

VIA MAIL AND ELECTRONIC FILING

M. Richard Boivin
Sous-ministre adjoint
Autorité des marchés financiers
8 rue Cook, 4th étage, Québec (Québec)
G1R 0A4

Re: Bill No. 128: An Act to enact the Money-Services Businesses Act (the “Act”) and to amend various legislative provisions mainly concerning special funds and the financial sector

Dear M. Boivin:

Western Union Financial Services (Canada), Inc. (“Western Union Canada”) and Custom House ULC, Custom House (Retail) Ltd., and Custom House (Online) Ltd. (collectively, “Custom House”) appreciate the opportunity you provided to Derek McMillan and Daniel Fihn to meet with you and your colleagues this past Tuesday regarding the above-referenced Act, and for further allowing us this opportunity to comment.

Western Union Canada and Custom House are subsidiaries of The Western Union Company, a global leader in consumer money transfer services, foreign exchange, and payment services for commercial entities. Western Union Canada is part of our global network of person to person money transfer and bill payment services. Through our extensive authorized delegate network and various electronic channels, we provide money transfer services to people who send funds to family and friends in other locations, who need to send and receive cash quickly in emergencies, or who want a convenient way to pay their monthly bills. Custom House is a Victoria, B.C., based business (operating through a number of affiliates), acquired by Western Union in 2009, that among other things, offers foreign exchange services and larger principal, bank-to-bank electronic transfers to individuals and businesses in Canada and around the world. Both Western Union Canada and Custom House are potentially covered by the Act, and jointly offer the comments set forth below.

Western Union Canada has a relatively large footprint in Canada with 3,800 authorized delegate locations offering money transfer and money order services to Canadian consumers. In Québec, Western Union offers services at over 500 locations operated by approximately 260 authorized delegates. Western Union services have been offered in Canada by Western Union Canada since 1991. Western Union Canada maintains corporate offices in Toronto. The Western Union Company’s headquarters are at 12500 East Belford Avenue, Englewood, Colorado, CO 80112, United States of America. Custom House operates across Canada and has offices in Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia. Custom House’s focus is to serve the domestic and cross border payment and foreign exchange needs of small and medium sized business enterprises.

Introduction

As money-services businesses (“MSBs”) in Canada, Western Union (including Western Union Canada and Custom House) has an interest in the Act as it will have a potentially significant impact on the way we offer certain services in the Province of Québec today, and how that in turn may negatively affect our delegates and consumers. We believe the language of the Act is ambiguous in certain respects, and we would like to take this opportunity to explain our concerns and help shape the Act in a manner that addresses the needs and concerns of all stakeholders.

In our consumer-to-consumer funds transfer segment provided through Western Union Canada we provide our third-party delegates (“delegates”) with our multi-currency, real-time money transfer processing systems used to originate and pay money transfers. Our delegates provide the physical infrastructure and staff required to complete the transfers. Western Union provides central operating functions such as transaction processing, settlement, marketing support and customer relationship management to our delegates. We generally pay our delegates a commission based on a percentage of revenue. The commission is shared between the delegate that initiated the transaction, the “send delegate,” and the delegate that paid the transaction, the “receive delegate.” For most delegates, the costs of providing the physical infrastructure and staff are typically covered by the delegate’s primary business (e.g., postal services, banking, cheque cashing, travel and retail businesses), making the economics of being a Western Union delegate attractive to our delegates. Western Union’s global reach and loyal consumer base allow us to attract delegates we believe to be of high quality. In Canada, Western Union’s delegates include Scotia Bank, Walmart, Metro Inc., Canada Safeway, Laurentian Bank, Cash Money and Money Mart. In addition to these large national chains, Western Union also has hundreds of small retailers which offer Western Union services to the public as delegates of Western Union.

A typical licensing regime that you might find elsewhere in the world would include a jurisdictional regulator responsible for licensing money transfer services providers and exercising authority over the operations of our money transfer services, including regular examinations. This type of structure requires us to invest an amount representing the principal of outstanding money transfers in high-quality, investment grade securities, and our use of such investments is restricted to satisfy outstanding settlement obligations. We regularly monitor credit risk and attempt to mitigate our exposure by making high-quality investments in compliance with these regulations.

These types of licensing laws also cover matters such as government approval of controlling shareholders and senior management of our licensed entities, regulatory approval of delegate locations, consumer disclosures and the filing of periodic reports by the licensee, and require the licensee to demonstrate and maintain certain net worth levels. It is important to note that these types of licensing laws generally do not require delegates to be separately licensed; they offer services under Western Union’s license.

When our colleagues Derek McMillan and Daniel Fihn met with you on Tuesday, November 16, they were under the impression that you interpreted the Act to require only that Western Union

be licensed, not its delegates. If that is the case, we believe that redrafting certain provisions of the Act would help clarify licensing obligations under the Act.

Our uncertainty over the interpretation of the scope of the Act stems from the fact that there is no definition section and key terms such as “money-services business” are not defined in the Act. Mr. McMillan was under the impression, based upon your discussion on Tuesday, that the Authority viewed money-services businesses in a manner consistent with FINTRAC Interpretation Notice No. 1 (May 20, 2008)¹ and its interpretive guidance on the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). If this is the case, we believe the Act should be amended to make reference to the PCMLTFA and the noted interpretive guidance.

In addition to the above, we also would like to offer additional comments on the specific sections:

Section 2 - Exemptions

This Act does not apply to... persons or entities who offer money services as part of their activities if those activities are governed by the Act respecting insurance (R.S.Q., chapter A-32), the Act respecting financial services cooperatives (R.S.Q., chapter C-67.3), the Derivatives Act (R.S.Q., chapter I-14.01), the Act respecting trust companies and savings companies (R.S.Q., chapter S-29.01), the Securities Act (R.S.Q., chapter V-1.1), except persons or entities who are subject to that Act only as reporting issuers, the Bank Act (Statutes of Canada, 1991, chapter 46), the Cooperative Credit Associations Act (Statutes of Canada, 1991, chapter 48), the Canadian Payments Act (Revised Statutes of Canada, 1985, chapter C-21) or the Payment Clearing and Settlement Act (Statutes of Canada, 1996, chapter 6, s. 162, Sch.).

In the meeting you had with Mr. McMillan and Mr. Fihn, you indicated that for Western Union delegates that are licensed as MSB’s, Western Union would not be required to include information on these entities in its application for licensing. Please confirm that our understanding is correct. The exemptions specified in Section 2 do not seem to support this interpretation.

Sections 3 and 4 – Categories of Licenses

3. *A person or entity operating a money-services business for remuneration must hold a licence of the appropriate class.*

4. *Licences of one or more of the following classes are issued by the Autorité des marchés financiers (the Authority): (1) currency exchange; (2) funds transfer; (3) the issue or redemption*

¹ You are not considered a money services business in the following situations:

- if you conduct money services business activities **solely as an agent or mandatary** for another business that is a money services business; or
- if you carry out money services business activities as part of other activities for which you are already subject to the PCMLTFA and regulations.

of traveller's cheques, money orders or bank drafts; (4) cheque cashing; and (5) the operation of automated teller machines.

The lessor of a commercial space intended as a location for an automated teller machine must be licensed to operate automated teller machines if the lessor is responsible for keeping the machine supplied with cash.

These Sections contemplate that entities engaged in multiple activities (i.e., cheque cashing and funds transfer) will hold multiple licenses and presumably have to submit multiple sets of data with each license application. We note that in your meeting with Mr. McMillan you indicated it would be one license listing the applicable services offered. Please confirm that our understanding is correct. If our understanding is correct, we suggest amending Sections 3 and 4 to make this point clear. If our understanding is not correct and multiple licenses are in fact contemplated, this may unintentionally result in extra work for both the license applicants as well as the Authority. This would have the effect of causing certain potential licensees to forego the licensing procedure, as licensed activity may constitute a relatively small portion of their income. This in turn means less convenience and choice for citizens of Québec and potentially higher prices as competition decreases.

Section 5 – Fees; Qualifications of Licensees

A licence application must be filed together with the fee determined by regulation and filed by the director, officer or partner of the money-services business who is acting as the business's respondent for the purposes of this Act. The respondent must (1) be 18 years of age or over; (2) not be under tutorship, curatorship or advisership; (3) be domiciled in Québec or have a place of business or a place of work in Québec; and (4) meet any other condition set by regulation.

There are no parameters on what the fee might be for a license application. There are also no parameters on what other conditions might be imposed by regulation. One condition of obtaining the required licence is that the applicant must “be domiciled in Quebec or have a place of business or place of work in Quebec”. For those entities that are Quebec-based or have a place of business or work in Quebec, this will not be a difficult requirement. However, in the case of an entity that does not have a place of business in Quebec, but that nevertheless transacts business with residents of Quebec (as is the case with Western Union Canada), this could be a significant problem requiring significant investments in real estate and personnel to comply with the law. Does the proposed legislation in fact apply to a person who does not have a place of business in Quebec?

Section 6 - Application; Required Information

When filing a licence application, a money-services business must provide (1) a document describing its legal structure together with a list containing the name, date of birth, if applicable, address and telephone number of each of its officers, directors or partners and branch managers, of any person or entity who directly or indirectly owns or controls the money-services business, of each of its employees working in Québec, stating the employee's functions, and of

any other person specified by regulation; (2) a list containing the name, date of birth, if applicable, address and telephone number of each of its mandataries and of each of their employees whose functions are related to the money services offered on behalf of the money-services business; (3) a list of the financial institutions with which it deals; (4) a list containing the name, date of birth, if applicable, address and telephone number of each of its lenders other than the financial institutions referred to in subparagraph 3 and, if a lender is not a natural person, of each of its officers, directors or partners, along with the documents evidencing the loans; (5) its business plan, its financial statements for the last fiscal year, a list of its establishments and, if applicable, the name of its subsidiaries and the names of its parent company and all subsidiaries of its parent company; and (6) any other document with respect to any person specified by regulation.

The money-services business must also, for every natural person mentioned in the first paragraph, provide a copy of photo identification issued by a government or a government department or agency and showing the person's name and date of birth.

While we are accustomed to providing information regarding Western Union affiliates and their officers and directors in connection with licensing obligations globally, the Act, as drafted, would require an unusually large amount of information. For Western Union Canada, if each delegate location were required to provide information for each of the individuals described in subsection (1), it would create a significant burden on the delegates. Walmart, for example, would have to provide and regularly update information on each of its over 1,000 employees based in Québec that are engaged in a licensed activity in addition to providing copies of their photo ID. Similar burdens would be associated with Western Union and/or any of its delegates having to provide information on all financial institutions with which it deals, as well as lists of all non-financial institution lenders and associated loan documentation. We understand that a reasonable alternative was discussed during your meeting with Mr. McMillan and Mr. Fihn which we reference below in Section 8. If the Act's licensing requirements will apply to both Western Union and our delegates (please see the discussion of Sections 3 & 4 above), then the requirement in subsection (5) for filing of a business plan and financial statements may be unduly burdensome for many small "mom and pop" delegate locations. Subsection (6) is open-ended and may place an unnecessary and undue burden on any licensee or their delegates.

Section 8 - Timing for Security Clearance

Within 30 days after receiving the notice from the Authority, the Sûreté du Québec sends the Authority a security clearance report for the money services business and for each of the persons referred to in subparagraphs 1 and 2 of the first paragraph of section 6 who exercise their functions in Québec, except employees of the money-services business whose functions are not related to the money services offered. A security clearance report must also be issued for each of the lenders of the money-services business other than the financial institutions referred to in subparagraph 3 of the first paragraph of section 6, for the parent company of the money-services business, if applicable, and for any other person specified by the Authority.

The security clearance report must state whether or not the person concerned has previous convictions and is of good moral character. For that purpose, it must specify whether there are

grounds for the Authority to refuse to issue a licence under paragraph 1 of section 11 that relate to the applicant's moral character, or under paragraph 4 or 5 of that section or under section 13, the first paragraph of section 15 or section 16, to the extent that those provisions do not refer to paragraph 6 of section 11 or to paragraph 1 of section 12.

Depending upon the scope of the Act, this language could be extremely burdensome for both potential licensees as well as the Sûreté du Québec (“Sûreté”). It is not clear what happens if the Sûreté does not issue a security clearance report in a timely manner; issuance or reports may not be possible in 30 days if all delegates of money-services business are required to be licensed. In retail environments like Walmart and Metro Inc., there is significant turnover of personnel. Having to obtain a significant amount of information on each employee, submit it to the Sûreté and then wait 30 days for the issuance of security clearance will create a significant impediment to offering services to the public. Western Union estimates that if the Act is enacted as proposed, it would require over 5,000 security clearance reports on individuals to be completed by the end of 2011. The unintended consequence of this burden will likely be that certain retailers will not offer the services as it is too much trouble. This will in turn limit the number of locations from which consumers can access money services, which limits convenience, decreases competition and increases costs to consumers. It could also have the unintended consequence of increasing unlicensed or underground means of funds transfer, which limits visibility of delivery. One possible solution may be to revise the Act such that only a limited number of delegate personnel are subject to the security clearance requirement. For example, collecting security clearances for certain principal owner and compliance designates or other employees with substantial oversight and decision making authority over the licensed activities would address the oversight concerns of the Sûreté, while making this a more manageable process for both licensees and the Sûreté.

It is also not clear why a security clearance report must be issued for each of the lenders of a money-services business. Does this mean that each entity from which an applicant or licensee borrows money would be required to pass a security clearance, regardless of the amount of the loan? Some materiality threshold on the amount of loans in question might make this more reasonable for the Sûreté and licensees to manage.

Section 9 – Timing and Basis for Objection to Application

The Sûreté du Québec or a police force may object to the issue of a licence within 30 days after receiving notice of it under section 7. The objection must be filed in writing and include reasons.

On what grounds would the police be permitted to object to the issuance of a license? While a written objection containing reasons is required by the Act, the scope of the reasons is unlimited. Similarly, permitting the police to have the authority to request suspension or revocation of a license for unspecified reasons seems unreasonably broad. To our knowledge, this degree of police involvement in the licensing process is unprecedented in any money services licensing regime in the world.

Sections 11(2) & 11(5) - Basis for Denial of License

The Authority refuses to issue a licence to a money-services business if it... (2) has made an assignment of property or is insolvent or bankrupt; or (5) has entered into a contract for the loan of money with a lender, other than a financial institution referred to in subparagraph 3 of the first paragraph of section 6, who or one of whose officers, directors or partners has, in the last 10 years, been convicted of or pleaded guilty to an indictable offence in connection with the activities carried on by the lender, or an indictable offence under sections 467.11 to 467.13 of the Criminal Code, unless a pardon has been obtained;

Regarding subsection (2), is any assignment of property grounds for refusal to issue a license, or is this intended to be confined to an insolvency or bankruptcy proceeding? If the former, the Authority does not seem to have any discretion on rejecting an application for a license on this point. As in the case of loans discussed above, some materiality threshold would make sense here.

The language of subsection (5), it may be unintentionally broad in requiring that a license application be rejected if the officer, director or partner of any lender to a licensee has been convicted of an indictable offense regardless of the amount of the loan or the financial standing of the licensee. Although this subsection appears to be directed at individuals that may be attempting to avoid the scope of the Act by investing in a licensee, it may be helpful to distinguish that situation from one in which the lender is another licensed and/or regulated financial institution and the prospective applicant otherwise complies with the requirements of the Act and has the financial resources to ensure the safety and soundness of its business and protection of consumer funds.

Section 12 - Refusal of License by Authority

The Authority may refuse to issue a licence to a money-services business, if the money-services business (1) has been convicted of or pleaded guilty to an offence under this Act or an offence under any of the Acts listed in Schedule 1 to the Act respecting the Autorité des marchés financiers or any similar legislation of a Canadian province or territory or of another jurisdiction, a fiscal law, the Corruption of Foreign Public Officials Act (Statutes of Canada, 1998, chapter 34), the Excise Act, 2001 (Statutes of Canada, 2002, chapter 22), subsection 1 of section 4 of the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19) or the Export and Import Permits Act (Revised Statutes of Canada, 1985, chapter E-19), unless a pardon has been obtained; (2) has had its right to operate suspended or conditions or restrictions imposed on it by a Canadian or foreign money-services regulator; or (3) has entered into a contract for the loan of money with a lender, other than a financial institution referred to in subparagraph 3 of the first paragraph of section 6, who or one of whose officers, directors or partners has, in the last 10 years, been convicted of or pleaded guilty to an indictable offence under a fiscal law.

Subsection 12(2) could limit the ability of many money transfer providers to obtain a license in Québec. “Conditions or restrictions imposed on it by a Canadian or foreign money-services regulator” could be read to include any conditions imposed by state or federal government as part of their licensing and oversight of Western Union in any country, regardless of any wrong doing or legal or regulatory violation. Subsection 12(3) would grant the Authority discretion to

refuse a license in the event a lender to Western Union or any delegates required to be licensed under the Act has an officer or director that have been convicted of any offence under fiscal law. Please see Western Union's comment to subsection 11(5) above.

Section 14 - Refusal of License by Authority

The Authority may refuse to issue a licence to a money-services business if one of its officers, directors, partners, branch managers or any other person specified by regulation (1) has made an assignment of property or is an undischarged bankrupt; (2) is under tutorship, curatorship or advisership; (3) is not 18 years of age or over; (4) has been convicted of or pleaded guilty to an offence under any of the Acts referred to in paragraph 1 of section 12, unless a pardon has been obtained; (5) served in any of those capacities with a money-services business in the 12 months preceding its bankruptcy and the bankruptcy occurred less than three years before the person's appointment; (6) served in any of those capacities with a money-services business whose right to operate has, in the last three years, been revoked, suspended or made subject to conditions or restrictions by a Canadian or foreign money-services regulator; or (7) has served in any of those capacities with a money-services business in the 12 months preceding the cessation of its activities if, in the Authority's opinion, the cessation is attributable to unlawful acts or practices.

A potential license refusal to an applicant which has any employee that has made an assignment of property is unnecessarily broad. Subsections (5) – (7) unduly restrict employment opportunities of employees of licensees who may have been unwittingly involved with a money-services business which, through no fault of the employee, has filed for bankruptcy, etc. Why should a branch manager of a cheque casher be denied an opportunity of employment if activities at another branch subjected the licensee to “restrictions or conditions”? This not only limits employment opportunities for individuals, it also limits licensees in Québec's ability to hire qualified candidates who may have been in the wrong place at the wrong time.

Section 16 - Refusal of License by Authority

The Authority may refuse to issue a licence to a money-services business if one of its employees whose functions are related to the money services offered by the money-services business is in a situation described in paragraph 1, 4 or 6 of section 11 or paragraph 1 of section 12.

Western Union is concerned that the broad language of this provision may result in the denial of a license application if, for example, any employee whose functions are related to the money services offered by the money-services business (in the case of Western Union, this would arguably include all employees) was convicted of or pleaded guilty to shoplifting or some other relatively minor offense almost a decade ago. A potential compromise solution would be to provide the Authority with the authority to consider prior offenses within the 10-year period, on a case-by-case basis.

Section 17 - Suspension or Revocation of License

The Authority suspends or revokes the licence of a money-services business on a ground specified in section 11 or 13.

Based on any other grounds specified in this Act, the Authority requests the Bureau de décision et de révision to suspend or revoke the licence of a money services business. The Authority may also request the Bureau to impose an administrative penalty on the money-services business, which may not exceed \$200,000 for each offence.

Sections 11 and 13 do not specify grounds for suspension or revocation of a license. Administrative penalties of \$200,000 per offense may not be reasonable in the context of, for example, a relatively minor criminal offense of an employee of a licensee of which the employee may or not have been aware.

Section 19 - Response to Rejection of Licenses

Before refusing to issue a licence or suspending or cancelling a licence, the Authority must notify the money-services business concerned in writing as prescribed by section 5 of the Act respecting administrative justice (R.S.Q., chapter J-3) and allow the business at least 10 days to submit observations and provide additional documents to complete the file.

The Authority may make a decision without complying with that prior obligation if urgent action is required or to prevent irreparable harm. In such a case, the money-services business concerned may, within the time specified in the decision, submit written observations and provide additional documents to the Authority for the purposes of a review of the decision.

While most prospective or actual licensees would be eager to respond to a rejection of an application or a suspension of a license, it may not be possible to respond within 10 days. The Authority should have discretion to grant a longer period within which a response may be submitted. There appear to be no parameters for when “urgent action is required.”

Section 22 – Fees

A money-services business must pay the fees determined by regulation.

What kinds of fees are being contemplated? While Western Union is of course familiar with paying fees in connection with licensing in jurisdictions around the world, it would be helpful to understand what kind of fees are under consideration.

Section 23 - Moral Character Requirements

A money-services business, and the persons or entities referred to in subparagraph 1, 2 or 4 of the first paragraph of section 6, must be of good moral character and show the integrity needed to carry on their activities and perform their functions.

A lack of good moral character is determined in light of such factors as the connections the persons or entities referred to in the first paragraph maintain with a criminal organization within the meaning of subsection 1 of section 467.1 of the Criminal Code (Revised Statutes of Canada, 1985, chapter C-46) or with any other person or entity who engages in money

laundering for criminal activities or in trafficking in a substance included in any of Schedules I to IV to the Controlled Drugs and Substances Act (Statutes of Canada, 1996, chapter 19). It is also determined in light of any other event of such a nature as to affect the validity of the licence or give the Authority cause to act under any of sections 11 to 17.

The determination of good moral character is unnecessarily broad if it permits decisions “in light of any other such event of such nature as to affect the validity of the license.”

Section 25 - Licensee Notification Requirements

A money-services business must notify the Authority without delay of any change likely to affect the validity of its licence or give the Authority cause to act under any of sections 11 to 17.

"Without delay" is unnecessarily vague; a time period for notification (i.e., 10 business days) is much clearer for both licensees and the Authority.

Section 27 – Additional Security Clearance Reports

If a change to be reported under section 25 or under section 26 affects the security clearance report issued for a money-services business or any other person or entity referred to in section 8, a new background check must be conducted so that a new report can be issued. The same applies if the Authority otherwise becomes aware of such a change.

It is unclear how a licensee can determine if a change impacts the security clearance report. Presumably a background check would have to be conducted and a new security clearance report issued to evidence whether the change had the impact in question.

Section 28 – Customer ID Requirements

A money-services business must verify the identity of its customers, unless it operates automated teller machines. It must also, as part of its business dealings, verify the identity of its other co-contracting parties, in the cases and in the manner prescribed by regulation.

In most jurisdictions in which Western Union provides money transfer services, verification of identity of customers is not required until a certain amount of money (i.e., \$1,000) is being sent. Requiring identity verification on all transactions may have the unintended consequence of pushing consumers who do not wish to share identification information to complete a small dollar transaction to unlicensed underground methods of funds transfer.

Additionally, the Act is unclear about who or what “co-contracting parties” are and what identification of them is required.

Section 29 - Recordkeeping Requirement

A money-services business must maintain and update the following records and registers: (1) a register of the transactions it has conducted containing, among other things, customer

identification information; (2) the records needed to identify its sources of liquidity; (3) an accounting register containing a balance sheet and an income statement; (4) a register of accounts and bank reconciliation reports; (5) a record containing the name, address and function of each of its officers, directors, partners and employees; and (6) any other record or register prescribed by regulation.

The records and registers must be kept in Québec and be readily available to the Authority. If they are held by another person, such as a mandatory or a goods or services provider, who provides a service to the money-services business, they must be available to the Authority as if they were kept at the head office or a place of business of the money-services business.

The records and registers must be maintained in such a manner so as to allow auditing.

Instituting a requirement to physically store and maintain customer identification information in Québec may create unnecessary and expensive systems and process changes on money-services businesses currently operating in the province. As discussed with Mr. McMillan and Mr. Fihn, Western Union suggests removing the location requirement in favor of an obligation on licensees to make records and registers readily available to the Authority in Quebec.

Section 31 – Recordkeeping Requirements

A money-services business must, in the manner prescribed by regulation, notify the Authority of a financial transaction if there is reasonable cause to believe that the transaction or its purpose constitutes an offence under this Act or may give the Authority cause to act under any of sections 11 to 16.

A money-services business who notifies the Authority under the first paragraph does not incur any civil liability as a result.

Money-services businesses already have reporting obligations related to suspicious transactions at the Federal level in Canada. Western Union would like to understand how the new requirements under the Act may be similar to the Federal reporting requirements, and whether some form of combined reporting may serve as a compromise solution.

Section 35 – Record Disposal; Turnover

A money-services business that ceases its activities or whose licence is revoked must hand its records, books and registers over to the Authority, which determines how it will dispose of them.

However, the records, books and registers may be disposed of otherwise with the authorization of the Authority.

The Authority notifies the Ministère du Revenu, the Sûreté du Québec and the police force in the local municipal territory concerned that the money services business has ceased its activities. It must also notify them before the money-services business's records, books and registers are disposed of.

Licenses have obligations regarding security, confidentiality and destruction of consumer and employee data under Federal and provincial law in Canada. Requiring licenses to turn over records, books and registers to the Authority without specifically exempting them from these other legal obligations or otherwise indemnifying and holding them harmless does not seem reasonable.

Section 37 - Audit Reviews

The Authority may order a money-services business to direct an auditor designated by the Authority to conduct any audit or review at the money-services business's expense and deliver the audit or review to the Authority as soon as practicable.

This section appears to create unlimited authority to require a third party audit, to be paid for by the money-service business. Any such audits such be subject to a reasonableness requirement, upon a finding of "good cause" by the Authority, particularly if the money-service business regulatory already obtains a third party audit of its financial statements and makes such statements available to the Authority.

Section 39 – Turnover of Personal Information of Customers and Employees

The Authority may, without the consent of the money-services business or the person or entity concerned, communicate any information, including personal information, to a police force if there is reasonable cause to believe that the money-services business, person or entity has committed or is about to commit a criminal or penal offence under an Act enforceable in or outside Québec in relation to this Act or against the Authority or one of its employees, and that the information is required for the purposes of the investigation.

The Authority may also, without the consent of the money-services business or the person or entity concerned, communicate any information, including personal information, to the Minister of Revenue if there is reasonable cause to believe that the money-services business, person or entity has committed or is about to commit an offence that may have an impact on the administration or enforcement of a fiscal law.

This section appears to permit the Authority to turn over personal information on employees and customers of licenses to the police without a subpoena or court order. This seems to be inconsistent with Federal or provincial privacy laws in Canada. Has the Office of the Privacy Commissioner been consulted on this proposed language? The requirement for judicial authorization as described in Section 40 should apply to all disclosure of personal information from the Authority to the police.

Sec 50 – Verification of Licensee

The Sûreté du Québec or any police force may at any reasonable hour enter an establishment governed by this Act to verify whether the money services business holds a licence or to verify

any other thing that may affect the validity of the licence or give the Authority cause to act under any of sections 11 to 17.

While it is reasonable for the police to verify whether a business holds a license, it is not reasonable for the police to have the right to “verify any other thing that may affect the validity of the license or give the Authority cause to act under any of sections 11 through 17.” This presumably would give the police the right to review loan documents, personal information on officers, directors and employees which may include highly sensitive information.

Sec 61 - Regulatory Authority

The Authority may make regulations determining (1) the fees and tariffs payable for any formality required by this Act and for the services provided by the Authority, and payment terms and time limits; (2) the form and content of licence applications; (3) the other documents required for the issue of a licence; (4) the time limit and procedure for informing the Authority of any change in the information filed with the Authority by a money-services business, including any change to the lists and other documents provided; (5) the nature, form and content of the books, registers and records that a money-services business must maintain and rules relating to their preservation, use and destruction; (6) which money-services businesses must provide security for the performance of their obligations, and the amount and form of the security; (7) time limits for the purposes of this Act; (8) the cases and manner in which the identity of a co-contracting party must be verified for the purposes of section 28; (9) the manner in which notification of a financial transaction is to be given for the purposes of section 31; and (10) the nature, form and content of the reports, documents and statements required to be filed under section 33.

In subsection (6), the amount of security licensees may be required to post is not limited in any way. It would be appropriate to require security related to the amount of funds transfer principal a licensee is holding on behalf of its consumers, or some other reasonable calculation. In subsection (8), a definition of a co-contracting party would be helpful.

Conclusion

Thank you again for giving us the opportunity to meet with you and to provide these comments and suggestions. With a few of these changes, specifically providing more clarity and definitions including the definition of a money services business versus a delegate, as well as narrowing the scope of security clearances, we will be in a better position to continue serving customers in Quebec. In addition, it may be helpful to the Authority and to Québec businesses and consumers to have an opportunity to review and comment on the proposed Act in a more formal and robust manner. We respectfully suggest that the bill be referred for a consultation to allow MNAs to gain a more comprehensive understanding of the needs and opinions of the persons or bodes affected by the bill.