

October 24, 1997

**APPENDIX TO REMARKS OF EZRA C. LEVINE
ON BEHALF OF THE NON-BANK FUNDS TRANSMITTERS GROUP**

I. The Money Transmitters Regulators Association

Safety and soundness regulation of check sellers and money transmitters has been, and is, the province of the states. Today, and historically, neither the Federal Reserve Board nor any other federal agency regulates check sellers or money transmitters for safety and soundness purposes. Over 45 states have sale of checks/money transmitter laws. The substance of these laws varies somewhat from state to state, but are generally enforced by the state banking departments. In order to achieve a greater degree of regulatory cooperation and to promote uniformity of safety and soundness regulation, including a more disciplined approach to on-site compliance examinations, the state banking departments, led by those agencies in Texas, California, New York, Michigan, and Florida, formed the Money Transmitters Regulators Association (“MTRA”), in the late 1980’s.

The MTRA has remained a vibrant organization of state regulators. While industry representatives are invited to the annual meeting of the MTRA, the industry has no vote in any MTRA matter. Nevertheless, the MTRA has succeeded in obtaining industry cooperation in its efforts to develop a uniform safety and soundness proposal for money transmitters (i.e., those who sell or issue checks and/or transmit funds by electronic or by other means).

In fact, in considering what became Section 407 of the Money Laundering Suppression Act, the Congress, in recognition of the good work of the MTRA, specifically indicated that the “several states” in the development of “a model statute” could utilize “such other forum as the states may determine to be appropriate” This language was added to Section 407 after Congress reviewed testimony concerning MTRA’s activities.

II. The Model Act

Attached is a copy of the latest version of the Model Act, as well as a copy of the model legislation outline from which it derives. The Model Act is a safety and soundness law which, as indicated above, does not deal with currency exchanges or check cashers, and is not an anti-money laundering statute. What it represents is the result of the combined expertise of individuals with decades of regulatory experience in the safety and soundness area. Many state regulatory agencies have licensed and examined money transmitters since the turn of the century.

Over the past few years, the Model Act has become law in Indiana, Tennessee, Idaho, Maine, and, in slightly modified form, in Florida. It is being considered in the legislatures of New Jersey and Massachusetts. The Model Act provides for the licensing of those entities which sell checks or transmit funds but exempts the U.S. Government, the Post Office, states and their political subdivisions, and banks. Under the Model Act, minimum net worth is required and permissible investments must be maintained in an amount equal to all outstanding instruments or transmissions. This is a reserve requirement which is supplemented by the mandate that licensees post a bond or other security device.

Moreover, the Model Act requires that prior to the issuance of a license, the business record and capital adequacy of the applicant be examined, as well as the

competence and integrity of the management and owners. In addition, applicants must provide data on “material” litigation and criminal convictions, audited financial statements, SEC filings, if any, etc. In short, precisely the information recommended by Congress for inclusion in a model law in Section 407(b)(2) is contained in the Model Act to insure that an applicant’s suitability can be evaluated.

The act also provides for periodic reporting by licensees, on-site examinations of licensees by state officials, as well as the maintenance of records by licensees. The Model Act contains significant discretion for the state agency administering the Act to suspend or revoke licenses in appropriate cases, to impose civil and criminal penalties where necessary for the enforcement of the law, and for the promulgation of regulations in aid of the Act.

The experience to date under the Model Act in the states where it has been enacted has been good. In short, there is no need to duplicate the efforts of the MTRA in this regard, particularly where that effort has resulted in the adoption of modern safety and soundness regulation.

III. No Uniform Act Exists for Currency Exchanges and Check Cashers

In Section 407 of the Money Laundering Suppression Act, it was expressed as the “sense of the Congress” (which, by the way, is not a binding requirement of law), that uniform laws for licensing and regulation of currency exchangers and check cashers also be developed. While there are certain useful examples of recent state action in the area (see, e.g., the Florida “Check Cashing and Foreign Currency Exchange Act”), no national model act exists.

IV. No Model Anti-Money Laundering Law Exists

This is an issue that applies to both banks and non-banks. That is, it should be a crime under state law to engage in money laundering activities or to fail to file the reports or maintain the records required under the Bank Secrecy Act. Many states have a variety of anti-money laundering laws, but no uniformity exists among the states. Some states define as unlawful certain activities such as “structuring” in an effort to curb money laundering. Other states have enacted laws which designate as a state felony non-compliance with the Bank Secrecy Act recordkeeping and recording requirements. These laws in the aggregate apply to all financial Institutions; but there is no uniformity. It would be a worthy goal to develop a uniform state law in this area. Such a model law would help to provide an effective tool to combat illegal entities, and, hopefully, be fully consistent with Bank Secrecy Act recordkeeping and recording requirements.

V. Section 407 Does Not Require the Reinvention of the Regulatory Wheel

As set forth above, the “Model Act Regulating Money Transmitters,” which has been enacted in multiple states and is under consideration in others is viable, effective and in the public interest. There is no reason at this point to “reinvent the regulatory wheel,” to develop a new “model act” for check sellers and money transmitters when the existing model act works and generally satisfies Section 407 insofar as check sellers and money transmitters are concerned. However, there is no accepted model with regard to currency exchanges and check cashers, nor does one exist with regard to state criminal sanctions for money laundering.