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July 5, 2022

Ms. Kathy Lawson
General Counsel
West Virginia Division of Financial Institutions
900 Pennsylvania Avenue, Suite 306
Charleston, WV 25302

Re: West Virginia Money Transmission Draft Regulations

Dear Ms. Lawson:

I write on behalf of The Money Services Round Table¹ (“**TMSRT**”) regarding the Division of Financial Institutions’ proposed rule pertaining to money transmission services (the “**Proposed Rule**”).² The Proposed Rule follows on the enactment of West Virginia SB 505, effective June 7, 2022, which made certain changes to the West Virginia money transmission law based on the “Model Money Transmission Modernization Act” (the “**Model Act**”). The Model Act is a single set of nationwide standards and requirements developed by the Conference of State Bank Supervisors (“**CSBS**”) with extensive input from licensed money transmitters and state money transmission regulators. It is intended to harmonize the regulation of money transmission on a national basis.

The Proposed Rule primarily implements additional permissible investment provisions that are in the Model Act. TMSRT appreciates the proposal to include as permissible investments in West Virginia certain items that are included in the Model Act, such as ACH items in transit. Broad and consistent adoption of the Model Act language throughout the United States will help establish uniform standards for safety and soundness, including updated and uniform permissible investments definitions.

The Proposed Rule also establishes criteria for an irrevocable letter of credit as a permissible investment; SB 505, following the Model Act, provides for such a permissible investment. However, a provision of the Proposed Rule relating to the fixed date of issuance and expiration of the letter of credit deviates from the criteria for an irrevocable letter of credit criteria in the Model Act. Implementing this provision in West Virginia law would effectively permit licensees to only obtain letters of credit issued on December 31, which will likely create complex challenges for licensees and issuing banks.

In this regard, **the Model Act does not fix the date of expiration of a letter of credit**. This approach provides licensees, and their financial institutions, with flexibility regarding the timing of when the letter of credit is issued and, therefore, the timing of the end date of the letter of credit (subject to the automatic renewal provisions of the Model Act, as also provided for in the Proposed Rule). We do not believe that the safety and soundness of licensees that are issued a letter of credit as a permissible investment will depend on when the letter of credit expires (or is issued), and we do not think that West Virginia should

¹ TMSRT is comprised of the leading non-bank money transmitters RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc. and Western Union International Services, Inc., and MoneyGram 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. Each company is currently licensed as a money transmitter throughout the United States, including in West Virginia.

² 106 CSR 23.



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create a *de facto* national standard that was not contemplated by the Model Act or by the state regulators that participated in the CSBS effort.

As a separate matter, neither SB 505 nor the Proposed Rule includes a number of other permissible investments set forth in the Model Act. TMSRT respectfully suggests that the Proposed Rule add, as a new Section 3.3,³ the following permissible investments:

3.3. Additional Permissible Investments. Unless permitted by the Commissioner by order to exceed the limit as set forth herein, the following investments are permissible under §32A-2-8b(a) to the extent specified:

3.3.1 Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to 50% of the aggregate value of the licensee's total permissible investments;

3.3.2. Of the receivables permissible under Section 3.3.1, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed 10% of the aggregate value of the licensee's total permissible investments.

3.3.3 The following investments are permissible up to 20% per category and combined up to 50% of the aggregate value of the licensee's total permissible investments:

3.3.3(a) A short-term (up to six months) investment bearing an eligible rating;

3.3.3(b) Commercial paper bearing an eligible rating;

3.3.3(c) A bill, note, bond, or debenture bearing an eligible rating;

3.3.3(d) U.S. tri-party repurchase agreements collateralized at 100% or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

3.3.3(e) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P, or the equivalent from any other eligible rating service; and

3.3.3(f) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in §32A-2-8b(e)(1) – (3) and Section 3.1

3.3.4 Cash (including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers) at foreign depository institutions are permissible up to 10% of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution: has an eligible rating; is registered under the Foreign Account Tax Compliance Act; is not located in any country subject to sanctions from the Office of Foreign Asset Control; and is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

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The inclusion of these additional permissible investments, along with the deletion of the issuance/ expiration date "of December 31" from Section 3.2.1d of the Proposed Rule, will facilitate uniform adoption of permissible investments, particularly the letter of credit as a permissible investment, consistent with the Model Act.

³ The current 3.3 "Phase Implementation for Permissible Investments" would, in turn, be moved to a new 3.4.



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If you have any questions for TMSRT regarding these comments, or the CSBS model payments initiative generally, TMSRT would be happy to respond.

Sincerely

A handwritten signature in cursive script that reads "Adam J." followed by a long, sweeping horizontal line.

Adam J. Fleisher
Counsel to The Money Services Round Table
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