EMERGING TECHNOLOGY AND THE CALIFORNIA MONEY TRANSMISSION ACT

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On August 3, 2000, the National Conference of Commissioners on Uniform State Laws (NCCUSL) issued its first draft of a model act to provide a uniform regulation for money services business. One of the main drivers behind the creation of a uniform model act was to address concerns arising from potential money laundering activities and that states had begun to implement differing regulatory frameworks. A final version of the act was ratified by NCCUSL on August 6, 2004. Alaska, Arkansas, Iowa, Vermont, and Washington implemented the model act in its entirety. The creation of the model act did not end the patch work of state regulation. Instead, each state made their own changes and additions to the act.

On September 30, 2010, AB 2789 was signed into law by then Governor Arnold Schwarzenegger. AB 2789 established the California Money Transmission Act (MTA). The MTA combined the regulatory and licensing requirements of the Transmission of Money Abroad Law, the Travelers Check Act and the Payment Instruments Law. In addition to these changes, the MTA includes licensing for domestic money transfer and non-bank issued stored value. The MTA is administered by the California Department of Financial Institutions (DFI). Currently, there are approximately 71 MTA licensees, according to data available on DFIs website.

WHAT IS MONEY TRANSMISSION?

At the most basic level money transmission is the transfer of funds involving three parties, 1) Sender 2) Money transmitter and 3) Recipient. The transfer of funds may be intrastate, interstate, or international. Typically this service is conducted at a physical location where the sender of funds pays a fee to the remittance service and the money is then wired to the recipient. Though, as will be discussed later, emerging technologies are breaking up this old model.

Large money transmitters may have a home office, transaction clearing centers, service center (s), regional offices, and branches. They may also contract with agents. Agents may include established businesses such as grocery stores, truck stops, check cashers, pharmacists, travel agents and supermarket chains. The money transmission home office pays its agents using a fee schedule that provides predetermined charges for money transmission.

This is how the traditional model of money transmission works. A sender enters an agent location and wishes to send $500 to a recipient in another location. The sender provides the agent the funds and instructions for delivery to the recipient. The agent takes the funds and instructions and usually enters the transaction into a computer terminal owned by the money transmitter and that is linked to the money transmitter's processing system. Upon receiving the instructions, the money transmitter will contact its appropriate receiving agent for payout to the recipient. The sender and/or receiving agent will inform the recipient that the transmitted funds are available for pick-up. The availability of funds to the recipient may range from minutes to several days depending upon the location and availability of the receiving agent and money transmitter's delivery policy. While computers are the typical means for the transferring of money, telephone lines and fax machines are still widely used.

According to World Bank estimates, remittances totaled $414 billion in 2009, of which $316 billion went to developing countries that involved 192 million migrant workers. For some individual recipient countries, remittances can be as high as a third of their Gross Domestic Product (GDP). The top recipients in terms of the share of remittances in GDP included many smaller economies such as Tajikistan (45%), Moldova (38%), and Honduras (25%).

Historically, the money transmission involved face-to-face transaction between the consumer and transmitter agent that would accept the consumer's money and transmit those funds to another agent outside of the United States for delivery of those funds to the consumer's family or friends. These transactions were dominated primarily by a few large transmitters such as Western Union and MoneyGram. Subsequent to the issuance of the draft NCCUSL money transmission act, states across the country amended their statutes to provide enhanced regulation to foreign and domestic transmission and non-bank issued stored value. Forty eight states and the District of Columbia have money transmission licensing statutes.

As will be discussed later in this document, the definition of money transmission can be quite broad, both legally and interpretatively. Furthermore, the traditional model of money transmission has changed as emerging technologies are changing the way businesses accept payments and the way that consumers send money or pay for goods and services.

<u>Highlights of the MTA:</u>

The following are some highlights of California's MTA (Financial Code Sections 2000-2172):

1) Defines “payment instrument” as a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.

2) Defines “receiving money for transmission” or “money received 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. The term does not include sale or issuance of payment instruments and stored value.

3) Defines "Stored value" as monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

4) Requires licensing for domestic money transmittal services. Prior to enactment, licensing was only required for international money transfer.

5) Provides for regulation of non-bank issued stored value cards that may be offered by licensees. In order to offer non-bank stored value the seller of stored value must be licensed.

6) Prohibits a person from engaging in the business of money transmission in California or advertising, soliciting, or holding itself out as providing money transmission unless licensed.

7) Requires specified information to be included in an application for a license which shall be in the form proscribed by the commissioner of DFI.

8) Authorizes the commissioner to conduct an examination of an applicant, at the applicant's expense, and would require the commissioner to approve an application for a license if the commissioner makes specified findings, including that the applicant has adequate net worth and is competent to engage in the business of receiving money for transmission. In order to meet the net worth requirements a licensee that sells or issue payment instruments or stored value must maintain securities on deposit on a surety bond of no less than $500,000 or 50% of the average daily balance of outstanding payment instruments and stored value in CA. A licensee engaged in money transmission must either maintain securities or a surety bond not less than $250,000 no more than $2,000,000.

9) Requires licensees to file audit reports with the commissioner within 90 days after the end of each fiscal year.

10) Imposes various fees and would require the commissioner to levy assessments on licensees for the purposes of administering these provisions regulating money transmission including:

    a) A $5,000 application fee;

b) An annual license fee of $2,500;

c) An annual branch office fee of $125 per branch office;

d) An annual $25 fee for each branch employee; and,

e) For licensees that sell or issue payment instruments, an annual assessment based on the volume and aggregate face amounts of payment instruments and stored value issued or sold in California.

11) A licensee must maintain specified eligible securities including and/or a surety bond and maintain $500,000 in net-worth.

12) Requires a licensee to provide specified notices and disclosures to customers, including a notice relative to a customer's right to a refund, disclosures relating to rates of exchange, a notice indicating that payment instruments are not insured, and a notice providing information on making complaints to the commissioner against a licensee.

13) Requires licensees to maintain financial records for a 3-year period.

14) Mandates each licensee to file with the commissioner a certified copy of every receipt form used by it or by its agent for receiving money for transmission prior to its first use.

15) Authorizes the commissioner to suspend or revoke a license if the commissioner finds that a licensee or agent of a licensee has, among other things, violated the provisions of the act or engaged in fraud or unsound practices and would authorize the commissioner to assess specified civil penalties against a person that violates these provisions.

16) Makes it a crime for a person to engage in the business of money transmission without a license or for a person to intentionally make a false statement, misrepresentation, or false certification in a record filed or required to be maintained under these provisions.

17) Exempts from licensing,

a) The United States or a department, agency, or instrumentality thereof, including any federal reserve bank and any federal home loan bank.

b) Money transmission by the United States Postal Service or by a contractor on behalf of the United States Postal Service.

c) A state, county, city, or any other governmental agency or governmental subdivision of a state.

d) A commercial bank or industrial bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank.

e) Electronic funds transfer of governmental benefits for a federal, state, county, or local governmental agency.

f) A board of trade designated as a contract market under the federal Commodity Exchange Act (7 U.S.C. Secs. 1-25, incl.) or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for such a board.

g) A person that provides clearance or settlement services pursuant to a registration as a clearing agency or an exemption from registration granted under the federal securities laws to the extent of its operation as such a provider.

h) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers, to the extent of its operation as such a provider.

i) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as such a broker-dealer.

18) If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

a) The applicant has adequate tangible shareholders' equity, as specified in Section 2040 to engage in the business of money transmission and the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of money transmission.

b) The applicant, the directors and officers of the applicant, any person that controls the applicant, and the directors and officers of any person that controls the applicant are of good character and sound financial standing.

c) The applicant is competent to engage in the business of money transmission.

d) The applicant's plan for engaging in the business of money transmission affords reasonable promise of successful operation.

e) It is reasonable to believe that the applicant, if licensed, will engage in the business of money transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

FEDERAL LAW & REGULATIONS:

Federal Regulation E, the Electronic Funds Transfer Act (EFTA) was amended via the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) to include regulation of international remittances and money transfer. Section 1073 of Dodd-Frank expanded the scope of EFTA to include requirements concerning remittance disclosures to consumers. The Consumer Financial Protection Bureau (CFPB) has been tasked with creating rules to implement these changes. Last year, CFPB released draft rules that were to take effect February of 2013. However, CFPB postponed the final rules until later in the year to work out potential compliance issues.

A brief description of the new requirements:

- Money transmitters will be required to provide customers with written pre-payment disclosures containing information about the specific transfer, such as the exchange rate, applicable fees and taxes, and the amount to be received by the designated recipient.

- Money transmitters will be required to provide a written receipt when payment is made. The receipt must include the information provided on the pre-payment disclosure, as well as additional information, such as the date of availability, the recipient's contact information, and information regarding the customer's error resolution and cancellation rights. As an alternative, the new money transmitter regulation allows money transmitters to give customers a single written disclosure prior to payment containing all of the information required on the receipt, so long as the money transmitter also provides proof of payment such as a stamp on the earlier document.

- The pre-payment disclosures and receipts must be provided in English and in each of the foreign languages principally used by the money transmitter to advertise, solicit, or market money transfer services at a particular office. If you offer customers the ability to make money transfers using text message or a mobile application, the new money transmitter regulation provides additional guidance on how to provide the required disclosures.

- If, (i) due to the laws of a recipient country or (ii) the method by which transactions are made in the recipient country, a money transmitter cannot determine certain amounts that are required to be disclosed, exceptions permit the money transmitter to disclose an estimate of the amount of currency to be received, rather than the actual amount.

- Money transmitters will be required to provide customers with a 30-minute cancellation period that allows a customer the opportunity to review both the prepayment disclosure and the receipt to ensure that the transfer was sent as the customer intended. If a customer requests, a money transmitter must promptly provide the customer a notice describing the customer's "error resolution" and cancellation rights, using specified language or substantially similar language. Even after the cancellation period has passed, customers will have a right to a refund or other remedy if an error occurs in a transaction.

- In the event a customer timely requests the cancellation of a money transfer, the new money transmitter regulation requires money transmitters to provide customers with a refund, at no additional cost to the customer, the total amount of funds provided by the customer, including any fees and, to the extent not prohibited by law, taxes imposed in connection with the money transfer, within three business days of receiving the request to cancel the money transfer.

The United States Department of Treasury under the Financial Crimes Enforcement Network (FinCEN) requires registration of money services businesses (MSB). According to FinCEN an MSB includes any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities, and that meets a threshold of $1,000 per day or more transactions:

- Currency dealer or exchanger.
- Check casher.
- Issuer of traveler's checks, money orders or stored value.
- Seller or redeemer of traveler's checks, money orders or stored value;
- Money transmitter.

FinCEN registration does not apply to a bank or a person regulated or registered with the Securities and Exchange Commission. Entities registered with FinCEN must make electronic filings under the Bank Secrecy Act (BSA). As of July 1, 2012, all such filings must be electronic and made through the BSA E-Filing System. Reports that must be filed through this system include, but are not limited to:

- Currency Transaction Report (FinCEN Form 104)
- Designation of Exempt Person (FinCEN Form 110)
- Suspicious Activity Report (Form TD F 90-22.47)
- Suspicious Activity Report by the Securities and Futures Industries (FinCEN Form 101)
- Suspicious Activity Report by Money Services Business (FinCEN Form 109, formerly 90-22.56)
- Suspicious Activity Report by Casinos and Card Clubs (FinCEN Form 102)
- Currency Transaction Report by Casinos (FinCEN Form 103, formerly 8362)

- Registration of Money Services Business (FinCEN Form 107)
- Report of Foreign Bank and Financial Accounts (Form TD F 90-22.1)

EMERGING TECHNOLOGIES:

The last five years have witnessed technological changes that have drastically altered the old business model of remittances, as well as, the ways in which consumers pay for goods and services. Whereas, the traditional model involved visiting the location of a money transmitter agent, new technologies have completely changed the way in which customers send and use money.

Now a consumer wishing to send money to another person for goods, services, or simply as a remittance to family or friends, has various online services to choose from, including applications utilizing smart phones. The way in which consumers pay for goods and services has transcended checks and credit cards and is rapidly evolving with electronic payment systems and new innovative payment networks. Large financial institutions are also getting on the bandwagon as several large financial institutions (BofA, Chase, and even Golden 1 Credit Union) are offering money transfer services using smart phone and web based applications.

In the payments space, typical five channels have been available, 1) Cash 2) Check (Paper or Check 21 substitute check) 3) Automated Clearing House (ACH) transaction 4) Credit/debit/stored value and 5) Wire transfers. Emerging technologies have created new payment methods such as web payments, contactless payments, mobile payments, Bitcoin and other virtual currency.

Between December 2011 and January 2012, the Federal Reserve Board conducted a survey of consumers concerning the use of mobile financial services (http://www.federalreserve.gov/econresdata/mobile-devices/files/mobile-device-report-201203.pdf). The following are brief findings from their report.

1) Mobile phones and mobile Internet access are in widespread use.
    a) 87 percent of the U.S. population has a mobile phone.
    b) 44 percent of mobile phones are smartphones (Internet-enabled).
    c) 84 percent of smartphone users have accessed the Internet on their phone in the past week.
2) The ubiquity of mobile phones is changing the way consumers access financial services.

a) 21 percent of mobile phone owners have used mobile banking in the past 12 months.

b) 11 percent of those not currently using mobile banking think that they will probably use it within the next 12 months.

c) The most common use of mobile banking is to check account balances or recent transactions (90 percent of mobile banking users).

d) Transferring money between accounts is the second most common use of mobile banking (42 percent of mobile banking users).

3) Mobile phones are also changing the way consumers make payments.

a) 12 percent of mobile phone owners have made a mobile payment in the past 12 months.

b) The most common use of mobile payments was to make an online bill payment (47 percent of mobile payment users).

c) 21 percent of mobile payment users transferred money directly to another person's bank, credit card, or Paypal account.

4) Perceptions of limited usefulness and concerns about security are holding back the adoption of mobile financial services.

a) The primary reason why mobile phone users had not yet adopted mobile banking was that they felt their banking needs were being met without the use of mobile banking (58 percent).

b) Concerns about the security of the technology were the primary reason given for not using mobile payments (42 percent) and the second most common reason given for not using mobile banking (48 percent).

c) More than a third of mobile phone users who do not use mobile payments either don't see any benefit from using mobile payments or find it easier to pay with another method.

5) The "underbanked" make significant use of mobile financial services.

a) The underbanked make comparatively heavy use of both mobile banking and mobile payments, with 29 percent having used mobile banking and 17 percent having used mobile payments in the past 12 months.

b) 62 percent of the underbanked who use mobile payments have used it to pay bills.

c) 10 percent of the completely unbanked reports using mobile banking in the past 12 months, and 12 percent have made a mobile payment.

Mobile payment devices and systems are turning into new and innovative ways for businesses to accept electronic payments.

In addition to the money transmission licensing acts across 48 states, James Freis, Director of FinCEN testified on June 29, 2012, in front of the U.S. House Committee on Financial Services,

> *FinCEN's regulations also have made it clear that the acceptance and transmission of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another person or location, by any means, constitutes money transmission, and that any person wherever located doing business wholly or in substantial part within the United States engaging in money transmission, regardless of any other business lines the person is engaged in – such as the provision of telecommunication services – would likely be a money services business under FinCEN's regulations, and as such must register and comply with all the reporting, recordkeeping, and monitoring requirements applicable to a money transmitter.*

Payment networks:

Payment networks are the infrastructure, made up of multiple parties, that provide for the processing of electronic financial transactions, most notably, credit card transactions. A typical credit card transaction has four parties: the customer, the bank that issued the customer's card, the merchant, and the merchant's bank. The merchant typically receives less than the merchant's bank as the transaction is discounted due to the interchange rate (paid to network) and any fees paid to the merchant bank. The largest payment networks are Visa, MasterCard, Discover and American Express. The top issuers of credit cards are American Express, JP Morgan Chase, Bank of America, and Citigroup.

The interchange fee paid by merchants has been the source of great controversy between merchants and payment networks and issuing banks. Interchange fees are set by the payment networks and can vary based on type of card used and transaction volume. The largest criticism of interchange fees have been 1) they are uncompetitive, as fee competition among the established networks is fairly non-existent. 2) Medium and small merchants have no ability to negotiate on the fee schedule, 3) Network rules prohibit passing the fee along to customers.

One of the most contentious fights concerning interchange involved the "Durbin amendments" to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. The Durbin amendment specified that financial institutions with assets over $10 billion could only charge interchange fees that are "reasonable and proportional to the actual cost." The Durbin Amendment also gave the Federal Reserve the power to regulate debit card interchange fees, and on December 16, 2010, the Fed proposed a maximum interchange fee of 12 cents per debit card transaction, which CardHub.com estimated would cost large banks $14 billion annually. On June 29, 2011, the Fed issued its final rule, which holds that the maximum interchange fee an issuer can receive from a single debit card transaction is 21 cents plus 5 basis points multiplied by the amount of the transaction.

On July 13, 2012, a settlement between retailers and the payment card industry (Visa, MasterCard, several banks) over interchange fees was reached. The settlement will not be implemented until it receives court approval. The settlement only applies to credit cards not debit cards.

The settlement establishes:

- Cash payment: $6.05 billion
- Credit interchange modification: 10 basis points for eight months. Anticipated value is approximately $1.2 billion
- Ability to charge “checkout fees” at the point of sale for customers paying with a credit or charge card. Fee cannot exceed 4%. This includes American Express and Discover although they were not parties to the settlement.
- Ability to form buying groups to negotiate interchange rates collectively

The settlement allows members of the class to opt-out of the damages portion of the settlement agreement if they prefer to litigate independently for more damages. No retailer can opt-out of the forward looking injunctive portion of the settlement, related to rule changes such as the surcharge. The defendants have the right to terminate the settlement agreement should more than 25% of the merchants opt out of the damages portion. Retailers have until October, 2012, to opt-out.

California enacted Civil Code Section 1748.1 in 2005 which prohibits a retailer in any sales, service, or lease transaction with a consumer may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means. A retailer may, however, offer discounts for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card, provided that the discount is offered to all prospective buyers.

This law will still prohibit retailers from charging a surcharge in California although there is a settlement.

States do not have the ability to regulate interchange rates between retailers, banks and the card networks. The main area of nexus is how retailers pass along those charges to customers. As mentioned previously, CA prohibits retailers from imposing a surcharge; however this restriction does not apply to non-retailers, such as government agencies. It's foreseeable that we may see legislation prohibiting fees for these non-retail entities.

The emergence of alternative payment networks has arisen in large part from the desire of merchants to mitigate the fees and costs associated with the traditional payment networks.

ALTERNATIVE PAYMENT NETWORKS:

Growth in technology has assisted with the rapid development of alternative payment networks. PayPal started in 1998 to allow people to send money without sharing financial information. The bulk of PayPal's business came from its relationship with Ebay (Ebay now owns PayPal) in which buyers paid for goods on Ebay via Paypal's service. PayPal is currently the global leader in processing payments with over $115 billion processed annually.

Square Inc. a payment processing company that began by offering a credit card reader to businesses in order to process credit card transactions including software to facilitate payments. Square is on track to process $10 billion in payments a year. They also offer smart phone app that allows customers to pay for goods and services with participating merchants. Square's main focus has been providing its services to small merchants like food trucks or taxi drivers. Square makes money by charging a 2.75% fee for every transaction.

Alipay reports a registered user base of approximately 600 million, and is accepted for online payment at many retail websites and service providers in China. They process more than 8.5 million transactions a day, and are partnered with more than 65 financial institutions including Visa, MasterCard, and all national banks in China. Alipay also provides payment solutions for more than 500,000 external Chinese merchants for online retail, virtual gaming, digital communications, commercial services, air ticketing, and utility fee payment transactions.

Popmoney lets you send money from your bank account to anyone using their name and email address or mobile number. Popmoney was developed by CashEdge (now part of Fiserve) and is offered through 1,400 US financial institutions (including US Bank and Citi) and processes nearly $50 billion in online fund transfers annually.

The Intuit Payment Network was developed to provide small businesses with an inexpensive way to get paid electronically. The service moves money directly from a sender's bank account to a receiver's bank account for one low flat fee of 50 cents. The network also offers several other ways to get paid: through QuickBooks invoice links, by credit card, ecommerce buttons, and through custom web links. Intuit, the maker of QuickBooks, Quicken, and TurboTax has over 240,000 merchants using the Intuit's credit card processing service.

ClearXchange (CXC) was formed in 2011 as the first network created by financial institutions to let customers send person-to-person payments directly from their checking and savings accounts with only the recipient's mobile number or email address. CXC is equally owned by Bank of America, JPMorgan Chase, and Wells Fargo. Although their service is just out of pilot mode, the three founding partner banks, when combined, reach over 50% of all U.S. online and mobile banking customers.

Dwolla was created in 2008 as an alternative payment network to help lower interchange fees for merchants. Dwolla allows consumers and organizations to send and receive money for only 25 cents per transaction, no matter how high the transfer amount. The company currently processes over $50 million per month in transactions and have signed up more than 100,000 users. Dwolla is currently not licensed as a money transmitter in California. These developments in payments provide businesses with multiple options for accepting payments for goods and services. Additionally, these innovations are creating an active competitive payment processing marketplace where businesses have the ability to price shop for these services.

The previous list of companies is only a small sample of companies operating in this space. For a list of money transmitters licensed in California, visit http://www.dfi.ca.gov/Directory/money_transmitters.html.

Stored Value:

An additional expanding model in the money transmission business is the use of stored value, typically via a pre-paid card, but new technology is growing the use of stored value across new mediums. The MTA regulates the issuance of non-bank stored value. The exempts stored value offered by a bank, or stored value on what is known as a "closed-loop" system. A closed loop system is typically a gift card or some other item representing monetary value that can only be used within the network of a given retailer or merchant. Money transferred via traditional means using an agent, or via computer can often be loaded onto a stored value device and provided to the receiver.

ISSUES & QUESTIONS FOR DISCUSSION:

- The emerging technologies that bring convenience to the consumer and competition to the market can create regulator confusion. As these technologies avoid storefront locations or traditional banking relationships, regulatory frameworks must keep up in order to remain relevant and clear, not just for consumers, but for those that desire to innovate.

- The road to becoming licensed as a money transmitter in California can create significant compliance costs. These costs can occur before the actual transmission business is off the ground. Licensing fees, net-worth reserves, bonding requirements, audited financial statements, as well as, compliance with Federal money laundering laws are among the costs that payment start-ups must consider. Many of these costs could be borne multiple times over if a potential licensee wishes to become licensed in more than one state. Policy makers may want to consider establishing a scaled approach to licensing in so far as potential transaction volume dictates net-worth requirements. Furthermore, it may be difficult to mitigate some compliance costs, but what policies and/or regulations may be necessary to avoid uncertainty in regards to these costs?

- The MTA creates a potential chicken and egg scenario. Many start-ups in the payments business rely on venture capital funding. Funding is difficult when one is not licensed to conduct business, yet one cannot acquire a license without sufficient funding. Furthermore, this conundrum creates difficulties in creating pilot projects or limited test runs of products because these market tests could be illegal, yet it is difficult to determine success of an innovation without testing.

- Do we need a clearer definition of "money transmission" to clarify when a business that is sending money from point A to point B is not engaged in transmitting money? Additionally, what clarifications may be needed to ensure that the MTA statute provides for functional regulation with a rapidly changing payment system landscape?

- What can policy makers do to ensure a correct balance between removing barriers to market entry while also providing sufficient state oversight?

- Each state has its own set of money transmission requirements that all differ from each other to varying degrees. As mentioned previously, these differences can potentially create barriers for new companies. Often, the requirements of different states may be slightly different, but functionally the same in wanting to ensure that a licensee is not financially over-leveraged and that consumers are appropriately protected. However, policy makers and regulators may wish to consider efforts to create some uniformity, or even reciprocity in licensing. However, before embarking on creating the potential for reciprocity it is vital that California standards are standards that other states may wish to copy and in turn, offer reciprocity for California licensees. Policy makers may want to consider encouraging California regulators to work with other state regulators to design more uniform regulations and standards.

- An idea circulating among some observers is that the Legislature should repeal the MTA. This idea may reflect frustration with compliance and regulatory difficulties facing existing and potential future licensees, a repeal of the MTA would lead to dangerous consequences. First, the repeal of the MTA would not provide the state with specific enforcement and licensing authority over entities that transmit money, issue payment instruments (money orders, traveler's checks) or non-bank issuers stored value. A complete repeal of the MTA could leave California with little oversight over entities that take consumer money and transfer it to other parties. If an entity offers services as a payment system that has no net-worth or bonding requirements then what protections would consumers have to recover lost funds, or for the state to hold them accountable? The purpose behind financial asset requirements is to ensure that if the consumer's funds are in jeopardy they have some recourse for potential recovery. This is not to say that numerous federal laws and regulations don't also regulate this area of operations. However, just like mortgage lending, the state has a vested interest in maintaining authority over practices that directly impact California consumers and specifically the safety and soundness of these entities.

Legislative Responses:

On February 21, 2013 Assemblymember Dickinson, Chair of Assembly Banking & Finance introduced AB 786. Initially, this legislation includes clarifications on issues relating to net-worth requirements, the use of certain types of accounts to fulfill liquidity requirements, clarifications on what entities are not money transmitters, and enhanced enforcement powers. AB 786 is viewed as a starting point for further discussion involving reform of California's MTA.