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April 7, 2016

Washington Department of Financial Institutions
Division of Consumer Services
Attention: Sara Rietcheck
P.O. Box 41200
Olympia, WA 98504 -1200

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DFI-CONSUMER SERVICES DIVISION
LICENSING UNIT
OLYMPIA, WASHINGTON

Re: Proposed Amendment of WAC 208-690-230

Dear Ms. Rietcheck:

CheckFreePay Corporation ("CheckFreePay"), a Washington State licensed money transmitter, respectfully submits this comment letter regarding the Department of Financial Institutions' (the "Department") proposal to amend Section 208-690-230 of the Washington Administrative Code regarding the use of trade names in advertising or provision of money services (the "Advertising Rule").

The proposed requirement that a licensee may not advertise or provide money services under a trade name "without an equally prominent display of the license's name and NMLS number" is unnecessary because it would not provide any greater consumer protection when licensees are already acting in compliance with the requirements of RCW 19.230.340, which expressly prohibits a licensee from engaging in "any unfair or deceptive act or practice toward any person, including but not limited to any false or deceptive statement about fees or other terms of a money transmission." CheckFreePay believes, as set forth herein, that imposing new, additional disclosure requirements is not only unwarranted, but also (i) creates additional, undue burden on both the Department and its licensees, (ii) is unlikely to improve consumer awareness, and (iii) will damage those brands that companies work tirelessly to create.

CheckFreePay and other licensed money transmitters already employ several distinct mechanisms designed to avoid customer confusion and to ensure that consumers understand that the licensee is the provider of the financial service it offers to the public, namely: (i) by conspicuous disclosure on its product website where consumers may obtain information about the service, and where the consumer may transact, (ii) within legal "Terms of Service" agreements, to which links are provided on the product websites; and (iii) on the transaction receipt issued to the consumer. All of these mechanisms, when taken together, ensure that there is no obscurity as to who is providing the services, and lead to the reasonable conclusion that the licensee is offering, and responsible for, the money transmission services. Institutions that operate under a trade name, a product name or d/b/a can, and do, create adequate distinction between the legal name of the licensee and the d/b/a without an equal prominence requirement. Moreover, when the wording at issue is obviously a product name, such as the case with CheckFreePay's "Popmoney" product offering, there is even less risk and less justification



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to be proscriptive in specifying the steps that a licensee must take to avoid customer confusion (customers would not reasonably believe that "Popmoney" is an entity). Furthermore, use of the licensee's legal name is likely to distract consumers from the intended marketing message, thereby causing damage to the brand that companies work hard to create. We also believe the requirement will be problematic in the context of mobile advertising, which is significantly size-constrained.

In contrast to the intended purpose of the proposed Advertising Rule, CheckFreePay is of the view that requiring the inclusion of the licensee's NMLS number will foster or create consumer confusion, where there is none today. As the Department is aware, the licensee's NMLS number is associated with the licensee in those state(s) that that have adopted use of NMLS. Even assuming consumers understand what the NMLS is and what the NMLS number means (most would not), given that use of the NMLS has not been adopted by all states, use of this number may create consumer confusion for those consumers who are residents of states that have not adopted use of the NMLS.

CheckFreePay urges the Department to carefully consider whether it is necessary and appropriate to impose new requirements that will require the industry to modify existing marketing materials, websites, mobile applications, and the like when licensees are already required to conduct themselves in a fair and straightforward manner in the provision of money services. As long as the licensee is complying with the requirements of RCW 19.230.340 and the advertising, taken as a whole, is not misleading, licensees should have flexibility in crafting their advertising messages in such circumstances.

We thank the Department for the opportunity to submit these comments on the Department's Advertising Rule.

Sincerely,

Lisa Liban
Vice President and Assistant General Counsel, Payments Regulatory

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