

**TESTIMONY OF DAVID J. COTNEY**

**COMMISSIONER OF BANKS, MASSACHUSETTS DIVISION OF BANKS**

**On behalf of the**

**CONFERENCE OF STATE BANK SUPERVISORS**

**On**

**“THE PRESENT AND FUTURE IMPACT OF VIRTUAL CURRENCY”**

**Before the**

**NATIONAL SECURITY AND INTERNATIONAL TRADE AND FINANCE and**

**ECONOMIC POLICY SUBCOMMITTEES OF THE**

**COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS**

**UNITED STATES SENATE**

**Tuesday, November 19, 2013, 3:30 p.m., Room 538 Dirksen Senate Office Building**

## INTRODUCTION

Good afternoon Chairmen Warner and Merkley, Ranking Members Kirk and Heller. My name is David Cotney and I serve as the Commissioner of Banks for the Commonwealth of Massachusetts. The Massachusetts Division of Banks is responsible for the overseeing all state-chartered banks and credit unions as well as regulating a range of non-bank financial service providers including money transmitters. I also serve as the Vice Chairman of the Board of Directors of the Conference of State Bank Supervisors (CSBS), and as the Chairman of the State Liaison Committee of the Federal Financial Institutions Examination Council (FFIEC).<sup>1</sup>

It is my pleasure to testify before you today on behalf of CSBS. CSBS is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

State banking regulators supervise over 5,200 state-chartered banks.<sup>2</sup> The majority of state banking departments also regulates a variety of non-bank financial services providers, including money services businesses (MSBs) as well as mortgage lenders, check cashers, and payday lenders. This broad supervisory portfolio provides state regulators with a unique perspective in the payments landscape. Unlike any single federal prudential regulator, most states regulate all of the financial intermediaries in the payments system: banks, credit unions, and money transmitters.

---

<sup>1</sup> Since 2006, state depository regulators have had a voting seat on the FFIEC, an interagency body empowered to prescribe uniform principles, standards, and report forms for financial institution examinations. The State Liaison Committee is made up of representatives of state bank, credit union and savings bank regulators and serves as the formal means for state input and representation on the FFIEC.

<sup>2</sup> Federal Deposit Insurance Corporation Statistics on Depository Institutions, Report Date June 30, 2013.

I thank you for holding this hearing on virtual currency. The risks virtual currency presents impact consumer protection, payment systems stability, money laundering, national security, and tax evasion. The potential benefits are similarly multi-faceted: speed and efficiency, lower transaction costs, and providing an outlet for the unbanked and underbanked around the world. To address these areas, state regulators view our responsibility as supervising in a manner that mitigates risks while not impeding industry innovation and flexibility.

States and state regulation have served as a forum for market experimentation as well as an early warning system of troublesome consumer and market trends. As the laboratories of innovation, the states welcome technology developments in the payments system that can lead to greater choice, security, and lower costs for consumers. Whether it's the Cambodian community in Lowell, the Somali community in Minneapolis, or the unbanked in Portland, Oregon, the states have a responsibility to ensure their citizens have the best possible options for transmitting value in a manner that does not put people, businesses, the payments system, or national security at risk.

My testimony today discusses existing state regulatory regimes and processes that offer the ability to supervise payment systems participants in a manner that promotes trust, confidence, and regulatory collaboration. I will also set out state regulators' efforts to further define priorities and approaches moving forward.

### **PAYMENT SYSTEMS AND STATE SUPERVISION**

Payments systems are increasingly dynamic, signaling a shift in the way consumers and businesses pay for goods and services as well as the manner in which funds are remitted domestically and globally. Whether point of sale technologies, payment system intermediaries,

or virtual currencies, development is ongoing and the possibilities are promising. However, while the opportunity for economic and consumer benefit is significant, so is the opportunity for real time losses and other destabilizing effects.

Nowhere are opportunities and challenges more starkly visible than in the emerging field of virtual currencies. Virtual currencies are decentralized digital mediums of exchange that, depending on the structure, serve as a hybrid of types of value. Today's virtual currencies are mostly math based, finite, verifiable, and open source, factors that present an opportunity to enhance the basic manner in which we conceive the exchange of value. In addition to virtual currencies, the business of transmitting value continues to evolve through mobile and web-based technologies that allow for instant and mobile payments on a secure basis.

To understand the opportunities and the risks presented in this sector, state agencies are actively monitoring new entrants into the digital market, including recent high-profile law enforcement actions related to virtual currency. State regulators are engaged in open discussions with a broad range of industry participants, joint state and federal working groups, and state-to-state coordination and strategic planning. States are also using their regulatory and legislative tools to learn more about the industry and increase transparency. For example, the New York Department of Financial Services launched an inquiry in August<sup>3</sup> and recently announced it will hold public hearings on virtual currency with an eye toward identifying possible licensing regimes.<sup>4</sup> New York's goal is one all states share, to determine appropriate regulatory guidelines

---

<sup>3</sup> Notice of Inquiry on Virtual Currencies, NYDFS (12 August 2013) *available at* <http://www.dfs.ny.gov/about/press2013/memo1308121.pdf>. Superintendent Lawsky explains: "The emergence of Bitcoin and other virtual currencies has presented a number of unique opportunities and challenges. Building innovative platforms for conducted commerce can help improve the depth and breadth of our nation's financial system. However, we have also seen instances where the cloak of anonymity provided by virtual currencies has helped support dangerous criminal activity, such as drug smuggling, money laundering, gun running, and child pornography."

<sup>4</sup> Notice of Intent to Hold Hearing on Virtual Currencies, Including Potential NYDFS Issuance of a 'BitLicense,' NYDFS (14 November 2013) *available at* <http://www.dfs.ny.gov/about/press2013/virtual-currency-131114.pdf>.

that “allow new technologies and industries to flourish, while also working to ensure that consumers and our national security remain protected.”<sup>5</sup> The California legislature has also worked to give regulators more tools to make the licensing process more transparent, authorizing the Department of Business Oversight to make written guidance public and offer guidance to prospective licensees.<sup>6</sup>

The states have a legal and regulatory structure that encompasses a broad range of financial services offered by a variety of bank and non-bank providers. For emerging payment technologies and alternative currencies, the threshold issue is the electronic movement of value owned by others – conduct over which the states have an existing structure for regulation and oversight. Money services businesses are entities that provide money transmission, currency exchange, prepaid access, monetary instruments as well as check cashing products and services. These companies provide a variety of financial products and services to a diverse customer base ranging from sophisticated financial customers to the underbanked and unbanked. One type of MSB, money transmitters, conducts remittance transfer services, domestically and internationally.

State MSB regulation recognizes the reality that money transmitters are local in touch, global in scale, and include a broad range of business models. A money transmitter’s business platform may include telephone, online, authorized agent locations, or a combination thereof to reach its customer base. Additionally, a money transmitter may offer several different types of MSB activities simultaneously. For example, Moneygram Payment Systems – a company licensed in 48 states, the District of Columbia, and Puerto Rico – offers money transmission, bill payment, prepaid cards, and money orders through their online platform and authorized agents

---

<sup>5</sup> Notice of Inquiry on Virtual Currencies, *supra*.

<sup>6</sup> California Assembly Bill No. 786, Money Transmissions (2013-2014). Effective January 1, 2014. Available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB786](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB786).

nationwide. As technology has evolved to include mobile payments and digital commerce, state money transmitter regulation has demonstrated the flexibility to supervise these products and services to consumers.

At the most basic level, many of the new products and services receive, hold, and send funds domestically or internationally. As such, these activities could fit into state money transmission definitions: the accepting or delivering of currency, funds, or other value, to another location or person by electronic means.<sup>7</sup>

### **CREDENTIALING OF FINANCIAL SERVICES PROVIDERS**

Given the position of trust and confidence held by money transmitters and their critical function within local economies,<sup>8</sup> state law generally requires the licensing of companies and individuals that transmit other people's funds. By credentialing those who take and send monetary value on behalf of others, the states limit potential consumer harm and add stability to financial markets. In turn, licensed companies increase consumer and commercial confidence, which encourages the economic stability needed to support successful innovation.

Licensing communicates to the public that a licensee is viable, secure, and able to protect funds. State regulatory agencies license and regulate money transmitters to ensure compliance with state and federal regulatory requirements, to help prevent the use of money transmitters to finance illicit activities such as narcotics trafficking and terrorism, while also providing

---

<sup>7</sup> “‘Money transmission’ means . . . receiving money or monetary value for transmission . . . .” Alaska Stat. § 06.55.990; Arkansas A.C.A. § 23-55-102 (12) (A); Hawaii HRS § 489D-4; Iowa Code § 533C.102; Kansas K.S.A. § 9-508; La. R.S. 6:1032; Michigan MCLS § 487.1003; Miss. Code Ann. § 75-15-3; N.C. Gen. Stat. § 53-208.2; N.D. Cent. Code, § 13-09-02; S.D. Codified Laws § 51A-17-1; New Hampshire RSA 399-G:1; Tex. Finance Code § 151.301; Vermont 8 V.S.A. § 2500; Va. Code Ann. § 6.2-1900.

<sup>8</sup> See, e.g., The California Money Transmitter Act, Cal Fin Code § 2000 et seq. (“The [California] Legislature finds and declares all of the following: \* \* \* (c) The failure of money transmission businesses to fulfill their obligations would cause loss to consumers, disrupt the payments mechanism in this state, undermine public confidence in financial institutions doing business in this state, and adversely affect the health, safety, and general welfare of persons in this state.”).

consumer protection for residents. Oversight includes ensuring the proper policies, procedures, and safeguards are in place to protect the company and its customers from operational, monetary, and fraud risk. Many states have utilized the Uniform Money Services Act, adopted by the National Commission on Uniform State Laws as the outline for their statutory provisions, which includes licensing standards, financial stability requirements, and regulatory principles.

Prospective licensees must file an application that typically includes the submission of credit reports, fingerprints, a business plan, financial statements, and a surety bond. The prospective licensee may provide evidence of policies, procedures, and internal controls that will facilitate the organization's compliance with state and federal regulations, including required Financial Crimes Enforcement Network (FinCEN) registration and documentation of a Bank Secrecy Act (BSA) compliance program.<sup>9</sup> Once a license is granted, management is required to maintain requisite permissible investments,<sup>10</sup> surety bonds, and submit periodic reports that often include financial statements, permissible investments calculations, branch and agent reporting, and transmission volume activity.

One of the main purposes of licensing is credentialing the entities and individuals seeking to engage in money transmission. Prospective licensees may be required to undergo rigorous requirements with the state agencies that include dialogue with the applicant regarding their business plan. The application may also include a background check on all owners, a requirement common in the MSB, banking, mortgage, securities, and other financial industries to ensure persons in a position of trust meet established standards to protect consumers and

---

<sup>9</sup> BSA compliance programs include policies, procedures, and internal controls to detect and deter money laundering and other illegal activity.

<sup>10</sup> Permissible investments are low risk, liquid assets such as cash and high rated investments required to be maintained in case an institution is unable to meet its commitments or fails. Permissible investments must be equal to the outstanding transmissions, payment instruments, or prepaid access values in the state or in all states.

businesses alike. While some have complained that the process is cumbersome, most licensees recognize the value of identifying and validating market participants.

Credentialing requirements are vital and elementary to consumer protection. Some comments to date suggest this process is invasive and/or unnecessary, a view that reflects inexperience with time-validated requirements and unfamiliarity with the public policy goals served by licensing and regulatory oversight. We have seen this type of initial reaction as the states have enhanced their regulatory responsibilities, such as with the licensing of mortgage brokers and payday lenders. State legislatures have been very deliberate in crafting a credentialing process designed around the core objectives of consumer protection and promoting safety and soundness. State agencies would be negligent in their responsibilities if they simply allowed the push of technological innovation to preempt the need to apply the law in a thorough and deliberate manner.

### **SUPERVISION OF FINANCIAL SERVICES PROVIDERS**

State agencies examine licensed money transmitters on a 12 to 24 month cycle to ensure licensees operate in a safe, sound, and legal manner. Between exams, state regulators monitor their licensees on an ongoing basis by reviewing the information submitted pursuant to reporting requirements. Licensees have periodic reporting requirements covering financial statements, permissible investments adequacy, branch and agent listings, and transmission volume activity. Consumer complaints provide another input into the supervisory process.

During the course of an examination, state examiners review complaints, capital, asset quality, management, earnings, operations, and compliance with the Bank Secrecy Act and the institution's anti-money laundering program. All these areas of review provide state agencies

with data and other information to assess if a licensee is complying with applicable laws and conducting business in a safe and sound manner. If a licensee is found operating in an unsafe manner or out of compliance with state and federal requirements, the licensee may face state enforcement actions.

State enforcement actions vary depending on the entity, substantiated behavior, and violation. Importantly, enforcement is subject to appeal to an administrative hearing, ensuring licensees are afforded due process. For less serious findings warranting redress, the regulator and the regulated entity might agree to a letter of understanding or consent order, acknowledging the violation and setting forth a corrective plan. For more serious violations, temporary or permanent cease and desist orders will be issued, potentially limiting or even halting an entity's ability to operate. In more egregious circumstances, civil money penalties will be imposed in addition to any consumer restitution. Additionally, an entity's license could be revoked and the regulator's findings may necessitate referral to state and/or federal law enforcement.

### **STREAMLINED AND COORDINATED OVERSIGHT**

Many state MSB licensees hold licenses in more than one state. Consequently, state agencies have proactively built a foundation for multi-state coordination and examinations. The Money Transmitters Regulators Association (MTRA)<sup>11</sup> formed the foundation for multi-state MSB efforts by executing the Money Transmitter Regulators Cooperative Agreement (MTRA Agreement) in 2002<sup>12</sup> and the MTRA Examination Protocol (MTRA Protocol) in 2010. These

---

<sup>11</sup> MTRA is a national non-profit organization dedicated to the efficient and effective regulation of the money transmission industry in the United States of America. The MTRA membership consists of state regulatory authorities in charge of regulating money transmitters and sellers of traveler's checks, money orders, drafts, and other money instruments.

<sup>12</sup> The MTRA Cooperative Agreement can be found at <http://www.mtraweb.org/about/cooperative-agreement/>.

documents established the initial framework for states to coordinate MSB examinations and share information.

The MTRA Agreement started the states on the path to coordinated regulatory oversight by promoting concurrent and joint examinations among states. The MTRA Protocol provided a process for examinations, including multi-state examination schedules, work programs, and reports designed to increase effectiveness and reduce regulatory burden. Since the MTRA Agreement and Protocol were implemented, state agencies have conducted over 300 multi-state MSB examinations. Through coordination, regulatory oversight is applied in a uniform manner, a benefit that has been publicly noted by industry.<sup>13</sup>

To foster consistency, coordination, and communication, the states have collaborated on the enhanced CSBS/MTRA Nationwide Cooperative Agreement for MSB Supervision<sup>14</sup> and the Protocol for Performing Multi-State Examinations. The CSBS/MTRA Agreement and Protocol will supplement an effective and efficient regulatory framework for licensees by establishing the Multi-State MSB Examination Taskforce (MMET) to oversee joint examinations. Representing all states, the MMET has 10 members, currently comprised of state regulators from California, Florida, New York, North Carolina, Ohio, Pennsylvania, Texas, Virginia, Washington, and Wyoming. The MMET is working on developing an enhanced supervisory program tailored to multi-state licensees that fosters a process of consistency and coordination among state agencies.

---

<sup>13</sup> “Recent developments in money transmitter regulation have been positive for regulated entities, as examinations by multi-state regulator teams have blossomed.” Ezra C. Levine, Counsel, The Money Services Roundtable. Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, 112<sup>th</sup> Congress, Second Session, Serial No. 112-139, 9 (June 21, 2012). *See also*, Timothy P. Daly, Senior Vice President, Global Public Policy, The Western Union Company. *Id.* at 49. (“Recent developments in money transmitter regulation have been positive for both consumers and regulated entities, as examinations of multi-state organizations have grown more efficient, effective and consistent.”).

<sup>14</sup> The Enhanced CSBS/MTRA Nationwide Cooperative Agreement for MSB Supervision, *available at* <http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/MSB/MSB-CooperativeAgreement010512clean.pdf>.

In its first year, the MMET has improved the MSB examination work program and identified MSBs that meet the criteria for multi-state examinations.

As a result of established processes and lines of communication, state agencies promptly communicate to one another to reduce the possibility of consumer harm when enforcement is necessary across state lines. Over the last several years, the Massachusetts Division of Banks and our sister states have been active in ensuring that the monies that consumers transmit are received by the intended recipients. When companies fail to deliver, we are the only regulators out there to help consumers who may have lost their hard earned money. When we learn that someone has lost their funds, either through fraud or the financial instability of the company, the Division can act swiftly and in collaboration with our state regulatory counterparts.

State collaboration and coordination was evident earlier this year when it became clear to the Division that a money transmitter was possibly misappropriating customer funds. The money transmitter in question primarily remitted funds to Brazil with transfers in excess of \$122 million originating from Massachusetts in 2012 alone. During an examination that involved coordination with the Brazilian Central Bank and two private Brazilian banks, it was determined that transaction records were falsified, evidencing an even broader pattern of illegal activity.

As a result, we promptly issued a Cease and Desist order<sup>15</sup> to stop this company from accepting and transmitting money from Massachusetts consumers and initiated a coordinated response across 37-states.<sup>16</sup> My agency communicated the enforcement action to our sister states, held multi-state calls, and worked with other state regulators to ensure remittance transfers were

---

<sup>15</sup> Braz Transfers Cease and Desist Order, *available at* <http://www.mass.gov/ocabr/business/banking-services/banking-legal-resources/enforcement-actions/2013-dob-enforcement-actions/braz04012013.html>.

<sup>16</sup> Braz Transfers was licensed in 7 of the 14 states currently using NMLS to license MSBs. According to NMLS Consumer Access, the company is no longer authorized to do business in any of these states. *See* <http://www.nmlsconsumeraccess.org/EntityDetails.aspx/COMPANY/907744>.

received and customers were assisted in a timely manner. All consumers who lost money have been made whole. This investigation is ongoing, but demonstrates that state regulators are prepared and capable of promptly acting on a national and international basis.

### **STATE- FEDERAL COORDINATION**

Equally important as inter-state action is meaningful coordination with federal regulatory agencies. States recognize the importance of a larger regulatory fabric and integrated oversight for consumer protection and national security. In many areas of bank and non-bank regulation and supervision, the states have found that a more coordinated approach better serves both consumers and regulated entities.

The FFIEC has proved a valuable venue for coordination on processes between state regulators and federal financial regulators across a wide range of supervisory issues and processes. Through the State Liaison Committee to the FFIEC, the states collaborate with the FFIEC on the Bank Secrecy Act/Anti-Money Laundering Examination Manual, and participate as voting members of the FFIEC BSA/AML Working Group, an interagency effort to enhance coordination of BSA/AML training, guidance, and policy. The responsibilities of the working group include ensuring consistent agency approaches and collaborating on emerging issues.

The states have also entered into memorandums of understanding with FinCEN and the Internal Revenue Service (IRS) to coordinate BSA/AML supervision in the non-bank sector.<sup>17</sup> As such, state agencies provide information to FinCEN and the IRS on a quarterly and annual basis. This information may include the number of BSA examinations conducted, referrals of BSA violations, and state enforcement actions. Additionally, state agencies worked

---

<sup>17</sup> Memorandum of Understanding between the Internal Revenue Service and the States concerning Money Services Businesses and Certain Other Non-bank Financial Institutions. *Available at* [http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/IRS-StatesBSA\\_MOU\\_4-22-2005.pdf](http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/IRS-StatesBSA_MOU_4-22-2005.pdf).

collaboratively with FinCEN and the IRS on the FinCEN/IRS Bank Secrecy Act/Anti-Money Laundering Examination Manual for MSBs that was issued in 2008. State agencies also have provided resources to develop and conduct training for state and IRS examiners nationwide on BSA compliance for MSBs.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank) recognized the importance of a holistic approach to supervision. States bring a local point of view and a hands-on approach that complements the national priorities and perspective of federal regulators. In addition to existing state/federal cooperative frameworks, Dodd-Frank established new expectations for coordination, collaboration, and information sharing between the states and federal regulators, including with the Consumer Financial Protection Bureau (CFPB).<sup>18</sup> In 2011, the states entered into an Information Sharing Memorandum of Understanding with the CFPB (Information-Sharing MOU).<sup>19</sup> This was the first such MOU that the CFPB signed. Sixty-one state agencies and the six state regulatory associations<sup>20</sup> have signed the Information-Sharing MOU, which lays the foundation for information-sharing and supervision and enforcement cooperation between the CFPB and state regulators. Additionally, the state system is coordinating with the CFPB through CSBS on examiner training, examination technology and procedures, and complaint sharing.

Building on the foundation of the Information-Sharing MOU, on May 20, 2013, CSBS on behalf of the state regulators entered into the 2013 CFPB-State Supervisory Coordination

---

<sup>18</sup> “The Bureau shall coordinate with . . . State regulators, as appropriate, to promote consistent regulatory treatment of consumer financial and investment products and services.” Dodd-Frank Act § 1015, *codified at* 12 U.S.C. 5495.

<sup>19</sup> Memorandum of Understanding Between the Consumer Financial Protection Bureau, the Conference of State Bank Supervisors, and the Other Signatories Hereto On the Sharing of Information for Consumer Protection and Other Purposes. Available at <http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/CFPB%20CSBS%20MOU.pdf>.

<sup>20</sup> The six state regulatory associations are the American Association of Residential Mortgage Regulators, Conference of State Bank Supervisors, Money Transmitter Regulators Association, National Association of Consumer Credit Administrators, North American Collection Agency Regulatory Association, and National Association of Credit Union Supervisors.

Framework (Framework)<sup>21</sup> for the purposes of implementing a state-federal process for coordinated supervision. Under the Framework, the State Coordinating Committee (SCC)<sup>22</sup> – representing nearly 100 state regulatory agencies covering mortgage, MSBs, payday lending, consumer finance, student lending, debt collection, and others – is charged with coordinating examination and enforcement efforts directly with the CFPB. Through the SCC, the state system has the opportunity to influence and direct supervisory policy on a nationwide basis for non-depository industries including emerging and innovative players in the mobile, payments systems, and virtual currency markets.

### **NATIONWIDE MULTI-STATE LICENSING SYSTEM**

State regulators have long understood that regulation needs to adapt alongside marketplace changes in order to capture the benefits and mitigate the risks of innovation. State regulators also understand that, in the modern economy, businesses and markets grow irrespective of geographic boundaries. Accordingly, the states recognized a need to be able to effectively and efficiently license mortgage companies and mortgage loan originators, to keep track of bad actors, and to provide responsible actors with greater efficiency and consistency in the licensing process. To achieve these goals, the states collectively developed and currently operate through CSBS the Nationwide Multi-State Licensing System and Registry (NMLS or System). After success in the mortgage licensing arena, states are currently using the System to license other regulated businesses, including all 12 license types issued by the Massachusetts Division of Banks.

---

<sup>21</sup> 2013 CFPB-State Supervisory Coordination Framework. *Available at* <http://www.csbs.org/regulatory/Cooperative-Agreements/Documents/2013-CFPB.pdf>.

<sup>22</sup> The SCC is comprised of representatives of the six State Regulatory Associations and is responsible for representing the state system as a single body to the CFPB.

Originally developed as a voluntary state system for mortgage licensing and then codified in the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act),<sup>23</sup> NMLS is a web-based system that allows state-licensed non-depository companies, branches, and individuals in the mortgage, consumer lending, money services businesses, and debt collection industries to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications.

Last year, NMLS expanded functionality to include MSBs. Massachusetts is among 15 states currently using NMLS for MSB licensing, and 14 more are scheduled to come onto the system in the next year. The System enables licensees to manage their licenses in one location for multiple states, while states are able to track the number of unique companies and individuals, as well as the number of licenses they hold in each state. As a system of record for state regulatory authorities and a central point of access for licensing, NMLS brings greater uniformity and transparency to these non-depository financial services industries while maintaining and strengthening the ability of state regulators to monitor these industries.

Both industry and regulators see great advantages to NMLS. During last year's House hearing on money services businesses, industry representatives testified that widespread adoption of the system "would eliminate duplication of effort and opportunities for error" and "urge[d] any changes at the federal level to accommodate and encourage its further development."<sup>24</sup> To that end, I want to thank Senators Hagan and Toomey for taking the lead in sponsoring S. 947, which enhances the confidentiality and privilege already built into the NMLS. I also want to thank the other members of the Committee – Senators Merkley, Manchin, Heitkamp, and

---

<sup>23</sup> P.L. 110-289. *Codified at* 12 U.S.C. 5101 et seq.

<sup>24</sup> Timothy P. Daly, Senior Vice President, Global Public Policy, The Western Union Company. Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, 112<sup>th</sup> Congress, Second Session, Serial No. 112-139, 49-50 (June 21, 2012).

Johanns – who have signed on as co-sponsors of S. 947. With the passage of S. 947, state regulators will have full confidence in the expanded use of NMLS, bringing greater efficiency to the regulatory process.

In addition to shared functionality between regulators and industry, NMLS provides transparency to consumers seeking information on regulated companies and individuals. NMLS Consumer Access ([www.nmlsconsumeraccess.org](http://www.nmlsconsumeraccess.org)) is a fully searchable public website that allows consumers to view information concerning companies, branches, and individuals holding state licenses in the NMLS. In 2012, the information available on the website was upgraded to include public state regulatory actions for state licensees. The website also enables consumers to connect directly to state agencies for the purpose of submitting a consumer complaint against a state licensed company.

As we continue to expand NMLS into other license types, regulators and industry alike will have the benefit of streamlined licensing requirements at a single source, and NMLS will be an important tool to provide understanding and responsiveness to companies that are local in touch but global in scale. Considering this, we continue to recommend to our colleagues at FinCEN and the CFPB that they use NMLS for any federal registration requirements.<sup>25</sup> State regulators and CSBS are ready to work with our federal counterparts to bring registration and licensing requirements under one shared structure, and NMLS already has the proven capabilities and widespread support for such a streamlined process.<sup>26</sup>

---

<sup>25</sup> Section 1022(c) of the Dodd-Frank Act directs the CFPB to “consult with State agencies regarding requirements or systems (including coordinated or combined systems for registration), where appropriate.”

<sup>26</sup> NMLS complies with the moderate baseline security controls contained in National Institute of Standards and Technology (NIST) Special Publication 800-53, and is fully accredited (FISMA Certification and Accreditation) by the Consumer Financial Protection Bureau. Technical Details and Data Security Protocols for NMLS are available at <http://mortgage.nationwidelicencingsystem.org/about/Documents/NMLS%20Data%20Security%20Overview.pdf>.

## **LOOKING FORWARD**

State regulators are keenly aware that constantly emerging technologies have brought exciting and innovative products to the financial marketplace that consumers are utilizing on a daily basis. I and my fellow state banking commissioners recognize the need to understand these innovations. We also understand that there is a desire by many in the payments and technology industries for greater clarity for both state and federal regulatory requirements.

State regulators have structures, processes, and systems in place to bring clarity and consistency, while promoting consumer protection, safety and soundness, and national security goals. The states stand ready to work with our federal counterparts, as well as with representatives from industry and consumer groups, to seek opportunities for greater clarity and consistency, allow for innovation in the payments systems, and both exploit the benefits and minimize the risks of such innovations.

To address this changing landscape, CSBS is currently exploring policy processes for framing and considering issues facing regulators. These threshold issues include establishing the right characterization of virtual currency,<sup>27</sup> the consumer protection needs raised by instantly settled payments,<sup>28</sup> the resolution of conflicts between commercial entities in an instantaneous transfer system, and whether – and in what manner -- states should license entities involved with digital currency.<sup>29</sup> Our consideration of these and other issues will inform our efforts to preserve marketplace stability while supporting constructive innovation. The states will continue to work

---

<sup>27</sup> Whether virtual currency is “money” is a critical question. Congress has the sole power to “coin money” and “regulate the value thereof” under Article I, Section 8 of the Constitution. Conversely, Article I, Section 10 prohibits states from coining money and from “mak[ing] any Thing but gold and silver Coin a Tender in Payment of Debts.” If virtual currency is not money, the states must determine whether it holds monetary value for the purposes of money transmission laws, or whether it is an instrument securing an interest in another currency.

<sup>28</sup> The Electronic Funds Transfer Act requires disclosure and other consumer protections for the transfer of funds. As technology accelerates payment clearing, disclosures and liability standards will be of the utmost importance. For example, if a virtual currency wallet is hacked, who is responsible for the lost funds?

<sup>29</sup> Article 4A of the Uniform Commercial Code currently governs commercial fund transfers. Though “funds transfer” is broadly defined under the law, the process is reliant on relationships through the banking system.

with this goal in mind, expanding on a framework that ensures safety and soundness, minimizes the use of digital currencies to fund illicit activities, and protects consumers and across a diverse landscape of companies and business models.

Local understanding, coordination between regulators, and collaboration with policy makers has provided the states a unique ability to actively regulate a broad range of financial products and services in an effective and timely manner. We look forward to working with Congress and our federal regulatory partners toward an integrated and collaborative approach to all innovative financial products and services, ensuring individuals and economies are well served.