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January 2, 2014

VIA OVERNIGHT DELIVERY AND EMAIL TO [rules@nccob.gov](mailto:rules@nccob.gov)

Lonnie Christopher, Rules Coordinator  
North Carolina Office of the Commissioner of Banks  
316 W. Edenton Street  
Raleigh, NC 27603

**Re: *Proposed Revisions to Money Transmitter Regulations***

Dear Mr. Christopher:

I write on behalf of The Money Services Roundtable (TMSRT)<sup>1</sup> regarding the proposed changes to Subchapter F of Title 4, Chapter 3 of the N.C. Admin. Code, regulations relating to licensees under the North Carolina Money Transmitters Act. TMSRT appreciates the opportunity to comment on the proposed changes to the regulations. While TMSRT generally believes that the proposed revised regulations are reasonable and will provide valuable clarity for transmitters, we note the following potential issues with the regulations as drafted.

***Agent of the Payee Definition***

The proposed regulations provide for how agents of payees may seek exemption from licensing under the Money Transmitters Act, but the proposed definition of "agent of payee" may not capture the business model under which agents of payees typically operate. While agents of payees are, as a matter of contract, appointed by payees to receive and process payments on the payee's behalf, it is *not* typical for the payee to "in writing, direc[t] buyers of its goods or services to tender payment to the agent." 04 NCAC 03F .0201(1). Typically,

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<sup>1</sup> TMSRT is comprised of the leading national non-bank money transmitters, including RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc., MoneyGram Payment Systems, Inc., and Integrated Payment Systems, Inc. These companies offer a variety of non-bank funds transmission services, often in locations not served by banks and other depository institutions. Examples of offered services include funds transfer through retail points of sale, the internet, mobile phones, and other avenues.

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payees give customers the *option* to pay their bills through an agent as well as directly through the payee, and would therefore not limit the payor to tender payment to the agent only. Moreover, in many transactions, there is no formal writing between the buyer and the seller through which such instructions could be provided. In addition, agents often are the ones who inform buyers (i.e., payors) that they have been appointed an agent to collect funds on behalf of the payee, with the payee not directly involved in the engagement.

Given the inherent difficult and complexity in securing a writing between the payee and the payor/buyer for purposes of payment to an agent on the payee's behalf, TMSRT suggests that the regulations require only that: there exist a written contract between the payee and the agent that specifically provides that payment to the agent satisfies the payor's obligation to the payee. This revised definition would also be consistent with the proposed requirements for seeking an exemption under 04 NCAC 03F .0305, which requires entities requesting an exemption to include "a copy of the written agreement between the payee and the agent" and evidence that "the consumer's financial obligation to the payee has been satisfied once the agent has received payment by the consumer" with the application.

### ***Executive Officer Definition***

The proposed regulations would expand the definition of an "Executive officer" to include an entity's chief technology officer ("CTO"), as well as any individual who "exercises significant influence over, or participates in, major policy making decisions of the applicant or licensee . . ." 04 NCAC 03F .0201(5). For most money transmitters, including the members of TMSRT, the chief technology officer does not play a significant role in policy making relating to the entity's transmission services and operations. To the contrary, a CTO is typically involved in overseeing the development, deployment and operation of *technology* facilitating the conduct of the business. As such, for most traditional transmitters, the CTO, to the extent the company has one, would not be involved in policy making with regard to the substance of services provided to consumers. Rather, the position is focused on procuring and providing the technology needed to execute the policy decisions made by other executives. In short, the position of CTO does not fall within the statutory definition of "executive officer" which includes the "president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions." N.C. Gen. Stat. Ann. § 53-208.2(a)(7). A CTO of a traditional money transmitter does not perform similar functions to the president, the chair of the executive committee or a senior office responsible for the licensee's business or the chief financial officer. TMSRT requests that "chief technology officer" be removed from the definition of "Executive officer."

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***Virtual Currency Definition***

TMSRT suggests that the definition of virtual currency be modified to specify that this term is limited to *mediums of exchange* that can be digitally traded and operate like a currency in digital or electronic environments, but do not have the attributes of a real currency (as opposed to only “digital representations of value that . . . *function* as a medium of exchange”). Modifying the definition in this way would avoid the potential for the definition of virtual currency under the regulation to be interpreted broadly to encompass anything that may function as a medium of exchange, unit of account, *or* store of value in certain situations. Many digital representations of value, including “rewards” points, or even shares of stock in publicly held companies, can be traded digitally (for goods or services, legal tender or other shares of stock), and may be considered to be a store of value or to *function* as a medium of exchange. These types of digital representations should not be considered virtual currency subject to regulation, and thus the definition of virtual currency should be revised to avoid the potential for capturing them.

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TMSRT appreciates the opportunity to comment on these important new regulations. If you have any questions concerning the above comments, or if TMSRT may otherwise be of assistance by providing additional industry information, please do not hesitate to contact me.

Sincerely,



Bradley S. Lui  
Counsel for The Money Services Round Table