

MEMORANDUM

October 5, 2021

To Our Clients and Friends

Re: Conference of State Bank Supervisors Model Money Transmission Modernization Act

The Conference of State Bank Supervisors (“CSBS”) recently released the Model Money Transmission Modernization Act (the “Act”), after multiple rounds of comments. The Act is part of CSBS’ Vision 2020 initiative to modernize state regulation of non-bank financial institutions. CSBS encourages states to propose the Act to their legislatures and replace their prior money transmitter law with the model law in order to ease the regulatory burden on money transmitters.

The model law includes the following provisions, among others:

- Money Transmission: Requires persons engaged in money transmission to obtain a license.
 - Defines “money transmission” as: (1) selling or issuing payment instruments to a person located in a state; (2) selling or issuing stored value to a person located in a state; or (3) receiving money for transmission from a person located in a state. Includes payroll processing services (separately defined).
 - Defines “receiving money for transmission” as receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.
- Virtual Currency:
 - Model Act includes a separate module for states which prefer a stand-alone portion of the law covering virtual currency.
 - Clarifies virtual currency received for transmission is included in the definition of “money transmission.”
 - Defines “virtual currency” as a digital representation of value that: (1) is used as a medium of exchange, unit of account, or store of value; and (2) is not money, whether or not denominated in money.
 - Excludes from the definition of virtual currency (1) a transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; and (2) a digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

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- Provides that a person may not engage in virtual currency business activity unless licensed or exempt from licensure.
- Exemptions: Proscribes categories of exempted persons, including:
 - A person appointed as an agent of a payee to collect and process a payment from the payor to the payee for goods or services, other than money transmission itself (subject to certain conditions).
 - A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender and the sender's designated recipient (subject to certain conditions)
 - Payment system operators to the extent such operators provide processing, clearing or settlement services between or among exempted or licensed persons.
 - Federally insured depository financial institutions, bank holding companies, and offices of an international banking corporation, and persons expressly appointed as a third-party service provider to or agent of those entities (subject to certain conditions).
 - Authorized delegates of a licensee.
- Net Worth: Requires licensees to maintain a tangible net worth of the greater of (a) \$100,000; or (b) 3 percent of total assets for the first \$100 million, 2 percent of additional assets for \$100 million to \$1 billion, and 0.5 percent of additional assets for over \$1 billion.
- Surety Bond: Provides a general formula which may be the greater of a flat amount or average daily transmission liability in the most recent three-month period, with an overall cap; or may be based on the percentage of tangible net worth that exceeds total assets. Amounts and formulas will be up to each state. Provides that a state may exempt licensees from having to do average daily transmission liability calculations if it maintains a bond in the maximum amount.
- Permissible Investments: Requires a licensee to maintain permissible investments that have a market value of not less than the aggregate amount of all of its outstanding money transmission obligations. Sets forth categories of permissible investments considered at full value versus various percentages which may be counted, depending on the category.
- Control: Defines "control" as (1) the power to vote, directly or indirectly, at least 25 percent of the outstanding voting shares of a licensee or person in control of a licensee; (2) the power to elect or appoint a majority of key individuals or executive officers, directors, or other persons exercising managerial authority of a person in control of a licensee; or (3) the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

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- Establishes a rebuttable presumption of controlling influence for persons who hold, directly or indirectly, at least 10 percent of the outstanding voting shares or voting interests of a licensee or person in control of a license.
 - Requires licensees to submit background materials for control persons and key individuals.
 - Requires persons seeking to acquire control of a licensee to obtain prior approval from state regulators.
- Change of Key Individuals: Requires licensee adding or replacing a key individual to provide notice within 15 days of effective date of a key individual's appointment, plus information required, within 45 days of the effective date. States may issue notice of disapproval within 90 days of the date the notice provided was deemed to be complete; deemed approved if no notice of disapproval is received.
 - Networked Supervision: Authorizes state regulators to conduct examinations of licensees or accept examination reports of another state agency or independent accounting firm which will be viewed as an official report of the state regulator. Encourages state regulators to participate in multistate supervisory processes in order to limit the regulatory burden on licensees.
 - Application Requirements: Establishes required materials for license applications.
 - Renewal: Requires licenses to be renewed annually.
 - Confidentiality: Specifies information that a state regulator may make public and information that is confidential and not subject to disclosure.
 - Reporting: Requires licensees to submit a quarterly report of condition, quarterly authorized delegate report, and annual audited financial statement. Requires reports of certain events, within one or three business days depending on the event.
 - Records: Requires licensees to maintain specified records for at least three years, including a record of each outstanding money transmission obligation sold, bank statements and bank reconciliation records, and a general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts.
 - Timely Transmission. Provides licensee must forward money received for transmission in accordance with terms of its agreement with the sender, unless the licensee has a reasonable belief or a reasonable basis to believe sender may be a fraud victim or a crime or violation of law, rule or regulation has occurred, is occurring or may occur.
 - Refunds: Requires licensees to provide a refund within 10 days of receipt of a sender's written request for a refund (subject to certain exceptions, including

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international remittances subject to Regulation E and payment processing for goods/services under agreement with payee).

- Receipts: Requires licensees to provide senders with a receipt containing specified information (subject to certain exceptions, including international remittances subject to Regulation E, transmission for business (rather than consumer) purposes, payment processing for goods/services under agreement with payee, and payroll processing). Electronic receipts permitted for electronic or phone transactions or, for in-person transactions, if a sender agrees to receive an electronic receipt.
- Disclosures for Payroll Processing Services: Requires licensees providing payroll processing services to (a) issue reports to clients detailing payroll obligations in advance of funds being deducted from an account and (b) make available worker paystubs or equivalent statement to workers, unless client designates intended recipients to licensee and is responsible for providing those disclosures.
- Separate Module on Virtual Currency: Provides separate requirements which may be incorporated in a state's law for virtual currency, which are derived from the Virtual-Currency Businesses Act published by the Uniform Law Commission's Uniform Regulation of Virtual Currency Businesses Act.
 - Provides for a number of additional disclosures which are to be provided prior to and at the conclusion of a virtual currency transaction.
 - Addresses property interests and entitlements to virtual currency.
 - Varies the tangible net worth requirements to permit inclusion of virtual currency, measured on average value in USD in prior six months, excluding virtual currency controlled for end users.
 - Imposes additional recordkeeping requirements to be maintained for five years.

For more information, please call Gilbert Schwartz, Robert Ballen, Heidi Wicker, or Eric Knight at (202) 776-0700.