value providers (which can be used on line or off line)

27 As of July 1999, the Drafting Committee had decided to include certain non-
28 bank stored-value issuers within the scope of the UMSBA but had not fully
29 considered whether other Internet payment mechanisms should also be included
30 within the proposed Act. Hence, the Drafting Committee commissioned a
31 cyberpayments working group (“Cyberpayments Working Group”) in the autumn of
32 1999 to examine the issue of whether various Internet based payment mechanisms
33 should be included within the scope of the UMSBA. The recommendations of the
34 Cyberpayments Working Group and the Drafting Committee’s work in this area are
35 discussed in greater detail in Section 4B below. A description of the various types
36 of mechanisms analyzed by the Drafting Committee is also discussed below.

37 **(iv) MSBs and money laundering**

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

9 Customers often have different relationships with MSBs than customers do
10 with depository institutions. Typically, a customer has an ongoing relationship with
11 a financial institution at which it transacts business. This enables a bank to know its
12 customer and to identify a pattern or behavior that may suggest illegal activity. By
13 contrast, customers who utilize MSBs may do so because of the greater anonymity
14 the services provide. One does not need to be an existing “customer” of an MSB as
15 is the case with a bank. A customer can repeatedly use different MSBs to transact
16 business.

17 Additionally, MSBs are not always subject to the same level of licensing,
18 regulation and state oversight as are depository institutions. Money services are
19 provided a bit differently than financial services in depository institutions. Many
20 money transmitters and payment instrument sellers use networks of independent
21 sales outlets (i.e., authorized delegates) as the sites where business is transacted.
22 These sales outlets are operated under contract with a money transmitter and hence
23 are not directly supervised by the money transmitter. Thus, the role of the
24 authorized delegates with respect to money laundering has come under heightened
25 scrutiny. State oversight of these delegates varies greatly, especially with respect to
26 law enforcement. As noted below, the Drafting Committee has attempted to clarify
27 the relationship of a money transmitter licensee with the various delegates with
28 which it contracts and to provide regulators with greater enforcement powers with
29 respect to the delegates themselves.

30 How do MSBs serve as vehicles for money laundering? In some instances
31 MSBs may assist clients to evade federally mandated reporting requirements with
32 respect to currency transactions in excess of a certain dollar amount. For example,
33 corrupt delegates of money transmitters might accept illicit funds from a customer
34 and then transfer the funds overseas in smaller amounts in order to evade certain
35 currency reporting requirements. As the Financial Crimes Enforcement Network
36 (“FinCEN”) of Treasury has noted:

37 Most often, the traffickers bring the agents [of money transmitters] large
38 amounts of currency, which need to be returned to a drug source country. The
39 agents create invoices that make it appear as if the money had been brought in

1 by a number of different senders, in amounts below the record keeping and
2 reporting thresholds. These corrupt agents also provide the money transmitters
3 with lists of recipient names in the foreign countries for each remittance, again
4 using a different name for each remittance. In this way, each time it appears as
5 is there were a number of smaller, unrelated remittances instead of one
6 remittance, in excess of \$3,000, that would trigger the record keeping rules . . .
7 or in excess of \$10,000 which would trigger the filing of a Currency Transaction
8 Report.⁴

9 Additionally, MSBs may serve as another “layer” in a chain of funds transfer.
10 In other words, a customer may use an MSB in order to mask his or her identity. A
11 currency exchange house, for example, might accept cash from a customer, which it
12 will then deposit in its own bank account at a commercial banking institution. The
13 origin or source of the funds would be “disguised” because the bank will attribute
14 ownership to the currency exchange business. Similarly, a wire transfer service may
15 accept funds from a customer and wire them through its own commercial bank for a
16 small commission. Again the source of funds is masked.

17 The use by money launderers of money orders, whether issued by the United
18 States Postal Service or by private companies, has also been documented.⁵ The ease
19 with which money orders can be redeemed or negotiated makes them attractive
20 tools for money launderers. Money orders are negotiable, may be made out to
21 “cash,” and operate as a cash substitute. Traveler’s checks also raise similar issues
22 to money orders.⁶ The requirement that traveler’s checks be countersigned on
23 issuance at the time they are negotiated makes them more difficult to abuse.
24 However, the counter-signature requirement can be evaded by a sales agent and may
25 have less force abroad than in the United States. Consequently, traveler’s checks
26 can be purchased in bulk and used to transport large amounts of illegal currency
27 overseas.

⁴ See Special Currency Transaction Reporting Requirements for Money Transmitters, 62 Fed. Reg. 27,909 (May 21, 1997), at 27,912.

⁵ *Money Laundering Trends Before United States House of Representatives*, Committee on Banking and Financial Services, Subcommittee on General Oversight and Investigations (April 15, 1999) (Statement of Assistant U.S. Attorney Jodie Levine Avergun), 1999 WL 16946054.

⁶ United States Department of Treasury, Financial Crimes Enforcement Network, Money Laundering in the United States, U.S. Submission to the Financial Action Task Force for the Meeting of the Experts Group on Money Laundering Typologies (November 1997), at 10.

1 While new or emerging payment systems may not yet pose a money
2 laundering threat, such technologies pose potential risks. As FATF has noted:
3 “[e]lectronic purse systems would present a laundering risk in the future if their
4 upper limits were to be raised substantially or removed altogether.”⁷ FATF has also
5 noted that electronic purse systems such as stored-value cards pose increased risks
6 for money laundering when they are utilized for cross border purposes. Electronic
7 currency or cyberpayments also may create risks, if they do not include mechanisms
8 for leaving an audit trail when value is changed from one holder to another.
9 Additionally, FATF has noted that the new payment technologies have features
10 similar to traditional systems of electronic funds transfer: rapidity of execution,
11 dematerialization, and the potential magnitude of the transactions.⁸

12 **(v) Existing state and federal regulation of MSBs**

13 In 1994, Congress enacted the Money Laundering Suppression Act of 1994
14 (“MLSA”).⁹ The MLSA recommended that States enact uniform laws to regulate
15 MSBs. The MLSA also called upon the Treasury to promulgate a registration rule
16 for MSBs. The registration requirement is also meant to educate MSBs about their
17 requirements under the federal Bank Secrecy Act (“BSA”).

18 The MLSA urged States to enact uniform laws to “license and regulate”
19 MSBs including “businesses which provide check cashing, currency exchange or
20 money transmitting or remittance services, or issue or redeem money orders,
21 traveler’s checks and other similar instruments.” Congress specifically requested
22 that the States develop uniform legislation under the auspices of either NCCUSL or
23 the American Law Institute. Congress recommended that a proposed uniform act
24 would include:

25 (1) licensing requirements for MSBs;

26 (2) licensing standards for MSBs that focus on:

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

⁷ Financial Action Task Force, *Report on Money Laundering Typologies (1997-1998)*, 15 app. (visited May 14, 2000)
<<http://www.oecd.org/fatf/reports.htm>>.

⁸ *Id.* at 16. FATF states that “these features pose difficulties as regards of traceability of payments and law enforcement intervention only after the event.” *Id.*

⁹ Pub. L. N. 103-225.

- 1 (b) the competence and experience of the directors and officers of the MSB;
- 2 (3) reporting requirements concerning disclosure of fees for services offered to
3 consumers;
- 4 (4) procedures to comply with federal currency transaction reporting
5 requirements; and
- 6 (5) criminal penalties for the operation of an MSB business without a license.

7 Section 407 of the MLSA also called for the States to enact civil or criminal
8 penalties for MSBs who fail to comply with the currency reporting requirements of
9 the federal FSA.

10 In September 1999, the Secretary of the Treasury Lawrence H. Summers
11 and United States Attorney General Janet Reno presented the National Money
12 Laundering Strategy to Congress. As noted in this document, Goal 3 of the
13 Strategy is “Strengthening Partnerships with State and Local Governments to Fight
14 Money Laundering Throughout the United States.”¹⁰ Objective 4 under Goal 3 is to
15 “Encourage Comprehensive State Counter-Money Laundering and Related
16 Legislation.”¹¹

17 This objective reads:

18 At last count, 17 states still have not made money laundering a state crime. That
19 gap in coverage should be speedily closed. State money laundering statutes are
20 essential if states are to be full partners in the national counter-money laundering
21 effort. . . . Experts at the Departments of Treasury and Justice will assist
22 states that are considering enacting or revising statutes dealing with money
23 laundering or financial reporting and recordkeeping. Assistance can take the
24 form of producing information about the patterns of money laundering
25 encountered in a state, or providing drafting or related advice about the terms of
26 the necessary statutes themselves or related legal issues. **The Administration
27 also will encourage states to enact legislation licensing and regulating
28 appropriate money-services businesses and those engaged in the business of
29 transporting currency.**¹²

¹⁰ National Money Laundering Strategy, (visited May 17, 2000)
<<http://www.treas.gov/press/releases/docs/money.pdf>>.

¹¹ *Id.*

¹² *Id.* (emphasis supplied).

1 Congress called for a two-tier approach to MSB regulation because of the
2 existing duality of MSB regulation. Direct oversight of MSBs occurs at the state
3 level through state licensing laws. State licensing, regulation and oversight of MSBs
4 vary greatly from State to State. Because state legislation focuses on licensing and
5 safety and soundness, the UMSBA also focuses on these issues. The sale of
6 payment instruments and money transmission is the most heavily regulated activity
7 with more than 44 States having some form of law which regulates the sale of
8 checks and other payment instruments and/or money transmission. States vary to
9 the extent in which they regulate both payment instrument sellers and money
10 transmission – with some States regulating money transmission, others the sale of
11 payment instruments and still others a combination of the two activities.

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

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

- 29 • licensing and registration of MSBs (with more detailed requirements for
30 payment instrument sellers and money transmitters than for check cashers or
31 currency exchangers);
- 32 • bonding, collateral, and net worth requirements;
- 33 • examination of MSBs;
- 34 • record keeping requirements;
- 35 • reporting requirements;

- 1 • enforcement powers; and
- 2 • civil and/or criminal penalties.

3 Federal and state regulators and law enforcement authorities have
4 traditionally relied on currency transaction reports (“CTRs”) as a means of detecting
5 money laundering in financial institutions and in MSBs. Pursuant to the federal BSA
6 (which is a federal anti-money laundering record keeping statute), financial
7 institutions are required to report currency transactions equal to or greater than
8 \$10,000 to Treasury. For example, if a bank customer deposits \$10,000 into his or
9 her bank account, the bank is obligated to file a CTR.¹³ The CTR indicates the
10 name of the depositor as well as the nature of the transaction (as a way of trying to
11 track down customers who may be money launderers). Additionally, financial
12 institutions are also required to retain records for transactions in excess of \$3,000.¹⁴

13 MSBs are technically obligated to file CTRs and to also keep records for
14 transactions greater than \$3,000. The lack of consistent and coherent federal and
15 state oversight of MSBs, however, makes it more difficult to enforce this obligation
16 and for regulators to act on information that they receive. Additionally, many
17 money launderers avoid triggering the CTR or record keeping requirements of the
18 BSA by structuring their transactions into several smaller transactions below the
19 reporting thresholds of \$10,000 or \$3,000. As noted above, in some instances,
20 MSBs may actively assist the customer in evading reporting requirements (as was
21 the case with transmitters monitored under Operation El Dorado). Some MSBs
22 may be unaware, furthermore, that they possess such an affirmative obligation.
23 Unlike banks, which are licensed and regulated more closely at either a state or a
24 federal level, MSBs are subject to a varying degree of state regulation (especially
25 with respect to the role of authorized delegates).

26 On May 21, 1997, FinCEN proposed rules on the following subjects: (1)
27 registration of MSBs (2) suspicious transaction reporting by money transmitters and
28 issuers, sellers, and redeemers of money orders and travelers checks and (3)
29 currency transaction reporting by money transmitters of overseas transmissions of
30 funds.¹⁵

¹³ 31 C.F.R. Section 103.22(a) imposes a general reporting and recordkeeping threshold of \$10,000 for domestic financial institutions.

¹⁴ 31 C.F.R. Section 103.33.

¹⁵ Proposed Rules of the Department of Treasury, 31 CFR Part 103 Financial Crimes Enforcement Network; (1) Proposed Amendment to the Bank Secrecy Act Regulations – Definitions and Registration of Money Services Businesses, Wednesday, May 21, 1997, 62 Fed. Reg. 27,890-01; (2) Proposed Amendment to

1 In August 18, 1999, FinCEN issued a final rule requiring that MSBs register
2 with Treasury.¹⁶ This rule is based on a proposed rule that was published on May
3 21, 1997.¹⁷ The registration requirement was mandated by Congress as part of the
4 Money Laundering Suppression Act of 1994. The registration requirement applies
5 to five types of MSBs: (1) currency dealers or exchangers; (2) check cashers; (3)
6 issuers of traveler’s checks or money orders; (4) sellers or redeemers of traveler’s
7 checks or money orders; and (5) money transmitters.

8 At present, these categories of MSBs are required to register with the
9 Department of Treasury by December 31, 2001 and to renew their registration every
10 two years. Additionally, MSBs will be required to update the list of agents annually.
11 Agents of MSBs will not have to register unless they operate as an MSB on their
12 own behalf. At present, stored-value issuers and sellers will not be required to
13 register with Treasury.¹⁸

14 Currently, depository institutions are also required to file suspicious activity
15 reports (“SARs”) on transactions that suggest money laundering or other
16 illegal/fraudulent activity on the part of a customer. Unlike currency reporting
17 requirements, which are triggered by the dollar value of transactions, SARs are
18 designed to detect unusual patterns or activities that may involve money laundering
19 or financial crime. Treasury initiated proposed rulemaking in May 1997 that would
20 create a SAR form for money transmitters and payment instrument sellers. The final
21 SAR rule was promulgated on March 14, 2000.¹⁹

22 Under the SAR rule (1) money transmitters, (2) issuers, sellers, and
23 redeemers of money orders, (3) issuers, sellers, and redeemers of traveler’s checks,
24 and (4) the United States Postal Service (except with regard to the sale of postage
25 or philatelic products) are required to report certain classes of transactions that meet

the Bank Secrecy Act Regulations – Requirement of Money Transmitters and
Money Order and Traveler's Check Issuers, Sellers, and Redeemers to Report
Suspicious Transactions, Wednesday, May 21, 1997, 62 Fed. Reg. 27,900-01; (3)
Proposed Amendments to the Bank Secrecy Act Regulations – Special Currency
Transaction Reporting Requirement for Money Transmitters, Wednesday, May 21,
1997, 62 Fed. Reg. 27,909-01.

¹⁶ 64 Fed. Reg. 45,438.

¹⁷ 62 Fed. Reg. 27,890.

¹⁸ Treasury Strengthens Anti-Money Laundering Proposal (visited May 12, 2000)
<<http://www.treas.gov/press/releases/ps57.htm>>.

¹⁹ 65 Fed. Reg. 13683.

1 certain dollar thresholds to the Department of the Treasury, beginning on January 1,
2 2002. The reportable transactions include:

- 3 • transactions involving funds derived from illegal activity or intended or
4 conducted in order to hide or disguise funds or assets derived from illegal
5 activity;
- 6 • transactions designed, whether through structuring or other means, to evade
7 the requirements of the BSA; and
- 8 • transactions that appear to serve no business or apparent lawful purpose.²⁰

9 **B. Drafting Committee Activities Subsequent to**
10 **the First Reading at the 1999 Annual Meeting**

11 Since the 1999 Annual Meeting, the Drafting Committee has met two
12 additional times in October 1999 and March 2000. The Drafting Committee
13 reviewed a Fifth Draft of the UMSBA in October 1999 at a meeting in Arlington,
14 Virginia. The Fifth Draft of the UMSBA contained revisions suggested during the
15 1999 Annual Meeting. One of the major revisions discussed at the October meeting
16 was an amendment to the application information required from non-corporate
17 entities seeking licenses for money transmission. The revised provisions included
18 broader standards that would be applicable to limited liability companies and
19 partnerships as well as joint stock companies. This change addressed concerns
20 raised at the Annual Meeting concerning the ability of non-publicly held business
21 entities to comply with the application requirements (e.g., concerning audited
22 financials) as previously drafted.

23 The Drafting Committee also requested that a working group be formed to
24 examine issues relating to cyberpayments and stored value. Subsequent to the
25 October meeting, the Chairman of the Drafting Committee appointed a
26 Cyberpayments Working Group composed of: Commissioner Bion M. Gregory,
27 Chair of the Working Group and Member of the Drafting Committee, Sarah Jane
28 Hughes, Professor of Law at Indiana University School of Law – Bloomington,
29 Nicholas Kyrus, President of the Money Transmitters Regulators Association and
30 Deputy Commissioner, Department of Financial Institutions, Virginia, Ezra Levine,

²⁰ The rule includes two different dollar thresholds depending on the stage and type of transaction involved: for transactions conducted or attempted by, at or through a money service business or its agent, the threshold of \$2,000 applies; for transactions identified by issuers of money orders or traveler's checks from a review of clearance records or other similar records of instruments that have been sold or processed, the threshold of \$5,000 applies.

1 Partner at Howrey & Simon and Counsel to the Non Bank Funds Transmitter
2 Group, Joseph Sommer, Counsel, Federal Reserve Bank of New York, and Russell
3 B. Stevenson, Jr., General Counsel, Arbros Communications. Anita Ramasastry,
4 Reporter for the Drafting Committee, served as the Reporter for the Cyberpayments
5 Working Group.

6 The Cyberpayments Working Group met for more than 5 hours by
7 conference call on February 15, February 29, and March 7, 2000 and exchanged
8 electronic communications. The Cyberpayments Working Group based its
9 discussion on a Memorandum, dated January 5, 2000 and prepared by Anita
10 Ramasastry. A copy of this memorandum may be found at the University of
11 Pennsylvania's web site.²¹

12 In March 2000, the Drafting Committee held its final meeting in Washington,
13 D.C. The Drafting Committee voted to change the definition of “money-services
14 business” to “money services.” Money services include money transmitters, check
15 cashers and currency exchangers. The previous term, “money-services business,”
16 closely paralleled the federal definition included in recent registration rules
17 promulgated by FinCEN. However, within the UMSBA the use of the word
18 “business” was confusing because of the separate use of the term “engage in the
19 business.” Additionally, the Drafting Committee felt that the term money services
20 was succinct and provided for greater clarity within the statute. Furthermore, the
21 definition of money services within the UMSBA is more consistent with terminology
22 used in existing state law.

23 The Drafting Committee also voted to send a request to the Executive
24 Committee of NCCUSL that the name of the UMSBA be changed to the Uniform
25 Money Services Act (“UMSA”) to provide consistency between the changed
26 definitions and the name of the act. This request has been sent to the Executive
27 Committee for their consideration.

28 During its final meeting, the Drafting Committee considered the
29 recommendations of the Cyberpayments Working Group. Based on the
30 recommendations of the Working Group, the Drafting Committee made several
31 decisions which are summarized in Section 4B of the Prefatory Note.

32 In addition to consideration of the cyberpayments recommendations, the
33 Drafting Committee spent time revising and fine turning the draft. At the March
34 meeting, the Drafting Committee also voted to amend the definition of “check

²¹ The National Conference of Commissioners on Uniform State Laws Drafts of Uniform and Model Acts Official Site (visited May 15, 2000)
<http://www.law.upenn.edu/bll/ulc/ulc_frame.htm>.

1 cashing” to specifically exclude entities that provide deferred-deposit services for a
2 fee. Such services are often referred to as “pay-day lending” whereby a customer
3 receives money in exchange for a check that will be submitted for collection at a
4 specified time in the **future**. The check is often to be presented at the time of the
5 customer’s next pay period (hence the reference to “pay-day”). It is believed that
6 such services do not constitute check cashing but are rather a related service often
7 regulated by separate statute. The security requirements set forth for money
8 transmitters in Section 203 were also shortened and simplified.

9 The Drafting Committee also decided to make optional (denoted by
10 brackets) the provisions of the UMSBA, which require licensees to file annual
11 renewal reports (Sections 205(b), 304(b), and 404(b)). States often use either an
12 **annual renewal report or annual examinations** as a means of exercising
13 regulatory oversight of a licensee. Thus, some States do not currently require
14 renewal reports and utilize annual examinations as a supervisory mechanism. Other
15 States rely more on renewal reports. The examination provision has not been
16 bracketed because Section 601 only provides authority for the superintendent to
17 conduct examinations but does not require such examinations to take place annually.
18 **States will be free to choose whether they wish to make renewal reporting part**
19 **of their supervisory regime.**

20 The other area where revisions were made was Article 8 of the Act, which
21 deals with enforcement. Section 801 provides the superintendent with authority to
22 bring enforcement proceedings against a licensee. Section 801(a)(2) has been
23 amended and language concerning the licensee’s responsibility for the fraud,
24 misrepresentation, deceit or gross negligence of an authorized delegate has been
25 removed because the Committee decided that it was not desirable to create liability
26 for the licensee on the basis of the fraudulent activities of a delegate. Under the
27 previous Section 801(a)(2), the licensee could have its license revoked based on
28 misrepresentation or fraudulent acts by one of its authorized delegates.

29 Section 801(a)(3) has also been revised. The licensee may still have its
30 license revoked should an authorized delegate violate either a money-laundering
31 statute or any part of the UMSBA. This creates a degree of accountability on the
32 part of the licensee for its delegates with respect to compliance with state and
33 federal anti-money laundering measures and also with the requirements of this Act.
34 However, it has been difficult for regulators to articulate a clearly defined standard
35 as to what constitutes a “wilful failure to supervise” an authorized delegate.
36 Consequently, this language has been omitted.

37 The Seventh Draft of the UMSBA, which is being presented to the Annual
38 Meeting, contains the following additional revisions. First, the Drafting Committee
39 worked during its March 2000 session to tighten the enforcement provisions and to

1 make the provisions dealing with licensees and delegates more consistent with each
2 other. Additionally, a new confidentiality provision has been included. The Drafting
3 Committee, after hearing the views of industry representatives, decided that it was
4 important to provide licensees and license applicants with an appropriate degree of
5 protection for business and proprietary information that is contained in applications
6 and reports filed with state regulators. In the absence of such protections,
7 information concerning an applicant's receivables, for example, could be used to
8 reconstruct the market share of a particular MSB. Hence, the Drafting Committee
9 voted to include the current confidentiality provision. Finally, the Seventh Draft
10 contains a new Section 807, which provides regulators with the ability to take
11 enforcement actions against unlicensed persons.

12 **2. CITATION AND STYLE NOTES**

13 Unless otherwise noted, references in this draft are to the following sources:

- 14 • "Model Act Regulating Money Transmitters" – Non-Bank Funds
15 Transmitter Group Model Act Regulating Money Transmitters (1996).
- 16 • "Arizona Money Transmitter Act" – Arizona Revised Statutes, Title 6,
17 Banks and Financial Institutions, Chapter 12, Transmitters of Money (Title
18 6, Banks and Financial Institutions; Chapter 12, Transmitters of Money,
19 [1999]).
- 20 • "Florida Money Transmitter's Code" – Florida Money Transmitters' Code
21 (Title XXXIII, Regulation of Trade, Commerce, Investments, and
22 Solicitations, Chapter 560, Money Transmitters' Code [1999]).
- 23 • "President's Commission Act" – President's Commission on Model State
24 Drug Laws Model Money Transmitter Licensing and Regulation Act (1993).
- 25 • "MTRA Outline" – Money Transmitters' Regulators Association Model
26 Legislation Outline (1991).

27 **3. GOALS AND OBJECTIVES**

28 There are several major goals that the Act seeks to achieve.

- 29 • Encompassing all MSBs within a single legislative framework (keeping in
30 mind the differences between various types of money services);

- 1 • Providing a strong safety and soundness law that will give regulators a
2 means of assessing whether a certain MSB should be permitted to engage in
3 business within a State (and ensuring consistent standards across the
4 country);
- 5 • Creating strong licensing mechanisms that will deter businesses that engage
6 in money laundering and illegal activity from conducting business in a State;
- 7 • Strengthening enforcement and supervisory powers that will permit
8 regulators and attorneys general to take appropriate action in the event of
9 suspected money laundering or other related violations of law;
- 10 • Including new Internet-based money transmission services and
11 cyberpayments within a statutory framework to the extent appropriate in an
12 effort to create a unified licensing mechanism that will not serve as a barrier
13 to entry for new business entities;
- 14 • Providing industry with a cost efficient manner of complying with various
15 state licensing requirements; and
- 16 • Providing regulators with the means of reducing administrative costs through
17 cooperation with other States and through the sharing and exchange of
18 uniform information provided by licensees.

19 As mentioned above, there are several reasons why a Uniform Act is
20 desirable. First, uniformity will create a level playing field with respect to the entry
21 of MSBs into various States. Uniform licensing, reporting and enforcement
22 provisions for MSBs will serve as a much larger deterrent to money laundering than
23 will a host of varying state laws. More generally, the uniformity of the reporting and
24 record keeping requirements will enable industry to comply with multiple state
25 requirements in a uniform and cost effective manner.

26 Additionally, while many States have laws that deal with the sale of payment
27 instruments, state regulation of money transmission, check cashers and currency
28 exchangers is extremely varied. Furthermore, only a few States have attempted to
29 create statutory frameworks which tie together the various types of MSBs in a way
30 that assists regulators and attorneys general in terms of law enforcement and the
31 prevention and detection of money laundering. The UMSBA creates a framework
32 that connects all types of MSBs and which clearly sets forth the relationship
33 between a licensee and its delegates.

34 In some States, the Act will replace existing licensing laws for money
35 transmitters and potentially check cashers. For the vast majority of States, the Act

1 will provide new provisions for dealing with currency exchangers (which are
2 virtually unregulated at the state level). The Act is not designed, however, to repeal
3 existing consumer protection laws. To the extent that States have existing check
4 cashier law that merges licensing with regulation of consumer fees, the Act is
5 structured to allow States to choose which licensing provisions they wish to adopt.
6 Thus, a State could decide not to incorporate the check cashing provisions as part of
7 its new statutory framework.

8 Alternatively, States might choose to use the Act as a basic framework that
9 it can supplement with additional consumer-related provisions. A State might
10 choose to supplement the Act’s check cashing licensing provisions, for example,
11 with its own requirements concurring consumer issues such as fee disclosure and fee
12 setting. **It is important to emphasize, however, that the only check cashers that**
13 **have to obtain licenses under this Act are check cashers that are NOT also**
14 **authorized delegates of money transmitters. In reality, the number of check**
15 **cashers that do not serve as delegates is minimal.** At the same time, this Act
16 provides for a greater recognition of the relationship between a licensee and
17 authorized delegates in terms of the enforcement measures that a regulator may take
18 directly against the delegate and also, under certain circumstances, against the
19 licensee with respect to the conduct of the delegate.

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

31 4. PRINCIPAL ISSUES IN THE DRAFT

32 As noted above, three principal issues have evolved over the course of the
33 Drafting Committee’s previous meetings: (1) the scope of the licensing provisions in
34 the UMSBA; (2) the treatment of Internet payment mechanisms within the UMSBA;
35 and (3) the categories of permissible investments available to money transmitters.

36 A. Scope of the Licensing Provisions in the UMSBA

1 The UMSBA currently has two separate licensing regimes. The first is for
2 money transmitters (consisting of money transmitters, payment instrument sellers,
3 and certain types of Internet payment services). The second is for check cashers and
4 currency exchangers.

5 As stated above, the UMSBA is a state safety and soundness law that creates
6 licensing provisions for various types of MSBs. Licensing is potentially a crucial
7 element in money laundering prevention. Proper licensing mechanisms will help
8 States to identify MSB operations that may be operated for illegitimate purposes
9 and to prevent them from conducting business in their States. Additionally,
10 licensing is one method whereby States could monitor the operations of these
11 businesses on an ongoing basis. Licensing will ensure better compliance with
12 existing laws, especially if obligations are accompanied by appropriate enforcement
13 mechanisms.

14 The Drafting Committee is aware of the potential implementation problems
15 that may be created by licensing requirements. State banking departments have
16 frequently been the administrative body vested with MSB oversight. The Drafting
17 Committee has attempted to keep regulatory burdens to a minimum and focused on
18 the types of provisions that would bolster the state regulatory and enforcement
19 mechanisms. There are, however, potential benefits to be gained from a uniform
20 statute. Uniform law would simplify MSB compliance efforts with respect to
21 transacting business in multiple jurisdictions. The diverse nature of state law makes
22 compliance difficult for some MSBs. The UMSBA would also facilitate and
23 enhance enforcement of existing money laundering and MSB provisions.

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

32 The September 1998 Draft included a separate licensing regime for two
33 distinct groups of MSBs. The first group was money transmitters, payment
34 instrument sellers, and stored-value providers (these entities are still grouped
35 together but are labeled as “money transmitters” more broadly for ease of
36 definition). The second group was check cashers and currency exchangers. The
37 Drafting Committee concluded that check cashers and currency exchangers did not
38 pose the same type of safety and soundness concerns for state regulators as other
39 types of MSBs because they did not accept funds from consumers for obligations

1 that might remain unpaid. Rather, both check cashers and currency exchangers
2 immediately provide customers with funds as part of their services. Thus, there is
3 no risk that customers may lose their money (as with the purchase of a money order
4 that might not be redeemed on a future date). Therefore, the Drafting Committee
5 decided that check cashers and currency exchangers should be subject to different
6 types of reporting and record keeping requirements and should be exempt from
7 bond requirements.

8 Check cashers and currency exchangers were still included within the Act
9 (albeit in a different manner) because (1) there was some indication that the activity
10 of currency exchange itself was vulnerable to money laundering (as contrasted to
11 check cashing); and (2) that the role of many check cashers and currency exchangers
12 as authorized delegates of money transmitters meant that they were potential
13 vehicles for money laundering with respect to money transmission and the sale of
14 money orders and traveler's checks.

15 During the October 1998 Drafting Committee meeting, the Drafting
16 Committee voted to further narrow the extent to which check cashers and currency
17 exchangers were subject to licensing requirements. In the Third Draft, check
18 cashers and currency exchangers were required to obtain a license ONLY IF they
19 were not authorized delegates of money transmitters, payment instruments sellers,
20 or stored-value providers. Committee members observed that check cashers and
21 currency exchangers who act as authorized delegates would already be identified
22 (for law enforcement purposes) as part of the information supplied to the state
23 regulator by the principal licensee. Additionally, the UMSBA permits the state
24 regulator to take enforcement actions against both licensees and authorized
25 delegates. Check cashers and currency exchangers are subject to anti-money
26 laundering provisions of the Act if they are EITHER (1) authorized delegates or (2)
27 licensed separately under the provisions for check cashers and currency exchangers.

28 The UMSBA also does not deal with issues such as consumer rate and fee
29 regulation for check cashing. The scope of the Act as approved by Scope and
30 Program pertains solely to safety and soundness as that relates to the prevention of
31 money laundering. The Drafting Committee was not directed to address consumer
32 issues. Nonetheless, the UMSBA is not meant to replace or supplant existing
33 consumer protection laws relating to check cashing. Instead, **the UMSBA is meant**
34 **to coexist with existing state consumer protection laws.** Additionally, the
35 licensing provisions for check cashing are separable to the extent that States have
36 existing laws that combine licensing provisions with consumer protection provisions.
37 As noted above, the UMSBA requires only those check cashers that are not
38 authorized delegates to become licensed. Relatively few check cashers offer check
39 cashing exclusively without offering an ancillary service of money transmission on
40 behalf of another licensed money transmitter. Thus, the majority of check cashers

1 will be authorized delegates under the UMSBA and subject to certain enforcement
2 measures rather than a full fledged licensing scheme.

3 The MTRA, which is the lead regulatory association that deals with MSBs,
4 has also been developing, in cooperation with industry, a uniform renewal form for
5 licensees. This form is meant to serve as a uniform document that licensees might
6 file in multiple jurisdictions. The Drafting Committee has reviewed this form and
7 has attempted to make the information requested pursuant to the UMSBA
8 consistent with the proposed renewal form. Additionally, the current draft of the
9 UMSBA offers the States some flexibility with respect to their regulatory and
10 supervisory practices. For example, the requirements that a licensee file an annual
11 renewal form have been bracketed. This is because some States examine a licensee
12 annually rather than require the filing of an annual report. Other States by contrast,
13 prefer to utilize annual reports in lieu of examinations. **States thus have a menu of**
14 **options presented within the uniform framework of the UMSBA.** Similarly,
15 States will retain discretion with respect to important issues such as licensing fees
16 and bonding and net worth requirements.

17 **B. Treatment of Internet Payment Mechanisms**

18 Subsequent to the first reading of the Act, the Drafting Committee focused
19 on the treatment of new payment technologies within the framework of the
20 UMSBA. The various types of payment mechanisms examined by the Drafting
21 Committee are outlined below, followed by the decisions of the Committee within
22 respect to their inclusion within the UMSBA.

23 The Seventh Draft has been revised to incorporate certain Internet payment
24 mechanisms into the existing licensing framework. However, the UMSBA does not
25 include new or different licensing regimes for such payment mechanisms. Thus, the
26 proposals contained in the UMSBA are not complex and cumbersome. Rather, they
27 are simple and meant to apply the existing licensing frameworks to new
28 technologies. Existing definitions have been expanded **slightly** to take into account
29 the fact that (1) Internet payment mechanisms and are in man respects the functional
30 equivalent of traditional money transmission and (2) that the sale of stored value is
31 in many respects analogous to the sale of traditional payment instruments such as
32 money orders.

33 The main changes to the Act involve an expansion of our traditional concept
34 of “money”. With the advent of the Internet and new microchip technology it is
35 possible to exchange value that is not “money” in the traditional sense. The
36 UMSBA consequently provides a new definition of “monetary value”. Like money,
37 monetary value can be transmitted. Similarly issuers need not sell a physical tangible
38 payment instrument in order to issue value to consumers. It is possible for

1 consumers to purchase redeemable value that may only exist in a computerized
2 format. Hence, the UMSBA contains definition of stored value that is distinct from
3 the traditional payment instrument.

4 **(i) Stored value**

5 Stored-value products are a recent innovation in payment systems
6 technology. Stored-value products possess certain basic characteristics. According
7 to the Federal Reserve, stored-value products share three attributes: “(1) [a] card or
8 other device electronically stores or provides access to a specified amount of funds
9 selected by the holder of the device and available for making payments to others; (2)
10 the device is the only means of routine access to the funds; and (3) the issuer does
11 not record the funds associated with the device as an account in the name of (or
12 credited to) the holder.”²²

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

26 The transfer of stored-value may provide an opportunity for money
27 laundering. The amount of value that can be retained on a stored-value card will, of
28 course, affect whether people will use these products for money laundering. If one
29 can store a large amount of value on a card that is highly portable and transferable,
30 this will increase the likelihood of money laundering. Stored value and electronic
31 currency may give people the ability to move money globally without using banks as
32 intermediaries. Theoretically, funds can be transferred to jurisdictions with less
33 stringent money laundering laws via a stored-value instrument or over the computer.
34 A smart card encoded with a large amount of electronic money can be slipped into a
35 person's pocket and taken anywhere in the world.

²² Electronic Funds Transfers (Regulation E), 61 Fed. Reg. 19, 696 (1996).

1 Several States have begun to include stored value within their existing
2 money transmission law. Connecticut, for example, has defined stored value as a
3 form of “electronic payment instrument.”²³ This term would also include electronic
4 traveler's checks. West Virginia defines “currency transmission” or “money
5 transmission” to include “the transmission of funds through the issuance and sale of
6 stored-value cards which are intended for general acceptance and use in commercial
7 or consumer transactions.”²⁴ Other States, such as Texas, have included stored-
8 value providers by interpretation. The Texas Banking Department has explained,
9 for example, its rationale for requiring nonbank issuers of open system stored-value
10 cards to obtain a license under the Texas Sale of Checks Act:

11 Stored-value cards issued by non-banks for use in “open” systems (i.e., to
12 purchase goods and services offered by vendors other than the issuer of the
13 card) will generally be subject to regulation under the Sale of Checks Act
14 because the non-bank issuer is holding the funds of third parties. Consumers are
15 relying on the non-bank issuer that the card will be honored when presented by
16 the purchaser of goods and services at diverse locations.²⁵

17 Oregon is the most recent State to include a provision for the regulation of stored
18 value. Section 2 of the Sale of Checks Act includes a definition of electronic
19 instrument which “means a card or other tangible object . . . for the storage of
20 information, that is prefunded and for which the value is decrement upon each
21 use.”²⁶ The term excludes “a card or other tangible object that is redeemable by the
22 issuer in the issuer’s goods and services.”²⁷

23 **(ii) E-money and Internet payment mechanisms**

²³ Conn. Gen. Stat. Ann. Section 36a-596 (West Westlaw through Gen. St. Rev. to 1-1-00). Connecticut defines electronic payment instrument as stored value, not the reverse.

²⁴ W. Va. Code Section 32A-2-1(6) (Lexis, Westlaw through End of 1999 2nd Ex. Session).

²⁵ See Remarks of Catherine A. Ghiglieri, Texas Department of Banking to the PULSE EFT Assoc. Member Conference (October 11, 1996) located at <www.banking.state.tx.us/exec/speech10a>.

²⁶ Or. Rev. Stat. Section 717.200(7) (West, Westlaw through End of 1999 Regular Session).

²⁷ *Id.*

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

9 The first type is through use of a traditional payment mechanism such as
10 Automated Clearing House (“ACH”) or a credit card. The Internet serves as a
11 mode of communication only. The second type of Internet payment mechanisms
12 involves “E-money”. One type of Internet-based E-money system has been
13 described as a token or notational system. These computer-based systems involve a
14 customer purchasing electronic tokens, which serve as cash substitutes for
15 transactions over the Internet. With this type of system, “money” or “value” is
16 purchased from an issuer (who may be a bank or a nonbank). The value is then
17 stored in a digital form on a consumer's personal computer and the notational value
18 is transferred over the Internet. The “coin” is merely a notational series of numbers
19 or other symbols that are transmitted over the Internet to a merchant. The merchant
20 must then redeem the “coin” with an issuerCwho will verify that the coin has not
21 been spent previously. The issuer of the Internet E-money is obligated to redeem
22 these payments when received from the merchant. Company A issues a certain type
23 of E-money – Internet “cash” cards with unique personal identification numbers
24 (“PINs”). These cash cards are purchased from venders who are sales
25 representatives. A consumer uses his PIN when transacting with a merchant on-line.

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

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

34 Other nonbank issuers may be subject to state regulatory oversight; however,
35 the extent of this supervision is unclear. Clarification by state regulators and
36 legislatures of the applicability of their laws to e-money could be beneficial.²⁸

²⁸ United States Consumer Electronic Payments Task Force, 44 (April 1998)
(visited May 15, 2000) <<http://www.occ.treas.gov/emoney/ceptfpap.htm>>.

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

7 **(iii) Internet scrip**

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

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

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

35 **(iv) Internet funds transfer**

36 New payment services offered by banks and nonbanks will transfer money
37 over the Internet. One such service, offered by Company D, will transfer money

1 over the Internet to anyone who has an email address. Consumers who wish to send
2 money via the Internet must first establish an online account with Company D. A
3 consumer can fund his or her account with payments from a credit card, a debit from
4 his bank account, or by sending in a money order or check. Company D holds the
5 consumer's money until it receives a request to transfer the funds to a recipient. A
6 transfer is effectuated by sending an email to the recipient. The recipient then has
7 several options for receiving payment: creating from establishing his or her own
8 online account with Company D, having the funds transferred to an existing bank
9 account, or, if the customer has no bank account, receiving a check from Company
10 D.

11 **(v) Gold/precious metals transfer and payment**

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

21 **(vi) Internet bill payment services**

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

34 The Texas Department of Banking has required at least one bill-payment
35 service to obtain a license under its Sale of Checks Act.²⁹ Texas made this decision

²⁹ Tex. Fin. Code Ann. Sections 152.001 *et seq.* (West, Westlaw through End of 1999 Regular Session).

1 based on the fact that the bill-payment service was holding the money of consumers
2 in its own account and issuing payment instruments to merchants payable on the
3 same account. The Texas Sale of Checks Act defines a check to include “an
4 instrument for the transmission or payment of money, including a draft, traveler's
5 check, or money order. The term also includes an instrument for the transmission or
6 payment of money in which the purchaser or remitter of the instrument appoints or
7 purports to appoint the seller as its agent for the receipt, transmission, or handling of
8 money, regardless of who signs the instrument.”³⁰ Texas is currently assessing the
9 situation with several other Internet bill-payment services. California has also
10 required an Internet bill-payment service to obtain a license under its relevant
11 statute.³¹ By implication, Internet bill-payment services may already be included
12 within various sale of payment instruments or money transmission statutes.

13 **(vii) Previous treatment of stored value**

14 At the October 1998 meeting, the Drafting Committee affirmed its decision
15 to include stored-value products and stored-value providers within the scope of the
16 Act. Drafting Committee members saw the use of stored value as a means of
17 payment as similar to money transmission. Therefore, to the extent possible, the
18 Drafting Committee recommended including stored value within existing definitions
19 of payment instruments. The Committee made the following decisions with respect
20 to stored value:

- 21 • stored value was defined as a form of electronic payment instrument, and
22 thus, the sale of a stored-value instrument would constitute the sale of a
23 payment instrument for purposes of UMSBA;
- 24 • stored-value issuers, sellers, and redeemers were treated as payment
25 instrument sellers; payment instrument sellers, in turn, were subsumed under
26 the definition of money transmitters, thereby triggering the Article 2
27 licensing provisions of the UMSBA.
- 28 • closed-end stored-value instruments, such as phone cards or metro cards,
29 were excluded from the definition of stored-value instrument³²; and

³⁰ Tex. Fin. Code Ann. Sections 152.002(1) (West, Westlaw through End of 1999 Regular Session).

³¹ State of California, Department of Financial Institutions (visited May 15, 2000) <<http://www.sbd.ca.gov/>>.

³² When discussing stored-value, commentators refer to “closed” and “open” systems. A closed system is one where the stored-value card can be used only for goods and services provided directly by the card issuer. For example, a university

- 1 • stored-value issuers that were subject to supervision and oversight by a
2 federal or state banking agency also would be exempt from the licensing
3 provisions of the Act.

4 **(viii) Current revisions to THE UMSBA that reflect inclusion of**
5 **certain cyberpayments within the scope of the Act**

6 In March 2000, The Drafting Committee considered the recommendations of
7 the Cyberpayments Working Group and decided to expand the scope of the
8 UMSBA to include a broader category of payment mechanisms. In general, the
9 Drafting Committee concluded that Internet-based payment mechanisms should be
10 included within the scope of the UMSBA to the extent that such services involved
11 the sale and issuance of monetary value or the transmission of monetary value by a
12 nonbank, if the nonbank also holds a consumer’s money for its own account prior to
13 redemption. In such circumstances, **the Drafting Committee felt that the types of**
14 **cyberpayment mechanisms listed above posed the same safety and soundness**
15 **concerns as their brick and mortar counterparts.** In furtherance of this general
16 principle, the Drafting Committee made the following decisions with respect to
17 cyberpayments:

- 18 • **New concept of monetary value.** The definition of “money” and related
19 definitions should be revised to reflect the fact that certain payment service
20 providers employ a form of value that is not directly redeemable in money,
21 but nevertheless (1) serves as a medium of exchange, and (2) places the
22 customer at risk of the provider’s insolvency while the medium is
23 outstanding. The same safety and soundness issues pertinent to redeemable
24 forms of value apply to these irredeemable forms of value. Online gift
25 certificates (redeemable at many locations) or reward points or precious
26 metal transfers would constitute monetary value.

27 Consequently, a new definition of “monetary value” has been added
28 Monetary value is defined as “a medium of exchange, whether or not redeemable in
29 money.” The term “medium of exchange” connotes that value that is being
30 exchanged be accepted by a community, larger than the two parties to the exchange.
31 Hence, bilateral units of account used in closed systems, such as university payment
32 cards, would not constitute “monetary value” for purposes of this Act. A university
33 payment card that was also accepted by a few local pizzerias could be at the

may issue a stored-value card which students may use to purchase books, cafeteria food, and fares on the university's bus system. An “open” system is one where the issuer is not the provider of goods and services but is perhaps part of a group of issuers whose stored-value cards are accepted as a form of payment by a host of merchants.

1 borderline. A university payment card accepted by most local merchants in a city or
2 town would likely be true open-system “monetary value.”

- 3 • **Definition of stored value.** The definition of stored-value instrument
4 should be changed to stored value because the instrument in which the
5 stored value is embedded is not conceptually relevant. Any definition that
6 conflates the two ideas may lead to confusion. For example, multiple issuers
7 of stored value might provide different value on a single instrument. The
8 instrument is unitary, but the stored value is not. Alternatively, value might
9 not be stored on any identifiable physical object, but instead by purely
10 cryptanalytic means. Based on the change of term, the definition of payment
11 instrument and the exclusion for certain stored-value providers has been
12 amended as well.

13 In the Seventh Draft, the term “stored value” is defined as “monetary value
14 that is evidenced in an electronic record.” The revised definition still excludes from
15 regulation closed-end stored-value systems such as transportation cards and single
16 issuer cards such as department store gift certificates. Because monetary value is
17 defined as “a medium of exchange, whether or not redeemable in money,” only
18 stored value which consists of a medium of exchange evidenced in electronic record
19 would qualify as stored value for purposes of regulation. **A medium of exchange**
20 **needs to be something that is a widely accepted.** Closed systems, as mere
21 bilateral units of account, therefore, would be excluded from regulation.

- 22 • **Definition of money transmission.** Internet payment services that hold
23 customer’s funds or monetary value for their own account rather than serve
24 simply as clearing agents should fall within the scope of the Act. By
25 contrast, entities that simply transfer money between parties as clearing
26 agents should clearly fall outside the scope of a safety and soundness statute.
27 The definition of money transmission should be revised to reflect this
28 distinction.

29 The revised definition of money transmission has been amended as follows:
30 “Money transmission” means to engage in the business of:

31 (A) selling or issuing payment instruments;

32 (B) selling or issuing stored value; or

33 (C) receiving money or monetary value for transmission to a location within
34 or outside the United States.

1 The previous definition of “money transmission” included the “sale or
2 issuance of a payment instrument, or engaging in receiving money for transmission,
3 **or transmitting money** within the United States or to locations outside the United
4 States”. The revised definition omits the language “or transmitting money” in an
5 attempt to distinguish between clearing services and entities that actually receive and
6 hold funds or monetary value before transmitting it on behalf of a customer. The
7 Drafting Committee decided that only those entities that received and held funds for
8 consumers prior to transmission should be licensed under the UMSBA, whereas
9 entities that merely served as clearing agencies and transmitted money but never
10 were in possession of consumer funds (e.g., a credit card processing facility) should
11 be exempt from licensing.

- 12 • **Exclusion of pure barter.** To the extent possible, the Act should not
13 encompass entities that engage in pure barter activities but should
14 encompass an issuer of monetary value that could be redeemed by multiple
15 merchants for goods and services.

16 As noted above, the term “monetary value” is defined in such a manner as to
17 exclude pure barter or activities where the “value” that is being exchanged is used
18 for exchange with a single issuer or merchant or within a small geographic radius.
19 Of course, regulators will have discretion with respect to which entities are engaged
20 in the transmission or issuance of monetary value. Some States, such as Texas, for
21 example, require the issuer of mall gift certificates that can be redeemed at multiple
22 issuers to become licensed.³³

- 23 • **Jurisdiction.** To the extent that Internet money transmitters choose to
24 engage in money services online, they should be subject to regulatory
25 jurisdiction if they meet the threshold for “engaging in business” with
26 customers domiciled in a particular State.

27 **5. PERMISSIBLE INVESTMENTS**

28 State money transmitter statutes include lists of “permissible” investments.
29 Money transmitters are required to maintain investments at all times that are equal
30 to the market value of the aggregate face amount of all funds transmitted and
31 outstanding payment instruments issued or sold by the money transmitter and all of
32 its authorized delegates. Typically, permissible investments have included the
33 following:

³³ Opinion 98-11 (February 19, 1998) of the Texas State Banking Commissioner
(visited May 15, 2000) <<http://www.banking.state.tx.us/legal/opinions/98-11.htm>>.

- 1 • cash;
- 2 • certificates of deposit of a financial institution (either domestic or foreign);
- 3 • banker's acceptances eligible for purchase by member banks of the Federal
- 4 Reserve System;
- 5 • an investment bearing a rating of one of the highest grades as defined by a
- 6 nationally recognized rating service of such securities;
- 7 • investment securities that are obligations of the United States, its agencies or
- 8 instrumentalities, or obligations that are guaranteed fully as to principal and
- 9 interest by the United States or any of its obligations of any State or
- 10 municipality, or any political subdivision thereof;
- 11 • shares in a money market mutual fund;
- 12 • a demand borrowing agreement or agreements made to a corporation or a
- 13 subsidiary of a corporation whose capital stock is listed on a national
- 14 exchange; and
- 15 • receivables that are due to a money transmitter from its authorized delegates
- 16 unless they are past due or doubtful of collection.

17 The Model Act Regulating Money Transmitters, the MTRA Model
18 Legislation Outline and other state money transmitter statutes include lists similar to
19 the one described above, with minor variations. There are no caps or restrictions on
20 the amounts or percentage of overall permissible investments that a money
21 transmitter can make in any one category. For example, it would be possible under
22 many existing state statutes for a money transmitter to satisfy its permissible
23 investment requirements solely through demand borrowing agreements with a parent
24 or subsidiary corporation.

25 At the October 1998 Drafting Committee meeting, the Committee expressed
26 some concerns about the types of permissible investments that have been included in
27 model legislation as well as in existing state money transmission statutes. As stated
28 in the Prefatory Note, money transmitters have to maintain investments that are
29 equal to the aggregate face amount of all their outstanding funds transfers and
30 payment instrument obligations (on a dollar for dollar basis). The Drafting
31 Committee observed that certain investments appeared more risky than others –
32 especially in the absence of any limitations or caps on percentage of the licensee's
33 portfolio invested in any of these items.

1 At the October 1998 Drafting Committee meeting, Committee members
2 expressed disagreement with the list of permissible investments contained in the
3 Second Draft. The items that certain Committee members identified as posing a
4 higher risk were:

5 (1) shares in money market mutual funds, interest-bearing bills or notes or
6 bonds, debentures on stock traded on any national securities exchange or on a
7 national over-the-counter market, or mutual funds primarily composed of one or
8 more investments of those items;

9 (2) demand borrowing agreement made to a corporation or a subsidiary of a
10 corporation whose capital stock is listed on a national exchange; and

11 (3) receivables that are due to a licensee from its authorized delegate
12 pursuant to a contract which are not past due or doubtful of collection.

13 The Committee thought that the lack of restrictions on the amount that a
14 money transmitter could invest in any of the categories was problematic. Industry
15 Observers pointed out that these types of permissible investments were typically
16 contained in existing state law. The same Observers emphasized that it was
17 important for many licensees to have diverse portfolios, which included the type of
18 investments listed above.

19 With respect to the inclusion of receivables from delegates, industry
20 representatives explained that the inclusion had become a necessity due to the use of
21 automated money order dispensers. Typically, money orders are sold at sales
22 outlets through automated dispensers. The automated dispenser immediately
23 records the sale of the money order and notifies the money transmitter. This real-
24 time “notification” immediately triggers the obligation of a money transmitter to
25 retain permissible investments for the money order sold on a dollar for dollar basis.
26 However, while the obligation to maintain investments is triggered at the time of
27 sale, there is a lag of time until the sales outlet actually remits funds to the money
28 transmitter. For the time period between sale and remittance of the funds that the
29 sales outlet has received, the money transmitter needs to treat those “receivables” as
30 part of its permissible investment portfolio. Previously, authorized delegates had
31 notified a money transmitter of the number of money orders sold at the same time
32 that it remitted a check for the funds received.

33 The current version of the UMSBA reflects an attempt to impose some
34 restrictions on the type and amount of permissible investment that a money
35 transmitter is allowed to make. The list of investments mirrors the list contained in
36 the Second Draft. The main difference, however, is that the current provisions in
37 the Act limit the aggregate amount of each of these contested categories of

1 investments to 20 percent of the licensee's total permissible investments.
2 Additionally, a licensee may not invest in more than 10 percent of any one entity
3 whose investments fall into these categories. The revised section on permissible
4 investments is an attempt to balance the concerns about the safety of the investments
5 made by licensees with the needs of MSBs to have diverse investment opportunities
6 and to include receivables among the categories permitted.

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UNIFORM MONEY-SERVICES BUSINESS ACT

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This [Act] may be cited as the Uniform Money-Services Business 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 that 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, 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, maintains only one office that accepts deposits, and does not engage in the business of making commercial loans.

(4) “Check cashing” means receiving at least \$500 compensation within a 30-day period for accepting payment instruments, other than traveler's checks, in exchange for money or monetary value delivered to the presenter of the instrument

1 at the time and place of presentation without any agreement specifying when the
2 payment instrument will be submitted for collection.

3 (5) “Control” means:

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

7 (B) power to elect a majority of executive officers, managers, directors,
8 trustees, or other persons exercising managerial authority of a licensee or person in
9 control of a licensee; or

10 (C) the power to exercise directly or indirectly, a controlling influence
11 over the management or policies of a licensee or person in control of a licensee, if
12 the [superintendent], after notice and opportunity for hearing, so determines.

13 (7) “Currency exchange” means receipt of revenues equal to or greater than
14 [five percent] of total revenues from the exchange of money of one government for
15 money of another government.

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

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

20 (10) “Limited station” means private premises where a check casher is
21 authorized to engage in check cashing for no more than two days of each week

1 solely for the employees of the particular employer or group of employers specified
2 in the check casher's license application.

3 (11) "Mobile location" means a vehicle or a movable facility where check
4 cashing occurs.

5 (12) "Monetary value" means a medium of exchange, whether or not
6 redeemable in money.

7 (13) "Money" means a medium of exchange that is authorized or adopted
8 by the United States or a foreign government. The term includes a monetary unit of
9 account established by an intergovernmental organization or by agreement between
10 two or more governments.

11 (14) "Money services" means money transmission, check cashing, or
12 currency exchange.

13 (15) "Money transmission" means to engage in the business of:

14 (A) selling or issuing payment instruments;

15 (B) selling or issuing stored value; or

16 (C) receiving money or monetary value for transmission to a location
17 within or outside the United States.

18 (16) "Outstanding," with respect to a payment instrument, means issued or
19 sold by or for the licensee and which has been reported as sold but not yet paid by
20 or for the licensee.

21 (17) "Payment instrument" means a check, draft, money order, traveler's
22 check, or other instrument for the transmission or payment of money or monetary

1 value, whether or not negotiable. The term does not include a credit card voucher,
2 letter of credit, or instrument that is redeemable by the issuer in goods or services.

3 (18) “Person” means an individual, corporation, business trust, estate, trust,
4 partnership, limited liability company, association, joint venture, or any other legal
5 or commercial entity. The term does not include a government or a governmental
6 subdivision, agency, or instrumentality.

7 (19) “Record” means information that is inscribed on a tangible medium or
8 that is stored in an electronic or other medium and is retrievable in perceivable form.

9 (20) “Responsible individual” means an individual who is employed by a
10 licensee and has principal, active managerial authority over the provision of money
11 services by the licensee in this State.

12 (21) “State” means a State of the United States, the District of Columbia,
13 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
14 subject to the jurisdiction of the United States.

15 (22) “Stored value” means monetary value that is evidenced by an electronic
16 record.

17 (23) “[Superintendent]” means the [state superintendent of banks or other
18 senior state regulator].

19 (24) “Unsafe or unsound practice” means a practice or conduct by a person
20 licensed to engage in money transmission or an authorized delegate of such a person
21 which creates the likelihood of material loss, insolvency, or dissipation of the
22 licensee’s assets, or otherwise materially prejudices the interests of its customers.

1 **Reporter’s Notes**

2 **Source:** Definitions in this Act have been mainly derived from the Model
3 Act Regulating Money Transmitters Section 3; President’s Commission Act;
4 Arizona Money Transmitter Act, Ariz. Rev. Stat. Ann. Section 6-1201 (West,
5 Westlaw through End of 1999 1st Regular Session and the 2nd Special Session);
6 and Florida Money Transmitter’s Code, Fla. Stat. Ann. ch. 560 Section 560.103
7 (West, Westlaw through End of 1999 1st Regular Session).

8 1. “Authorized delegate.” The ability of a state superintendent to regulate
9 the conduct of authorized delegates is of vital importance to the prevention and
10 detection of money laundering. It is important, therefore, to clearly define the
11 outlets through which a money-services business (“MSB”), primarily a money
12 transmitter, conducts its business. The term “authorized delegate” was selected
13 rather than “agent” to avoid confusion as to the nature of the legal relationship
14 between a money transmitter and the sales outlets through which it transacts
15 business. Sales outlets provide money transmission on behalf of a money transmitter
16 on a contractual basis. Although the delegates are not defined as “agents” of a
17 money transmitter, there are circumstances under which the superintendent may take
18 enforcement action against a licensed money transmitter on the basis of actions of its
19 delegates. The Act does impose some statutory obligations on the licensee with
20 respect to the conduct of its delegates. Additionally, the superintendent has the
21 authority to take action directly against the delegate. *See* Section 801.

22 2. “Bank.” The definition of bank has been revised to more closely mirror
23 the definition of bank in the Federal Reserve Act. It does not include unlicensed
24 firms that engage in money services and make commercial loans, because the
25 payment obligations of the MSB are not “deposits” in the traditional banking sense
26 of the term. It is intended to include partnerships regulated as banks, even though
27 they are not technically “organized” under United States law. The definition also
28 includes nonbank banks such as credit card banks that do not engage in traditional
29 deposit taking and commercial lending activity.

30 3. “Check cashing.” The definition of check cashing excludes businesses
31 that may offer a small amount of check-cashing services incidental to their primary
32 business. Hotels, for example, which cash checks as a courtesy for their guests, fall
33 in this excluded category. This definition was initially agreed upon at the October
34 1998 drafting meeting and has been refined during subsequent drafting meetings.
35 The main difference in the new definition (as compared with many existing state
36 definitions) is the method used to determine which businesses should be excluded
37 because they cash checks as a service that is incidental to their primary business and
38 which is also at a de minimis level. The exemption reflects an aggregate level of fees
39 over a 30-day period, rather than relying on a daily level of business. In order for a
40 business to qualify as an entity engaged in check cashing, it would have to cash

1 more than \$16,666 worth of checks within a 30-day period in order to receive
2 revenues of more than \$500. This figure was derived using a three- percent fee for
3 each check cashed (which is the average fee charged within the check cashing
4 industry). On an annual basis, a business would be able to cash up to \$200,000
5 worth of checks without having to obtain a license.

6 The definition of “check cashing” has been amended to specifically exclude
7 entities that provide deferred deposit services for a fee. Such services are often
8 referred to as “payday loans” whereby a customer receives money in exchange for a
9 check that will be submitted for collection at a specified time in the **future**. The
10 check is often to be presented at the time of the customer’s next pay period (hence
11 the reference to “payday”). It is believed that such services do not constitute check
12 cashing but are rather a related service often regulated by separate statute.

13 4. “Control.” The definition of control is derived from the definition
14 contained in the federal Bank Holding Company Act, 12 U.S.C. Section 1842(a)(2)
15 and Federal Reserve Regulation Y, 12 C.F.R. Section 225.2(e)(1). It was decided
16 that the definition of control included in the September 1998 draft was too
17 formalistic in that it required a bright line threshold of 25 percent or more ownership
18 to trigger control. The Drafting Committee decided that the Federal Bank Holding
19 Company Act provided a useful definition because it did not relate solely to a
20 threshold of share ownership. The current definition is more flexible and allows for
21 a broader interpretation of the concept of control. Subpart (c), which refers to the
22 power to exercise, directly or indirectly, a controlling influence over the
23 management of policies of a licensee or a person in control of the licensee, is a
24 broader more flexible category that allows the superintendent to hold a hearing to
25 determine whether a person exercises control, albeit not by pure ownership of
26 shares. The notion of controlling influence is also derived from the Federal Bank
27 Holding Company Act and Regulation Y, cited above.

28 5. “Engage in the business.” The term “engage in the business” has been
29 deleted from the draft. The Drafting Committee felt that the use of the term caused
30 confusion and also imprecision when trying to determine which entities were subject
31 to licensing requirements and which entities were engaged in unauthorized activities
32 but were nevertheless treated as if engaging in the business of providing money
33 services.

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

1 7. “Mobile location.” Mobile locations are movable locations (normally
2 motor vehicles such as vans) from which check cashing or currency-exchange
3 services are provided to members of the public. This term is defined because check
4 cashier and currency-exchanger licensees are required to report these locations on
5 their license applications and subsequent renewal reports.

6 8. “Money services.” Money services is used to define a group of entities
7 that engage in any of the following activities: money transmission, sale of payment
8 instruments (i.e., money orders or traveler's checks or stored-value), check cashing
9 and currency exchange. The definition focuses on the activities engaged in rather
10 than the entity that engages in the activities. The Drafting Committee decided to
11 use an activity-based definition because different money services may engage in one
12 or more of these money services activities.

13 9. “Money transmission.” Money transmission subsumes several activities
14 or functions: the transmission of funds as well as the sale or issuance of payment
15 instruments and the sale or issuance of stored value. Stored value, as defined in the
16 Act, is treated similarly to payment instruments, although some kinds of stored value
17 are irredeemable in money. The grouping of funds transmission and the sale or
18 issuance of payment instruments and stored value is consistent with existing state
19 practice. The Drafting Committee has consolidated related functions to simplify the
20 Act.

21 10. “Monetary value.” The definition of “money” has been expanded to
22 reflect the fact that certain payment service providers employ a form of value that is
23 not directly redeemable in money, but nevertheless (1) serves as a medium of
24 exchange and (2) places the customer at risk of the provider’s insolvency while the
25 medium is outstanding. The same safety and soundness issues pertinent to
26 redeemable forms of value apply to these irredeemable forms of value.
27 Consequently, a new definition of “monetary value” has been added. Monetary
28 value is defined as “a medium of exchange, whether or not redeemable in money.”
29 The term “medium of exchange” connotes that the value that is being exchanged be
30 accepted by a community, larger than the two parties to the exchange. Hence,
31 bilateral units of account, such as university payment cards, would not constitute
32 “monetary value” for purposes of this Act. A university payment card that was also
33 accepted by a few local pizzerias could be at the borderline. A university payment
34 card accepted by most local merchants would likely be “monetary value.” The
35 definition of monetary value, to some extent, must remain flexible to allow
36 regulators to deal with emerging forms of monetary value and Internet “scrip” on a
37 case by case basis.

38 11. “Payment instrument.” The definition of payment instrument has been
39 revised to exclude any reference to stored value. At the October 1998 meeting, the

1 Drafting Committee affirmed its decision to include stored-value products and
2 stored-value providers within the scope of the Act. Drafting Committee members
3 determined that the use of stored value as a means of payment was similar to money
4 transmission as a process. Therefore, to the extent possible, the Drafting Committee
5 included stored value within existing definitions of MSBs. Previous versions of the
6 Act followed the Connecticut approach and treated stored-value instruments
7 (including electronic traveler's checks) as payment instruments. *See* Conn. Gen.
8 Stat. Ann. Section 36a-596. In March 2000, the Drafting Committee, based upon
9 the recommendations of the Cyberpayments Working Group, has provided a
10 separate definition of stored value that is not tied to a tangible instrument. Because
11 stored value is no longer related to an instrument, the definition of payment
12 instrument was also revised.

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

18 12. “Stored value.” The definition of stored-value instrument has been
19 replaced with a simplified definition of stored value because the instrument in which
20 the stored value is embedded is not conceptually relevant. Any definition that
21 conflates the two ideas may lead to confusion. Multiple issuers of stored value
22 might provide different value on a single instrument. For example, a fast food
23 restaurant, a department store and a bank might all issue different forms of stored
24 value that can be loaded onto a single card but redeemed at several different issuers.
25 The instrument is unitary, but the stored value is not. Alternatively, value might not
26 be stored on any identifiable physical object, but instead stored by purely
27 cryptanalytic means. Based on the change of term, the definition of payment
28 instrument and the exclusion for certain stored-value providers needed to be
29 amended as well.

30 In the Seventh Draft, the term “stored value” is defined as “monetary value
31 that is evidenced in an electronic record.” (The revised definition still excludes from
32 regulation closed-end stored-value systems such as transportation cards, and single
33 issuer cards, such as department store gift certificates.) Because monetary value is
34 defined as “a medium of exchange, whether or not redeemable in money,” only
35 stored value that consists of a **medium of exchange** evidenced in electronic record
36 would qualify as stored value for purposes of regulation. A medium of exchange
37 needs to be something that is a widely accepted. Closed-end systems, as mere
38 bilateral units of account, therefore would be excluded from regulation.

39 13. “Stored-value instrument.” This definition has been deleted.

1 14. “Unsafe or unsound practice.” Under the Act, the superintendent
2 possesses the authority to take action against a money transmitter or its authorized
3 delegates in the event that the money transmitter engages in an unsafe or unsound
4 practice. The term unsafe and unsound is a general concept that has been used in
5 state and federal banking and financial law. Unsafe and unsound practices are ones
6 that may pose financial risk to a financial institution. The Act provides a definition
7 of unsafe and unsound that applies solely to money transmitters. Money
8 transmitters who engage in unsafe or unsound activity may leave consumers with
9 unredeemed money orders or uncollected funds transfers. The superintendent is
10 able to take protective action in the event that a money transmitter engages in an
11 unsafe or unsound activity. This prevents the dissipation of licensee assets that
12 should be used to fulfill obligations to customers.

13 The Drafting Committee determined that unsafe and unsound practices
14 related solely to the risk of financial loss posed by the actions of the money
15 transmitter. Currency exchangers and check cashers do not engage in an unsafe or
16 unsound practice with respect to their check cashing or currency-exchange activity
17 because they provide their customers with funds immediately. To the extent that a
18 check casher or currency exchanger dissipates its assets or becomes insolvent, it will
19 typically have to cease business. However, this will not directly harm consumers as
20 they will not be left with unpaid obligations. Furthermore, if a check casher or
21 currency exchanger engages in an unsafe activity with respect to money
22 transmission, this will not have any direct impact on or harm to individual
23 consumers. This is because the check casher or currency exchanger may only
24 conduct money transmission as an authorized delegate. The money transmitter will
25 remain liable to the holders of its money orders, even if an authorized delegate sells
26 them. Because the money transmitter bears ultimate financial responsibility to
27 customers, check cashers and currency exchangers are not considered to engage in
28 unsafe or unsound practices.

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

- 30 (1) the United States or a department, agency, or instrumentality thereof;
- 31 (2) the United States Postal Service;
- 32 (3) a State or a governmental subdivision, agency, or instrumentality thereof;
- 33 (4) a bank, bank holding company, an office of an international banking
- 34 corporation, a branch of a foreign bank, a corporation organized pursuant to the

1 Bank Services Act, or a corporation organized under the Edge Act under the laws
2 of a State or the United States if the person does not issue, sell, or provide payment
3 instruments or stored value through an authorized delegate that is not such a person;

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

8 (6) a board of trade designated as a contract market under the Commodity
9 Exchange Act or a person that, in the ordinary course of business, provides
10 clearance and settlement services for a board of trade to the extent of its operation
11 as or for such a board of trade;

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

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

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

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

3 **Reporter's Notes**

4 **Source:** President's Commission Act Section 6 (with several modifications
5 and additions).

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

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

18 3. The proposed exclusion involving boards of trade was submitted to
19 FinCEN by various clearing organizations that collectively represent several of the
20 largest commodity exchanges and commodities/options clearing organizations. In a
21 letter dated October 8, 1997, these organizations recommended that FinCEN change
22 the proposed definition of MSB to exclude regulated entities that are already subject
23 to regulation by the U.S. Securities and Exchange Commission ("SEC") and the
24 U.S. Commodities and Futures Trading Commission.

25 4. The proposed exclusion for broker-dealers arises from the fact that
26 broker-dealers are already subject to BSA reporting requirements and are highly
27 regulated by the SEC.

28 5. Previously, the Act contained a proposed exclusion for stored-value
29 issuers, sellers or redeemers that were subject to oversight by a federal or state
30 banking agency and that are subject to safety and soundness regime that includes
31 investment and capital requirements. In March 2000, the Drafting Committee
32 decided to remove this exclusion because the Committee decided that it would be
33 too cumbersome for state regulators to determine whether a particular stored-value
34 issue was subject to adequate federal oversight with respect to safety and soundness.
35 **Rather than creating an unclear standard, the Drafting Committee decided**
36 **that nonbank stored-value issuers must obtain a license.**

1 **SECTION 104. LICENSE REQUIRED.**

2 (a) A person may not engage in money transmission without:

3 (1) obtaining a license under [Article] 2; or

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

5 (b) A person may not engage in check cashing or currency exchange

6 without:

7 (1) obtaining a license under [Article] 3 or 4;

8 (2) obtaining a license for money transmission under [Article] 2; or

9 (3) being an authorized delegate of a person licensed under [Article] 2.

10 (c) A person not licensed under this [Act] or not an authorized delegate of a

11 licensee is engaged in providing money services if the person advertises those

12 services, solicits to provide those services, or holds itself out as providing those

13 services.

14 (d) A license is not transferable or assignable.

15 **Reporter's Notes**

16 **Source:** Model Act Regulating Money Transmitters Section 2, combined
17 with President's Commission Act Section 5. The restrictions on transfer or
18 assignment of a license come from California Financial Code Section 12219, Cal.
19 Fin. Section 12219 (West, Westlaw through 1999 portion of 1999-2000 Regular
20 Session and 1st Ex. Sess.), which prohibits the transfer of check selling licenses.

21 This section sets forth the overall licensing structure for MSBs created by
22 the Act. All MSBs (including money transmitters as broadly defined, check cashers
23 and currency exchangers) must either obtain a license or become an authorized
24 delegate with respect to the type of money service business it wishes to perform.
25 Additionally, should an MSB have neither a license nor status as an authorized
26 delegate, the person is treated, for purposes of the Act, as if it is engaging in money-
27 services business on its own behalf.

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ARTICLE 2
MONEY TRANSMISSION LICENSES

SECTION 201. LICENSE REQUIRED. A person licensed under this [article] or that is an authorized delegate of a person licensed under this [article] may engage in money transmission and may also engage in:

- (1) check cashing without obtaining a separate license under [Article] 3; and
- (2) currency exchange without obtaining a separate license under [Article] 4.

Reporter’s Notes

Source: New

SECTION 202. APPLICATION FOR LICENSE.

(a) In this section, “material litigation” means any litigation that according to generally accepted accounting principles is deemed 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;

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

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

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

9 (5) a list of other States in which the applicant is licensed to engage in
10 money transmission or provide other money services and information concerning
11 [the placing the licensee in receivership, and] any license revocations, suspensions,
12 or other disciplinary action taken against the applicant in other States;

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

16 (7) the name and address of any bank through which the applicant's
17 payment instruments will be paid;

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

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

1 (c) If an applicant is a corporation, limited liability company, or partnership,
2 the applicant must also provide:

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

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

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

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

14 (5) criminal convictions and any material litigation in which the applicant
15 has been involved in the [10]-year period next preceding the submission of the
16 application of each executive officer, manager, and director of, and individual in
17 control of, the applicant;

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

1 (7) a copy of the applicant's unconsolidated financial statements for the
2 current year, whether audited or not, and, if available, for the two year period next
3 preceding the submission of the application;

4 (8) if the applicant is publicly traded, a copy of the most recent 10-K
5 report filed with the United States Securities and Exchange Commission;

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

7 (A) a corporation publicly traded in the United States, a copy of
8 audited financial statements for the parent corporation for the current year or a copy
9 of the parent corporation's most recent 10-K reports filed with the United States
10 Securities and Exchange Commission; or

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

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

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

18 (d) A nonrefundable application fee of [\$2,000] and a license fee of
19 [\$2,000] must accompany an application for a license under this [article]. The
20 license fee must be refunded if the application is denied.

1 (e) The [superintendent] may waive a requirement of subsections (a)
2 through (c) or permit an applicant to submit substituted information in lieu of the
3 required information.

4 **Reporter's Notes**

5 **Source:** Arizona Money Transmitter Act Section 6-1203, Ariz. Rev. Stat.
6 Ann. Section 6-1203 (West, Westlaw through End of 1999 1st Regular Session and
7 the 2nd Special Session); President's Commission Act Section 7; Florida Money
8 Transmitter's Code Section 560.205, Fla. Stat. Ann. ch. 560 Section 560.205
9 (West, Westlaw through End of 1999 1st Regular Session) (with modifications).

10 1. At the February 1998 drafting meeting, the Drafting Committee decided
11 to create separate licensing provisions for money transmitters (which includes
12 payment instrument sellers and stored-value issuers and sellers) as distinct from
13 check cashers and currency exchangers. It was determined that check cashers and
14 currency exchangers posed less safety and soundness concerns because customers
15 who exchanged currency or cashed checks were provided with cash immediately.

16 As set forth in Articles 2, 3, and 4, separate licensing requirements are
17 established for money transmitters and for check cashers/foreign currency
18 exchangers. The superintendent's supervisory and enforcement powers, however,
19 are the same for all MSBs. The licensing requirement promotes one of the main
20 goals of the Act: to create an appropriate regulatory framework to deter and
21 eliminate the use of MSBs as potential vehicles for money laundering. Only a
22 handful of States have attempted to create a framework that links all MSBs together
23 within a statute, while recognizing the differences inherent in the various activities
24 concerned. Florida and Arizona, for example, are two States that have enacted
25 statutes that have uniform enforcement and penalty provisions for all MSBs, while
26 retaining separate licensing and record keeping provisions for each type of money
27 service activity. The Drafting Committee chose this approach because, for law
28 enforcement purposes, the state superintendent and the Attorney General need
29 general enforcement powers with respect to each of the different entities as a means
30 of prevention and detection of money laundering. Therefore, the Act contains
31 uniform enforcement provisions and different licensing requirements for each type of
32 money service.

33 The licensing application is the first point at which the State may protect the
34 public by prohibiting entry by those persons that would bring discredit on the
35 industry, and the first source of information for investigators and regulators in the
36 event that there is misconduct by a licensee. The information requested from money
37 transmitter applicants in Section 202 is the type of information recommended by the

1 Money Transmitter Regulators Association, Inc. (“MTRA”) in Section IV of its
2 Model Legislation Outline and also in the Model Act Regulating Money
3 Transmitters. The information concerning criminal convictions and employment
4 histories, as well as the identity of executive officers, controlling persons, managers,
5 directors, and responsible individuals is designed to assist the superintendent in
6 determining whether the license applicant is a reputable business or whether there
7 are any suggestions that the business might be used for illegal purposes.
8 Additionally, information relating to the applicant's financial position (including
9 information about net worth) is necessary in order to determine whether an applicant
10 will be able to meet its obligations with respect to any obligations it might have (in
11 connection with the sale of money payment instruments and stored value).

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

20 3. At the October 1999 Drafting Committee meeting, the Committee
21 decided to adopt Section 202(c)(8). As an alternative to the requirement that
22 publicly traded corporations submit all filings made to the SEC, the corporate
23 applicant is required to submit a copy of its most recent 10-K report filed with the
24 SEC. This report is required pursuant to the Securities and Exchange Act of 1934
25 for exchange-traded securities and contains financial information and other details
26 concerning the status of a publicly held company. Second, a new requirement has
27 been included for applicants that are wholly owned subsidiaries of publicly traded
28 corporations. These applicants are required to submit a copy of the parent’s audited
29 financial statement or its most recent 10-K report filed with the SEC or if it is a
30 foreign corporation, any similar filings made with the foreign regulator of the
31 corporation. *See* MTRA Model Legislation Outline Section IV(C)(5). Additionally,
32 applicants must furnish information concerning material litigation and criminal
33 convictions for the past ten rather than five years.

34 **SECTION 203. SECURITY.**

35 (a) Except as otherwise provided in subsection (b), the following rules
36 apply:

1 (1) A surety bond, letter of credit, or other similar security acceptable to
2 the [superintendent] in the amount of [\$50,000] must accompany an application for
3 a license.

4 (2) If an applicant proposes to provide money services at more than one
5 location through authorized delegates or otherwise, the amount of the security is
6 increased by [\$10,000] per location, not exceeding a total increase of [\$250,000].

7 (b) The [superintendent] may increase the amount of security required to a
8 maximum of [\$1,000,000] upon the basis of the impaired financial condition of a
9 licensee, as evidenced by reduction of net worth, financial losses, or other relevant
10 criteria.

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

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

18 (e) A surety bond must cover claims effective for as long as the
19 [superintendent] specifies but for at least five years after the licensee ceases to
20 provide money services in this State. However, the [superintendent] may permit the
21 amount of security to be reduced or eliminated before the expiration of that time to
22 the extent the amount of the licensee's payment instruments or stored-value

1 obligations outstanding in this State is reduced. The [superintendent] may permit a
2 licensee to substitute another form of security acceptable to the [superintendent] for
3 the security effective at the time the licensee ceases to provide money services in this
4 State.

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

7 **Reporter's Notes**

8 **Source:** Arizona Money Transmitter Act Section 6-1205, Ariz. Rev. Stat.
9 Ann. Section 6-1205 (West, Westlaw through End of 1999 1st Regular Session and
10 the 2nd Special Session); President's Commission Act Section 8 (with
11 modifications).

12 The bond and net worth requirements are safety and soundness measures
13 designed to protect the public, but also to deter companies that have questionable
14 solvency or business practices from entering the market. The bond requirement
15 serves as a barrier to entry for financially unstable companies. Alternatives to the
16 bond requirement, however, are provided in the form of cash or letters of credit.
17 Licensees may also be permitted to deposit specified liquid assets in the amount of
18 the bond. The Drafting Committee has attempted a balance between the goals of
19 safety and soundness and open access to businesses that wish to enter the money
20 transmission market, recognizing that decisions as to the final dollar amounts will
21 need to reflect the particular fiscal needs and concerns of different States.

22 Section 203 has also been revised and simplified. At the October 1999
23 Drafting Committee meeting, the Committee decided to focus on the requirements
24 for surety bonds in particular, which are the most common form of security used by
25 money transmitters. At the same time, Section 203(f) provides the superintendent
26 with the flexibility to allow for other forms of security that the superintendent deems
27 acceptable.

28 **SECTION 204. ISSUANCE OF LICENSE.**

29 (a) Upon the filing of an application under this [article], the [superintendent]
30 shall investigate the applicant's financial condition and responsibility, financial and

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

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

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

13 (3) the applicant has paid the requisite application and license fees.

14 (b) The [superintendent] shall approve or deny an application for an original
15 license within 120 days after a complete application is filed and notify the applicant
16 of its decision in a record. The [superintendent] for good cause may extend the
17 application period. The [superintendent] shall notify the applicant in a record of the
18 date on which the application is determined to be complete. If the application is not
19 approved or denied within the period allowed for approval, the application is
20 deemed approved and the [superintendent] shall issue the license under this [article],
21 to take effect as of the first business day after expiration of the period.

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

4 **Reporter's Notes**

5 **Source:** Arizona Money Transmitter Act Section 6-1206(B), Ariz. Rev.
6 Stat. Ann. Section 6-1206(B) (West, Westlaw through End of 1999 1st Regular
7 Session and the 2nd Special Session); Tennessee Revised Code Section 45-7-210,
8 Tenn. Code Ann. Section 45-7-210 (West, Westlaw through End of 1999 Regular
9 Session).

10 1. The Drafting Committee has previously inquired as to whether States
11 have mandatory time frames in which the superintendent must respond to license
12 applications. MTRA supplied the Drafting Committee with sample statutory
13 provisions that included mandatory time frames for response to a license application.
14 Based on existing state practice, the Drafting Committee decided on a 120-day
15 response period. The MTRA Model Legislation Outline recommends a 120-day
16 time period. The extension for “good cause” comes from the Maine Act to
17 Regulate Money Transmitters and Amend Consumer Credit Laws, Me. Rev. Stat.
18 Ann. tit 32 section 6109(2).

19 2. Concerns have been expressed about whether the costs of examining an
20 applicant by the superintendent (which may have locations in other States and
21 overseas) may be onerous and burdensome. It is customary for regulators to set
22 examination fees by administrative rule. Those fees are often capped or structured
23 in such a manner to provide the applicant with a clear picture of the potential costs
24 of an investigation.

25 **SECTION 205. RENEWAL OF LICENSE.**

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

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

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

8 (2) the number of payment instruments and stored-value obligations sold
9 by the licensee in this State that have not been previously included in a renewal
10 report, the monetary amount of those instruments, and the monetary amount of
11 those instruments currently outstanding;

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

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

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

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

1 (c) If a licensee does not [file a renewal report or] pay its renewal fee by the
2 renewal date, and has not been granted an extension of time to do so by the
3 [superintendent], its license is suspended on the renewal date. The licensee has [30]
4 days after its license is suspended in which to [file a renewal report and] pay the
5 renewal fee, plus [\$100] for each day after suspension that the [superintendent] does
6 not receive [the renewal report and] the renewal fee. The [superintendent] for good
7 cause may grant an extension of the renewal date.

8 **Reporter's Notes**

9 **Source:** Model Act Regulating Money Transmitters Section 11 (with
10 modifications).

11 1. The Drafting Committee has previously decided that it was too
12 cumbersome to have a hearing provision for failure to renew a license. The Drafting
13 Committee decided that a preferable alternative was for the license to expire if not
14 renewed in a timely fashion. The licensee, however, will have 30 days to cure its
15 failure to renew its license. As part of the renewal process, Article 2 licensees are
16 required to submit additional information to the superintendent as a means of
17 appraising the safety and soundness of the business.

18 2. Section 205 also provides for automatic license suspension in the event
19 that a licensee fails to renew its license in a timely fashion. In the previous draft, the
20 superintendent was required to send a notice of suspension to the licensee. The
21 superintendent has a pre-existing duty to notify the licensee of the renewal date and
22 to send the licensee a renewal form. Thus, the Drafting Committee concludes that it
23 was unnecessary to require the superintendent to notify the licensee of its own
24 failure to renew its license.

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

31 4. The MTRA, in cooperation with industry representatives, has developed
32 a uniform renewal form that may be used by licensees as an alternative to the myriad

1 forms that have been created by the various States. MTRA membership is currently
2 reviewing the forms and are considering whether to adopt such forms in their States
3 as an alternative to (rather than a replacement form) existing state renewal forms.
4 The creation of a uniform renewal form will allow licensees who engage in money
5 transmission in multiple jurisdictions, to complete one standard for annually rather
6 than a series of different forms. This will provide greater convenience and efficiency
7 for licensees and also for regulators who can more easily share information.
8 Regulators, through the use of such a uniform form may also be able to store such
9 forms in a centralized computer database. A copy of the proposed MTRA Uniform
10 Renewal Form is on file with the Drafting Committee.

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

14 **Reporter's Notes**

15 **Source:** President's Commission Act Section 8.

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

24 2. Only a minimal net worth requirement has been suggested because net
25 worth is used as an additional requirement to make sure that license applicants and
26 licensees have some resources for commencing and operating a money transmission
27 business. Section 206 has been bracketed because some States use net worth as part
28 of the safety and soundness mechanisms whereas other States rely on
29 bonding/security and permissible investment requirements instead. The current draft
30 gives States the option of choosing between a combination of security, net worth
31 and permissible investment requirements

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ARTICLE 3
CHECK CASHING LICENSES

SECTION 301. LICENSE REQUIRED.

(a) A person licensed under this [article] may engage in check cashing.

(b) A person licensed under [Article] 2, an authorized delegate of a person licensed under [Article] 2, or a person licensed under [Article] 4 may engage in check cashing without first obtaining a separate license under this [article].

(c) A person licensed under this [article] may also engage in currency exchange without obtaining a separate license under [Article] 4.

Reporter's Notes

Source: New

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;

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

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

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

9 (b) A nonrefundable application fee of [\$2,000] and a license fee of
10 [\$2,000] must accompany an application for a license under this [article]. The
11 license fee must be refunded if the application is denied.

12 **Reporter's Notes**

13 **Source:** Arizona Money Transmitter Act Section 6-1203, Ariz. Rev. Stat.
14 Ann. Section 6-1203 (West, Westlaw through End of 1999 1st Regular Session and
15 the 2nd Special Session); President's Commission Act Section 7; Florida Money
16 Transmitter's Code Section 560.205, Fla. Stat. Ann. ch. 560 Section 560.205
17 (West, Westlaw through End of 1999 1st Regular Session).

18 1. At the February 1998 drafting meeting, the Drafting Committee decided
19 that check cashers should be treated differently than money transmitters with respect
20 to licensing, bonding and, in particular, net worth. Because check cashers and
21 currency exchangers provide customers with funds immediately, they do not need
22 the same type of bond or security requirements. Existing state law makes a
23 distinction between check cashers and money transmitters with respect to
24 information provided to superintendents (e.g., audited as contrasted to unaudited
25 financial statements are requested and bond and net worth requirements are not
26 imposed). In general, fewer States have check-cashing law. The Drafting
27 Committee decided to include separate licensing provisions in this Act as an
28 alternative to a unified licensing system as contained in the February 1998 draft.

29 2. A provision has been included to require that check cashers provide
30 superintendents with information about the source of their funds. Superintendents

1 and law enforcement officials want to ensure that the cash used in such a business is
2 not derived from money laundering or other illegal activity. For a general discussion
3 of the main differences between Article 2 and Articles 3 and 4 see the Reporter's
4 Notes to Section 202 (which also explains the rationale for separate licensing
5 requirements for different types of MSBs). The Note to Section 202 also discusses
6 the reasons why certain types of information are requested from applicants during
7 the application process.

8 **SECTION 303. ISSUANCE OF LICENSE.**

9 (a) Upon the filing of an application under this [article], the [superintendent]
10 shall investigate the applicant's financial condition and responsibility, financial and
11 business experience, character, and general fitness. The [superintendent] may
12 conduct an on-site investigation of the applicant, the reasonable cost of which the
13 applicant must bear. The [superintendent] shall issue a license to an applicant under
14 this [article] if the [superintendent] finds that all of the following conditions have
15 been fulfilled:

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

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

22 (3) the applicant has paid the requisite application and license fees.

23 (c) The [superintendent] shall approve or deny an application for an original
24 license within 120 days after a complete application is filed and notify the applicant

1 of its decision in a record. The [superintendent] for good cause may extend the
2 application period. The [superintendent] shall notify the applicant in a record of the
3 date on which the application is determined to be complete. If the application is not
4 approved or denied within the period allowed for approval, the application is
5 deemed approved and the [superintendent] shall issue the license under this [article],
6 to take effect as of the first business day after expiration of the period.

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

10 **Reporter's Notes**

11 **Source:** Arizona Money Transmitter Act Section 6-1206(B), Ariz. Rev.
12 Stat. Ann. Section 6-1206(B) (West, Westlaw through End of 1999 1st Regular
13 Session and the 2nd Special Session); Tennessee Revised Code Section 45-7-210,
14 Tenn. Code Ann. Section 45-7-210 (West, Westlaw through End of 1999 Regular
15 Session).

16 See the Reporter's Notes accompanying Section 203.

17 **SECTION 304. RENEWAL OF LICENSE.**

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

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

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

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

7 (c) If a licensee does not [file a renewal report or] pay its renewal fee by the
8 renewal date, and has not been granted an extension of time to do so by the
9 [superintendent], its license is suspended on the renewal date. The licensee has [30]
10 days after its license is suspended in which to [file a renewal report and] pay the
11 renewal fee, plus [\$100] for each day after suspension that the [superintendent] does
12 not receive the [renewal report] and the renewal fee. The [superintendent] for good
13 cause may grant an extension of the renewal date.]

14 **Reporter's Notes**

15 **Source:** Model Act Regulating Money Transmitters Section 11 (with
16 modifications).

17 See the Reporter's Notes accompanying Section 205. The Drafting
18 Committee decided to require check cashers and currency exchangers to renew their
19 licenses biennially rather than annually. Because check cashers and currency
20 exchangers pose no safety and soundness concerns, the superintendent does not
21 have a need to examine renewal reports on an annual basis for these businesses. The
22 superintendent, however, will have the authority to conduct an on-site examination
23 if the check casher or currency exchanger engages in money laundering activity or
24 violates a provision of the Act.

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ARTICLE 4
CURRENCY EXCHANGE LICENSES

SECTION 401. LICENSE REQUIRED.

- (a) A person licensed under this [article] may engage in currency exchange.
- (b) A person licensed under [Article] 2, an authorized delegate of a person licensed under [Article] 2, or a person licensed under [Article] 3 may engage in currency exchange without first obtaining a separate license under this [article].
- (c) A person licensed under this [article] may also engage in check cashing without obtaining a separate license under [Article] 3.

Reporter's Notes

Source: New

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;

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

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

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

9 (b) A nonrefundable application fee of [\$2,000] and a license fee of
10 [\$2,000] must accompany an application for a license under this [article]. The
11 license fee must be refunded if the application is denied.

12 **Reporter's Notes**

13 At the March 1999 drafting meeting, Observers noted that the Act should
14 contain a different Article for the licensing of check cashers and currency
15 exchangers. Although the provisions contained in Articles 3 and 4 are almost
16 identical, the Drafting Committee thought that States should be presented the option
17 to include less than all of the Articles in an MSB licensing statute. Thus, each of the
18 licensing parts of the Act is separable. As indicated in the Prefatory Note, at
19 present, very few States have licensing requirements for currency exchangers. At
20 the same time, the activity of currency exchange (exchanging larger amounts of one
21 currency for smaller denominations in another, for example) has been identified by
22 law enforcement officials as vulnerable to money laundering (as contrasted with
23 check cashing).

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

29 **SECTION 403. ISSUANCE OF LICENSE.**

1 (a) Upon the filing of an application under this [article], the [superintendent]
2 shall investigate the applicant's financial condition and responsibility, financial and
3 business experience, character, and general fitness. The [superintendent] may
4 conduct an on-site investigation of the applicant, the reasonable cost of which the
5 applicant must bear. The [superintendent] shall issue a license to an applicant under
6 this [article] if the [superintendent] finds that all of the following conditions have
7 been fulfilled:

8 (1) the applicant has complied with Section 402;
9 (2) the financial condition and responsibility, financial and business
10 experience, competence, character, and general fitness of the applicant; and the
11 competence, experience, character, and general fitness of the executive officers,
12 managers, and directors of, and persons in control of, the applicant indicate that it is
13 in the interest of the public to permit the applicant to engage in currency exchange;
14 and

15 (3) the applicant has paid the requisite application and license fees.

16 (b) The [superintendent] shall approve or deny an application for an original
17 license within 120 days after a complete application is filed and notify the applicant
18 of its decision in a record. The [superintendent] for good cause may extend the
19 application period. The [superintendent] shall notify the applicant in a record of the
20 date on which the application is determined to be complete. If the application is not
21 approved or denied within the period allowed for approval, the application is

1 deemed approved and the [superintendent] shall issue the license under this [article],
2 to take effect as of the first business day after expiration of the period.

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

7 **Reporter's Notes**

8 **Source:** Arizona Money Transmitter Act 6-1206(B), Ariz. Rev. Stat. Ann.
9 Section 6-1206(B) (West, Westlaw through End of 1999 1st Regular Session and
10 the 2nd Special Session); Tennessee Revised Code Section 45-7-210, Tenn. Code
11 Ann. Section 45-7-210 (West, Westlaw through End of 1999 Regular Session).

12 See the Reporter's Notes accompanying Section 203.

13 **SECTION 404. RENEWAL OF LICENSE.**

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

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

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

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

4 (c) If a licensee does not [file a renewal report or] pay its renewal fee by the
5 renewal date, and has not been granted an extension of time to do so by the
6 [superintendent], its license is suspended on the renewal date. The licensee has [30]
7 days after its license is suspended in which to [file a renewal report and] pay the
8 renewal fee, plus [\$100] for each day after suspension the [superintendent] does not
9 receive the [renewal report and the] renewal fee. The [superintendent] for good
10 cause may grant an extension of the renewal date.

11 **Reporter's Notes**

12 **Source:** Model Act Regulating Money Transmitters Section 11 (with
13 modifications).

14 See the Reporter's Notes accompanying Section 204. The Drafting
15 Committee decided to require check cashers and currency exchangers to renew their
16 licenses biennially rather than annually. Because check cashers and currency
17 exchangers pose no safety and soundness concerns, the superintendent does not
18 have a need to examine renewal reports on an annual basis for these businesses. The
19 superintendent, however, will have the authority to conduct an on-site examination
20 if the check cashier or currency exchanger engages in money laundering activity or
21 violates a provision of the Act.

1 **ARTICLE 5**
2 **AUTHORIZED DELEGATES**

3 **SECTION 501. RELATIONSHIP BETWEEN LICENSEE AND**
4 **AUTHORIZED DELEGATE.**

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

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

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

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

21 (e) An authorized delegate may not provide money services outside the
22 scope of activity permissible under the contract between the authorized delegate and

1 the licensee, except activity for which the authorized delegate is authorized to
2 engage under [Articles] 2, 3, or 4. [An authorized delegate of a licensee holds in
3 trust for the benefit of the licensee all money net of fees received from money
4 transmission.]

5 **Reporter's Notes**

6 **Source:** President's Commission Act Section 10.

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

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

16 **Reporter's Notes**

17 **Source:** Arizona Money Transmitter Act Section 6-1218, Ariz. Rev. Stat.
18 Ann. Section 6-1218 (West, Westlaw through End of 1999 1st Regular Session and
19 the 2nd Special Session); President's Commission Act Section 10.

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

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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 the licensee or its authorized delegate without having given 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.

Reporter's Notes

Source: Model Act Regulating Money Transmitters Section 14; Florida Money Transmitter's Code Section 560.118(1)(a) (with modifications), Fla. Stat. Ann. ch. 560 Section 560.118(1)(a) (West, Westlaw through End of 1999 1st Regular Session).

1. This section 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 the Act. Subsection (a) permits the superintendent to examine a licensee or its delegates without advance

1 notice if the licensee is engaging in an unsafe or unsound practice or has violated or
2 is violating the Act. Previously, this section stated that the superintendent had to
3 have a reason to believe that the licensee or authorized delegate was engaging in an
4 unsafe or unsound practice. It was noted, however, that this is an ambiguous
5 standard that may hinder the superintendent's ability to examine licensees and
6 delegates in a timely fashion (i.e., because licensee will be able to challenge the
7 examination). Additionally, it was noted that superintendents have not abused this
8 authority where it has been given to them by statute. Furthermore, some regulators
9 have observed that resource constraints provide a natural check on abuse of
10 examination authority.

11 2. Subsection (b) allows the superintendent to waive an annual on-site
12 examination for licensees. It gives the superintendent flexibility in dealing with
13 reputable licensees. For example, if a licensee has been licensed for several years,
14 has maintained adequate financial resources, and has been cooperative with
15 regulators, the superintendent may determine that annual examinations are not
16 necessary. The waiver also conserves financial resources of the superintendent.

17 **SECTION 602. JOINT EXAMINATIONS.**

18 (a) The [superintendent] may conduct an on-site examination of records
19 listed in Section 605 in conjunction with representatives of other state agencies or
20 agencies of another State or of the federal government. Instead of an examination,
21 the [superintendent] may accept the examination report of an agency of this State or
22 of another State or of the federal government or a report prepared by an
23 independent licensed or certified public accountant.

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

28 **Reporter's Notes**

29 **Source:** Model Act Regulating Money Transmitters Section 14.

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

6 **SECTION 603. REPORTS.**

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

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

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

19 (1) the filing of a petition by or against the licensee under the United
20 States Bankruptcy Code for bankruptcy or reorganization;

21 (2) the filing of a petition by or against the licensee for receivership;

22 (3) the commencement of a proceeding to revoke or suspend its license
23 in a State or country in which the licensee engages in business or is licensed;

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

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

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

6 **Reporter's Notes**

7 **Source:** President's Commission Act Section 13 (with modifications).

8 1. Reports are essential to the proper regulation of problem delegates or
9 licensees. Although on-site examinations are authorized, the reporting requirements
10 provide a cost efficient mechanism for superintendents and industry members alike.
11 Certain significant events must be reported immediately, including a money-
12 laundering allegation against a delegate. The Drafting Committee, after consultation
13 with Observers, decided that quarterly reporting was only necessary with respect to
14 changes in authorized delegates. Furthermore, annual audited financial statements
15 are only required for Article 2 licensees (as this relates once again to the safety and
16 soundness of money transmitters and their financial solvency). All licensees are
17 required to file renewal reports pursuant to Articles 2, 3 and 4.

18 2. Section 603(a) was added in March 2000 and requires a licensee to
19 report on any changes that occur in information supplied in a license application
20 within 15 days after the change has occurred. This provision ensures that the
21 superintendent has current and accurate information in the time between the filling
22 of an initial application and the submission of a renewal report.

23 **SECTION 604. CHANGE OF CONTROL.**

24 (a) A licensee shall give the [superintendent] written notice of a proposed
25 change of control within [15] days after learning of the proposed change of control
26 and request approval of the acquisition. A licensee shall also submit with the notice
27 a nonrefundable fee of [\$2,000].

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

6 (c) The [superintendent] shall approve a request for change of control under
7 subsection (a) if, after investigation, the [superintendent] determines that the person
8 or group of persons requesting approval has the competence, experience, character,
9 and general fitness to operate the licensee or person in control of the licensee in a
10 lawful and proper manner and that the interests of the public will not be jeopardized
11 by the change of control.

12 (d) The following persons are exempt from the requirements of subsection
13 (a), but the licensee shall notify the [superintendent] of a change of control:

14 (1) a person that acts as a proxy for the sole purpose of voting at a
15 designated meeting of the security holders or holders of voting interests of a licensee
16 or person in control of a licensee;

17 (2) a person that acquires control of a licensee by devise or descent;

18 (3) a person that acquires control as a personal representative, custodian,
19 guardian, conservator, or trustee, or as an officer appointed by a court of competent
20 jurisdiction or by operation of law; and

21 (4) a person that the [superintendent] by rule or order exempts in the
22 public interest.

1 (e) Subsection (a) does not apply to public offerings of securities.

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

9 **Reporter's Notes**

10 **Source:** Florida Money Transmitter's Code Section 560.127 (with
11 modifications), Fla. Stat. Ann. ch. 560 Section 560.127 (West, Westlaw through
12 End of 1999 1st Regular Session).

13 1. Section 604 requires all persons who wish to acquire a controlling
14 interest in a licensee (as broadly defined in Section 102) to obtain approval from the
15 superintendent prior to obtaining control. The Drafting Committee determined that
16 prior notification was essential for both safety and soundness reasons, as well as for
17 the superintendent to properly assess the background of the persons who wish to
18 acquire control (in order to evaluate whether such persons pose any risks in terms of
19 potential illegal activity). The superintendent retains discretion to request additional
20 information from an applicant (e.g., personal financial information) that might assist
21 the superintendent in evaluating the application.

22 2. The Committee and Observers have previously debated the issue of
23 whether the superintendent should require applicants to provide personal financial
24 information under Section 604 about persons that have control of a licensee, such as
25 executive officers of the acquiring company. It was noted, however, that it should
26 not be a mandatory requirement because many executive officers at larger publicly
27 traded companies would object to such a requirement as an unnecessary invasion of
28 privacy, because the financial well-being of the company would bear no connection
29 to the officer's personal wealth. The superintendent retains the discretion to request
30 such information for smaller entities where the superintendent needs more
31 information to make an assessment of net worth and financial capability (i.e.,
32 individual proprietors who wish to acquire control of an MSB).

1 **SECTION 605. RECORDS.**

2 (a) A licensee shall maintain records for determining the licensee's
3 compliance with this [Act]. A licensee shall maintain the following for at least
4 [three] years after the record is created:

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

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

8 (3) bank statements and bank reconciliation records;

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

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

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

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

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

18 (c) Records may be maintained outside this State if they are made accessible
19 to the [superintendent] on [seven] business-days' notice that is sent in a record.

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

1 **Reporter’s Notes**

2 **Source:** Model Act Regulating Money Transmitters Section 15 (with
3 modifications).

4 This section combines the more general reporting provisions of the Florida
5 Money Transmitter’s Code Section 560.310, Fla. Stat. Ann. Section 560.310, and
6 the more detailed reporting requirements contained in Section 15 of the Model Act
7 Regulating Money Transmitters. The Drafting Committee determined that the
8 statutory prescription for record keeping should be a minimum and that additional
9 books and records might be required by rule, if needed. Therefore, the current
10 Section 605 is an amalgamation of two previous provisions. The reporting
11 requirements contained in Section 605 pertain mainly to money transmitters (with
12 respect to the sale of payment instruments). Most check cashing and currency-
13 exchange law simply states that the licensee must maintain books and records as
14 required by rule. Both Committee members and Observers were in agreement with
15 a three-year record retention period. The record retention period also reflects
16 existing state practice. A new subsection (d) has been added to clarify that the
17 records maintained by the licensee are subject to inspection pursuant to a regulatory
18 examination as set forth in Section 601.

19 **[SECTION 606. MONEY LAUNDERING REPORTS.**

20 (a) A licensee and an authorized delegate shall file with the [attorney
21 general] all reports required by federal currency reporting, record keeping, and
22 suspicious transaction reporting requirements as set forth in 31 U.S.C. Section
23 5311, 31 C.F.R. Part 103, and other federal and state laws pertaining to money
24 laundering.

25 (b) The timely filing of a complete and accurate report required under
26 subsection (a) with the appropriate federal agency is compliance with the
27 requirements of subsection (a), unless the [superintendent] notifies the licensee that
28 the [attorney general] has notified the [superintendent] that reports of this type are

1 not being regularly and comprehensively transmitted by the federal agency to the
2 [attorney general].]

3 **Reporter's Notes**

4 **Source:** Abbreviated version of Florida Money Transmitter's Code Section
5 560.128, Fla. Stat. Ann. ch. 560 Section 560.128 (West, Westlaw through End of
6 1999 1st Regular Session); President's Commission Act Section 5.

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

14 The section also permits licensees to comply with state reporting
15 requirements by filing the appropriate federal anti-money laundering reports as
16 required by the federal BSA, and thereby avoid duplicative filing. FinCEN provides
17 state law enforcement authorities access to these reports via its Gateway computer
18 system. Through Gateway, state enforcement agencies have on-line access to
19 records filed under the BSA. Every State, as well as the District of Columbia and
20 Puerto Rico has access to the Gateway system.

21 Approximately ten States require that an MSB comply with all federal and
22 state money laundering and currency transaction reporting laws. State laws typically
23 replicate the federal law and require that cash transactions in excess of \$10,000 be
24 reported to a state authority, as well as to the U.S. Treasury. Most of the state
25 reporting law does not specifically address MSBs (but may apply to MSBs by
26 implication). Several States, including Colorado, Connecticut, Idaho, Indiana and
27 Oklahoma, require financial institutions to file suspicious activity reports
28 concurrently with federal and state authorities. Arizona has its own suspicious
29 activity form for financial institutions. Suspected money laundering activities are
30 reported to Arizona's Attorney General on a one-page form. Georgia provides that
31 each financial institution must keep a record of currency transactions in excess of
32 \$10,000 and that those reports must be filed with the State within 15 days of the
33 transaction.

34 **SECTION 607. CONFIDENTIALITY OF RECORDS.**

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

9 (b) The [superintendent] may disclose information not subject to disclosure
10 under [this State's open records law] to representatives of state or federal agencies
11 who undertake in a record that they will maintain the confidentiality of the
12 information if the licensee provides consent before the release; or the
13 [superintendent] finds that the release is reasonably necessary for the protection of
14 the public and in the interests of justice, and the licensee has been given previous
15 notice by the [superintendent] of its intent to release the information.

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

19 **Reporter's Notes**

20 **Source:** Model Act Regulating Money Transmitters Section 16 (with
21 modifications).

22 Section 607 is an important confidentiality provision that protects the
23 business or proprietary financial information that may be submitted by a license
24 applicant or licensee. At the March drafting meeting, the Drafting Committee, after

1 hearing the views of industry representatives, concluded that it was important to
2 provide licensees and license applicants with an appropriate degree of protection for
3 various information, especially business and proprietary information, that is
4 contained in applications and reports filed with state regulators. In the absence of
5 such protections, information concerning an applicant's receivables, for example,
6 could be used to reconstruct the market share of a particular MSB. Hence, the
7 Drafting Committee voted to include the current confidentiality provision.

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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 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 in the event of bankruptcy or receivership of the licensee.

Reporter's Notes

Source: President's Commission Act Section 14 (with modifications)

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.

1 **SECTION 702. TYPES OF PERMISSIBLE INVESTMENTS.**

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

4 (1) cash, a certificate of deposit, or senior debt obligation of an insured
5 depository institution, as defined in Section 3 of the Federal Deposit Insurance Act
6 [12 U.S.C. Section 1813];

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

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

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

17 (5) receivables that are payable to a licensee from its authorized
18 delegates pursuant to contracts which are not past due or doubtful of collection if
19 the aggregate amount of investments in receivables under this paragraph does not
20 exceed 20 percent of the total permissible investments of a licensee and the licensee
21 does not have at one time investments in receivables under this paragraph in any one

1 person aggregating more than 10 percent of the licensee's total permissible
2 investments; and

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

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

10 (1) an interest-bearing bill, note, bond, or debenture of a person whose
11 equity shares are traded on a national securities exchange or on a national over-the-
12 counter market, if the aggregate of investments under this paragraph do not exceed
13 20 percent of the total permissible investments of a licensee and the licensee does
14 not at one time have investments under this paragraph in any one person aggregating
15 more than 10 percent of the licensee's total permissible investments;

16 (2) a share of a person traded on a national securities exchange or a
17 national over-the-counter market or a share or a certificate issued by an open-end
18 management investment company that is registered with the United States Securities
19 and Exchange Commission under the Investment Company Act of 1940, and whose
20 portfolio is restricted by the management company's investment policy to shares of a
21 person traded on a national securities exchange or a national over-the-counter
22 market, if the aggregate of investments under this paragraph does not exceed 20

1 percent of the total permissible investments of a licensee and the licensee does not at
2 one time have investments under this paragraph in any one person aggregating more
3 than 10 percent of the licensee's total permissible investments;

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

12 (4) any other investment the [superintendent] reasonably determines to
13 be permissible, to the extent specified by the [superintendent].

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

17 **Reporter's Notes**

18 **Source:** This is a new provision that works with some of the categories of
19 permissible investments contained in the Model Act Regulating Money Transmitters
20 Section 3.

21 1. At the October 1998 drafting meeting, the Drafting Committee expressed
22 some concern about the types of permissible investments that have been included in
23 model legislation, as well as in existing state money transmission statutes. As stated
24 in the Prefatory Note, money transmitters have to maintain investments that are
25 equal to the aggregate face amount of all their outstanding funds transfers and
26 payment instrument obligations (on a dollar for dollar basis). The Drafting

1 Committee observed that certain investments appeared more risky than others –
2 especially in the absence of any limitations or caps on percentage of the licensee's
3 portfolio invested in any of these items.

4 The items that the Committee identified as potentially problematic were:

- 5 • shares in a money market mutual fund, interest-bearing bills or notes or
6 bonds, debentures or stock traded on any national securities exchange or on
7 a national over-the counter-market, or mutual funds primarily composed of
8 one or more investments as described in this section;
- 9 • a demand borrowing agreement made to a corporation or a subsidiary of a
10 corporation whose capital stock is listed on a national exchange; and
- 11 • receivables that are due to a licensee from its authorized delegates pursuant
12 to a contract which are not past due or doubtful of collection.

13 The Drafting Committee thought that these types of investments posed
14 higher levels of risk to the licensee and ultimately to the public than was appropriate
15 for MSBs. Industry Observers noted, however, that such investments were
16 commonly included in state law. In fact, the MTRA outline lists such investments as
17 permissible, though it states that loans should not exceed 10 percent of the net
18 worth of a licensee, and the amount of such loans as a total percentage of
19 permissible investments may be subject to legislation.

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

31 3. Receivables, in particular, was one category that received considerable
32 attention by members of the Committee. Industry Observers, however, explained
33 that there was a practical reason for including receivables as a category of
34 permissible investments. They noted that the practice of including receivables as
35 permissible investments had become a necessity due to the use of automated money
36 order dispensers. Typically, money orders are sold at sales outlets through

1 automated dispensers. The automated dispenser immediately records the sale of the
2 money order and notifies the money transmitter. This real-time “notification”
3 immediately triggers the obligation of a money transmitter to retain permissible
4 investments for the money order sold on a dollar for dollar basis. However, while
5 the obligation to maintain investments is triggered at the time of sale, there is a lag
6 of time until the sales outlet actually remits funds to the money transmitter. For the
7 time period between sale and remittance of the funds that the sales outlet has
8 received, the money transmitter needs to treat those “receivables” as part of its
9 permissible investment portfolio. Previously, authorized delegates had notified a
10 money transmitter of the number of money orders sold at the same time that it
11 remitted a check for the funds received.

1 **ARTICLE 8**
2 **ENFORCEMENT**

3 **SECTION 801. SUSPENSION AND REVOCATION [;**
4 **RECEIVERSHIP].**

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

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

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

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

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

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

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

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

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

6 (b) In determining whether a licensee is engaging in an unsafe or unsound
7 practice, the [superintendent] may consider the size and condition of the licensee's
8 money transmission, the magnitude of the loss, the gravity of the violation of this
9 [Act], and the previous conduct of the person involved.

10 **Reporter's Notes**

11 **Source:** President's Commission Act Sections 11 and 12 (with
12 modifications).

13 1. Section 801 sets forth the circumstances pursuant to which the
14 superintendent may take disciplinary actions against a licensee. This is an important
15 mechanism for the prevention of money laundering. The issuance of a cease and
16 desist order and suspension and revocation of a license may only occur after a
17 hearing in accordance with the State's administrative procedure act. Licensee
18 violation of state money laundering prohibitions is specified on the list. Section 801
19 also specifies the circumstances under which the superintendent may take action
20 against the licensee for the authorized delegate's conduct. Pursuant to Section 801
21 (a)(3), the superintendent is authorized to take action against a licensee for a
22 delegate's violations of money laundering prohibitions or any act done "as a result of
23 a course of a willful failure to supervise or of the willful misconduct or willful
24 blindness of the licensee." A willful misconduct standard has been chosen because a
25 strict liability standard may result in consequences disproportionate to the social
26 harm involved from the delegate's activity.

27 2. Some States provide more detailed standards for when a cease and desist
28 order becomes effective. Texas' Currency Exchange Transportation or
29 Transmission provisions of the Texas Finance Code provide that a cease and desist
30 order takes effect on issuance if the Banking Commissioner finds a threat of
31 immediate and irreparable harm to the license holder or the public. If no immediate
32 or irreparable harm is found, the order is not effective before 10 days after the order

1 is received. *See* Tex. Rev. Fin. Stat. Ann. Section 153.407. Other state laws
2 enumerate separate and specific grounds for the denial of a license or for revocation,
3 suspension or restriction of a previously granted license. Florida, for example, lists a
4 material misstatement of fact in an initial or renewal application, the loss of license
5 in another jurisdiction (due to fraud or dishonest dealing) and criminal convictions
6 involving fraud or dishonest dealing as grounds for license denial, suspension or
7 non-renewal. *See* Florida Money Transmitter’s Code Section 560.114(2)(a)-(c),
8 Fla. Stat. Ann. ch. 560 Section 560.114(2)(a)-(c).

9 3. Section 801(a)(2) has been amended and language concerning the
10 licensee’s responsibility for the fraud, misrepresentation, deceit or gross negligence
11 of an authorized delegate has been removed. Under the previous Section 801(a)(2),
12 the licensee could have its license revoked based on misrepresentation or fraudulent
13 acts by one of its authorized delegates. Section 801(a)(3) has also been revised.
14 The licensee may still have its license revoked should an authorized delegate violate
15 either a money laundering statute or any part of the Act. This creates a degree of
16 accountability on the part of the licensee for its delegates with respect to compliance
17 with state and federal anti-money laundering measures and also with the
18 requirements of this Act. However, it has been difficult for regulators to articulate a
19 clearly defined standard as to what constitutes a “willful failure to supervise” an
20 authorized delegate. Consequently, this language has been omitted.

21 **SECTION 802. SUSPENSION OR REVOCATION OF AUTHORIZED**
22 **DELEGATES.**

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

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

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

29 (3) the authorized delegate engages in fraud, intentional
30 misrepresentation, or gross negligence;

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

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

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

8 (b) In determining whether an authorized delegate is engaging in an unsafe
9 or unsound practice, the [superintendent] may consider the size and condition of the
10 authorized delegate's provision of money services, the magnitude of the loss, the
11 gravity of the violation of this [Act], and the previous conduct of the authorized
12 delegate.

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

16 **Reporter's Notes**

17 **Source:** President's Commission Act Section 10 (with modifications).

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

1 2. Section 802(a) has been revised to focus solely on the conduct of the
2 authorized delegate. Previously, the superintendent was able to issue a cease and
3 desist order against the licensee based on the conduct of a licensee’s delegate. As
4 noted in Section 801, under certain circumstances, a licensee may lose its license or
5 be subject to other action by the superintendent if a delegate engages in violations of
6 the Act or of related money laundering statutes and regulations as a result of the
7 licensee’s willful misconduct or willful blindness. A new subsection (b) has been
8 added to Section 802, which permits the superintendent to issue an order against a
9 licensee requiring the licensee to cease providing services through a delegate if the
10 delegate is already subject to a separate cease and desist order.

11 **SECTION 803. ORDERS TO CEASE AND DESIST.**

12 (a) If the [superintendent] determines that a violation of this [Act] or of a
13 rule adopted or an order issued under this [Act] by a licensee or authorized delegate
14 is likely to cause immediate and irreparable harm to the licensee, its customers, or
15 the public as a result of the violation, or cause insolvency or significant dissipation
16 of assets of the licensee, the [superintendent] may issue an order requiring the
17 licensee or authorized delegate to cease and desist from the violation. The order
18 becomes effective upon service of it upon the licensee or authorized delegate.

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

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

24 (d) A licensee or an authorized delegate that is served with an order to
25 cease and desist may petition the [appropriate court], for a judicial order setting
26 aside, limiting, or suspending the enforcement, operation, or effectiveness of the

1 order pending the completion of an administrative proceeding pursuant to Section
2 801 or 802.

3 (e) The [superintendent] must commence an administrative proceeding
4 pursuant to Section 801 or 802 within [10] days after issuing an order to cease and
5 desist.

6 **Reporter's Notes**

7 **Source:** This new provision is loosely based on Section 8(c) of the Federal
8 Deposit Corporation Insurance Act, 12 U.S.C. Section 1818(c) (1999).

9 There was some concern expressed at the October 1998 meeting that the
10 Act did not provide the superintendent with sufficient authority to deal with exigent
11 situations through the use of expedited procedures. Section 803 provides the
12 superintendent with limited authority to issue orders to cease and desist without
13 prior notice and hearing procedures. The superintendent, however, must have a
14 reasonable belief that the licensee or its authorized delegate is engaging in an unsafe
15 or unsound activity or is violating a provision of the Act, before invoking temporary
16 powers. Subsection (d) is new. At the October 1999 Drafting Committee meeting,
17 it was decided that the superintendent needed to commence an administrative
18 proceeding at a certain time after issuing the temporary cease and desist order.
19 Subsection (d) requires the superintendent to begin an enforcement proceeding
20 pursuant to Section 801 or 802 rather than relying solely on the cease and desist
21 order as an enforcement tool.

22 **SECTION 804. CONSENT ORDERS.** The [superintendent] may enter into a
23 consent order at any time with a person to resolve a matter arising under this [Act].
24 A consent order must be signed by the person to whom it is issued or by the person's
25 authorized representative, and must indicate agreement with the terms contained in
26 the order. A consent order may provide that it does not constitute an admission by
27 a person that this [Act] or a rule adopted or an order issued under this [Act] has
28 been violated.

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Reporter’s Notes

Source: Model Act Regulating Money Transmitters Section 24.

Section 804 gives the superintendent the ability to enter into a negotiated settlement with an MSB with respect to alleged violations of the 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 the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

Reporter’s Notes

Source: Florida Money Transmitter’s Code Section 560.117, Fla. Stat. Ann. ch. 560 Section 560.117 (West, Westlaw through End of 1999 1st Regular Session); President’s Commission Act Section 23 (with modifications).

In addition to the ability to take disciplinary action against an MSB or its delegates for violations of the Act, civil penalties provide another enforcement mechanisms aimed at deterring money laundering. As discussed at the first meeting of the Drafting Committee, civil penalties are preferred enforcement mechanisms due to the commercial nature of the 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.

1 (b) An individual that knowingly engages in any activity for which a license
2 is required under this [Act] without being licensed under this [Act] is guilty of a
3 [reference to state classification] felony.

4 **Reporter's Notes**

5 **Source:** President's Commission Act Section 22.

6 General criminal penalties for all violations are typical of regulatory codes.
7 False statements and other misrepresentations are at the core of the regulatory
8 process and therefore are listed separately. Although the Drafting Committee
9 expressed some concern about the inclusion of criminal penalties in a civil licensing
10 statute, Observers who represented law enforcement emphasized the need for
11 criminal penalties in connection with serious violations of the Act. The Committee
12 supports the inclusion of those provisions in Section 806 because they relate to very
13 serious, specific and tangible violations of the Act.

14 **SECTION 807. UNLICENSED PERSONS.**

15 (a) If the [superintendent] has reason to believe that a person has violated or
16 is violating Section 104 of this [Act] the [superintendent] may issue an order to
17 show cause why an order to cease and desist should not issue requiring that the
18 person cease and desist from the violation of Section 104.

19 (b) In an emergency, the [superintendent] may petition the [appropriate
20 court] for the issuance of an ex parte temporary restraining order pursuant to the
21 rule of civil procedure.

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

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

1 (e) A person that is served with an order to cease and desist for violating
2 Section 104 may petition the [appropriate court] for a judicial order setting aside,
3 limiting, or suspending the enforcement, operation, or effectiveness of the order
4 pending the completion of an administrative proceeding pursuant to Section 901 and
5 902.

6 (f) The [superintendent] shall commence an administrative proceeding
7 within [10] days after issuing an order to cease and desist.

8 **Reporter’s Notes**

9 **Source:** New.

10 At the March 2000 meeting, the Drafting Committee decided that the
11 superintendent needed specific enforcement and regulatory authority with respect to
12 unlicensed persons. Previously, the UMSBA only provided the superintendent with
13 authority to issue a cease and desist order against licensees and their delegates. The
14 Drafting Committee noted, however that it was equally important that regulators
15 have the ability potentially to issue a cease and desist order in the event that the
16 unlicensed person’s activities posed a serious risk to the public.

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ARTICLE 9
ADMINISTRATIVE PROCEDURES

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

Reporter's Notes

Source: Florida Money Transmitter's Code Section 560.108(2) (with modifications), Fla. Stat. Ann. ch. 560 Section 560.108(2) (West, Westlaw through End of 1999 1st Regular Session).

The Drafting Committee noted that the Act should generally conform to the Model State Administrative Procedure Act. MTRA members also expressed their position that the Act should conform to state administrative procedure laws.

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.

Reporter's Notes

Source: President's Commission Act Section 12 (with modifications).

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. The President's Commission Act only refers to suspension, revocation and denial of

1 licenses. Section 802 has been also been extended further to include cease and
2 desist authority and the ability to assess civil penalties.

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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 several.

SECTION 1003. EFFECTIVE DATE. This [Act] takes effect
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SECTION 1004. REPEALS. The following acts and parts of acts are repealed:

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- (2)
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Reporter’s Notes

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

license issued under [name of existing money services licensing statutes] that is in effect immediately prior to [Effective Date of this Act] shall remain in force as a license under [name of existing money services statutes] until the license’s expiration date. Thereafter, the licensee shall be treated as if it had applied for and had received a license under this [Act] and shall be required to comply with the renewal requirements set forth in this [Act].

Reporter’s Notes

As a matter of policy, the Drafting Committee decided that existing licensees should be grandfathered in under the UMSBA and have their existing licenses (which are in force prior to the effective date of UMSBA) to remain in force under the previous money services statutes. Thus, for some time the previous statutes will govern existing licensees whereas the UMSBA 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 UMSBA and will be required to submit renewal information rather than a do novo license application.

SECTION 1006. APPLICATION TO EXISTING RELATIONSHIPS.