

April 6, 2016

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**VIA EMAIL AND
OVERNIGHT DELIVERY**

Sara Rietcheck
Washington State Department of Financial Institutions
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Re: *Comments of The Money Services Round Table Regarding the 2016 Uniform Money Services Act Rulemaking*

Dear Ms. Rietcheck:

I write on behalf of the Money Services Round Table ("TMSRT") regarding the Uniform Money Services Act Rulemaking ("Rulemaking"). TMSRT is comprised of non-bank money transmitters including RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc., and MoneyGram Payment Systems, Inc. Each of these entities is licensed in Washington State under the Uniform Money Services Act ("Act"), Rev. Code Wash. 19.230. TMSRT was pleased to have appeared in support of the Act at the time of its adoption.

TMSRT supports the efforts of the Department of Financial Institutions ("Department") to clarify the existing compliance obligations of licensees under the Act and applicable federal law through the changes to Wash. Admin. Code § 208-690 ("Rules") proposed by the Rulemaking. TMSRT does, however, have some minor concerns with respect to clarifying certain aspects of the Rulemaking, in particular with regard to the practices of authorized delegates, advertising, and the new rules pertaining specifically to security practices. These concerns, and suggested revisions, are elaborated below. We look forward to continuing to work with the Department on these issues and others as the rulemaking process moves forward.

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Authorized Delegates

Supervision

The Rulemaking proposes certain minor changes to the Rules with respect to authorized delegates. TMSRT generally has no concerns with many of these changes. Proposed § 208-690-035(6), however, seeks to create liability for licensees for “*any actions of the authorized delegate in violation*” of the Act or the Rules. This revision, among other things, would put licensees at risk of liability for conduct of their authorized delegates outside of the scope of the authorized delegate relationship, including conduct contrary to specific instructions of the licensee and conduct about which licensees were not knowledgeable. For example, if an authorized delegate were conducting its own, unlicensed money transmission activity outside of the authority delegated by the licensee, the licensee would ostensibly be liable, *even if the licensee had no knowledge* of the authorized delegate’s actions.

This proposed change is inconsistent with the boundaries for liability that are set forth in the statute. Under the Act, a licensee may be liable for violations of the Act or Rules by its authorized delegate *if the licensee* “commits willful misconduct in its supervision of its authorized delegate or willfully avoids knowledge of its authorized delegate’s business activities.” Rev. Code Wash. 19.230.280(2). Furthermore, especially in the absence of a knowledge qualifier, such a rule could be construed as excusing an authorized delegate from responsibility for its own conduct, even when the licensee trains and monitors the authorized delegate, and identifies and remediates inappropriate authorized delegate conduct, pursuant to its statutory obligations.

TMSRT thus respectfully suggests that proposed new rule § 208-690-035(6) be revised to reflect the Department’s statutory authority to take action against a licensee for the actions of its authorized delegate in cases only where the licensee committed willful misconduct in its supervision of its authorized delegate or willfully avoided knowledge of its authorized delegate’s business activities with respect to such violations as authorized by the Act.

Receipt Disclosures

Proposed new § 208-690-035(10) would require the licensee’s name to be on any disclosure or receipt, along with the other applicable requirements of Rev. Code Wash. 19.230.330(2). TMSRT believes that this is a reasonable requirement and it is, in any case, generally consistent with common business practices today. It is not clear, however, what is meant by any “disclosures or receipts *for business services*.” TMSRT suggests that § 208-690-035(10) be revised to state: “Every receipt provided by an authorized delegate to a customer pursuant to RCW 19.230.330(2) must include the licensee’s name in addition to the other applicable requirements of RCW 19.230.330(2).”

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Bond

Proposed new § 208-690-035(11) would provide that the “licensee’s bond covers the actions of the authorized delegate.” As with proposed new § 208-690-035(6), this requirement as drafted could be construed broadly to subject the licensee’s bond to actions of the authorized delegate outside the scope of the authorized delegate relationship. TMSRT respectfully suggests that this rule be clarified to affirm its consistency with Rev. Code Wash. 19.230.050(2), which states, in relevant part, that the surety bond shall “run to the benefit of the state and any person or persons who suffer loss by reason of a licensee’s or licensee’s authorized delegate’s violation of this chapter or the rules adopted under this chapter.”

Security and Privacy

Proposed new § 208-690-240 would require licensees to maintain a cyber security program. We would suggest the Department consider harmonizing this requirement with existing data security standards, such as the information security program obligations under the Gramm-Leach-Bliley Act (“GLBA”) and cited in proposed new § 208-690-250. Consistent with existing standards, then, all licensees could be required to have a written information security program reasonably designed to address risks appropriate to the company’s size and complexity, the activity conducted, and the sensitivity of the information at issue.

In addition, proposed new §§ 208-690-250 and -260 address the GLBA directly. TMSRT members, of course, comply with all applicable laws and regulations, including, as relevant to their business models, the GLBA Privacy Rule (Regulation P, 12 CFR 1016) and the Safeguards Rule (16 CFR 314). We are concerned that these proposed new rules will, however, create significant confusion for licensees. In particular, it is not clear if these rules are meant as guidance to licensees or as formal obligations incorporated by reference into the Washington Administrative Code. To avoid confusion, § 208-690-260, which addresses the GLBA Privacy Rule, should be deleted. The rule as drafted both states that licensees “must comply with Regulation P” and “may have to provide consumers” with notice pursuant to Regulation P. While it may be helpful for some licensees to be informed of the possibility of compliance obligations under the GLBA, informal guidance from the Department, as opposed to a formal rule, may be a more effective vehicle to convey that information to licensees. To the extent that a licensee is subject to GLBA, its obligations would be addressed by proposed new § 208-690-210, which affirms that a licensee must ensure that it is compliant with applicable federal laws.

Similarly, § 208-690-250 could be interpreted as a requirement that companies not subject to GLBA must have a GLBA-compliant information security program to comply with the Uniform Act. The applicability of these requirements may be difficult for licensees to ascertain. For example, § 208-690-250(1) notes that “Generally . . . licensees must have a written [information security] program. . .”, but it is not clear whether this statement is meant to indicate that *all* licensees, regardless of whether GLBA applies to their business models, are

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required by the Department to have such a written program. And § 208-690-250(2) states that this program must be retained as part of the licensee's books and records. Therefore, to avoid confusion this rule could be deleted as well (as the general requirement to have an information security program would be addressed by § 208-690-240). Alternatively, § 208-690-250 could be revised to affirm that to the extent that a licensee is required to comply with the GLBA Safeguards Rule, any information security plan drafted in accordance with that rule shall be kept as part of the licensee's books and records.

Finally, the Rulemaking would address notification requirements relating to data security incidents in two separate sections: (1) § 208-690-110(10), requiring notice to the director in the event of a security breach, and (2) § 208-690-270, which appears to simply note that a licensee might have to provide notice to consumers and the Washington Attorney General under the Washington breach notification statute, Rev. Code Wash. § 19.255. To simplify matters for licensees, TMSRT respectfully suggests that notification obligations relating to security incidents be consolidated in one section of the applicable rules. And, to avoid creating confusion for licensees with respect to what qualifies as an incident requiring notice, the combined rule could work as follows: in the event that a licensee provides notice to the Attorney General's office pursuant to Rev. Code Wash. § 19.255, notice shall be timely provided to the director as well.

Minor Clarifications and Revisions

The proposed change to the definition of an "AML compliance officer," under § 208-690-010, would require that the compliance officer be *employed by the licensee*. In a number of cases, however, in particular with a publicly traded company, the compliance officer, and others, may not be employed by the licensee directly, but rather by a parent or affiliate of the licensee. Any required change to this longstanding, common business practice—which is not inconsistent with the Act—would create considerable operational challenges for many Washington money transmission licensees. To address this concern, TMSRT respectfully suggests that this proposal be revised as follows:

"AML compliance officer" means the individual(s) employed by the licensee **or an entity under common control with the licensee's ultimate parent** designated to implement the anti-money laundering (AML) program.

Separately, the proposed changes to § 208-690-200 would clarify the receipt requirements for general money transmission transactions and would also impose specific receipt requirements "[f]or electronic funds transfers at an electronic terminal," § 208-690-200(4). TMSRT respectfully requests that these proposed changes not take effect until six months after the effective date of the adoption of any such rule, which would enable licensees to make necessary changes to remain in compliance with the Act and Rules. In addition, if it is possible for the Department to clarify what is meant by "the type of transfer," such clarification would be greatly appreciated.

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Proposed new § 208-690-230 affirms that licensees may advertise using a name other than the named used by a licensee on its license, provided that the Department has previously approved such action. This proposed rule also states that a licensee “must also use the NMLS number.” As drafted, this statement is ambiguous, but it would seem to suggest that a licensee might be required to use its NMLS license number on all advertisements. Such a requirement, if that is the Department’s intent, would create a considerable challenge for licensees that operate nationally, in particular with regard to Internet advertising, which may not be conducted on a state-by-state basis. Including the NMLS number on advertising can create customer confusion because licensees have non-NMLS license numbers as well. On the other hand, this information may not provide any benefit to consumers; the name of the licensee remains the essential identifying element. As such, TMSRT respectfully suggests that the Department affirm that the requirements relating to advertising disclosures do not include using the NMLS number on every such advertisement. In addition, to the extent that this new section would require any changes to licensees’ existing practices, TMSRT respectfully requests that such requirements not take effect until twelve months after the effective date of the regulations. Such a delay would enable existing licensees to use existing advertising materials that have already been printed.

Finally, TMSRT respectfully suggests that the Department clarify that § 208-690-090(3), as revised, affirm that the licensee’s certification relating to its permissible investments covers “average outstanding daily *transmission* liability.” By adding “transmission,” the Department can eliminate any potential confusion and also maintain consistency with revised § 208-690-085(3), which addresses the “monthly calculation of the average outstanding daily transmission liability.”

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TMSRT appreciates the Department’s efforts to revise these rules to clarify the obligations of licensees and to ensure that consumers are appropriately protected. TMSRT members share the goals of clear, consistent and reasonable regulation that protects consumers by ensuring the safety and soundness of licensees. We hope that the Department agrees that the suggestions provided herein are in pursuit of that mutual goal, and we would look forward to the opportunity to discuss further any of these issues at your convenience.

Sincerely,



Bradley S. Lui
Counsel to The Money Services Round Table