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Via Electronic Filing and Mail

Maitre Stephanie Boutin
Acting Secretary of the Committee on Public Finance
Secretariat des commissions
Edifice Pamphile-Le May, 3e etage
Quebec (Quebec) G1A 1A3

Re: Comments to Bill No. 128: An Act to Enact the Money-Services Business Act (the "Act")

Dear Maitre Boutin:

MoneyGram Payment Systems, Inc. ("MoneyGram US") is a provider of international money transfer services via an agent network. MoneyGram US money transfer services are offered in Canada through MoneyGram US's subsidiary MoneyGram Payment Systems Canada, Inc. ("MoneyGram Canada"). MoneyGram US and MoneyGram Canada are collectively referred to herein as "MoneyGram."

Our payment services are available at approximately 207,000 agent locations in approximately 190 countries and territories. We help people and business by providing affordable, reliable and convenient payment services. Our services enable customers throughout the world to transfer money and pay bills, helping them meet the financial demands of their lives.

As you can imagine, compliance with legal requirements and government regulations is a highly complex and integral part of our day-to-day operations. Our operations are subject to a wide range of laws and regulations that include international, federal and state anti-money laundering laws and regulations; money transfer and payment instrument licensing laws; escheatment laws; privacy laws; data protection and information security laws; and consumer protection and disclosure laws. Failure to comply with any applicable laws and regulations could result in restrictions on our ability to provide our products and services, as well as the potential imposition of civil fines and possibly criminal penalties.

Our products are subject to anti-money laundering laws and regulations of the United States, including the Bank Secrecy Act, as amended by the USA PATRIOT Act, as well as the anti-money laundering laws and regulations in many of the countries in which we operate. Countries in which we operate typically require one or more of the following:

- reporting of large cash transactions and suspicious activity;
- screening of transactions against the government's watch-lists, including but not limited to, the watch list maintained by the United States Treasury Department's Office of Foreign Assets Control ("OFAC");



- prohibition of transactions in, to or from certain countries, governments, individuals and entities;
- limitations on amounts that may be transferred by a consumer or from a jurisdiction at any one time or over specified periods of time, which require the aggregation of information over multiple transactions;
- consumer information gathering and reporting requirements;
- consumer disclosure requirements, including language requirements and foreign currency restrictions;
- notification requirements as to the identity of contracting agents, governmental approval of contracting agents or requirements and limitations on contract terms with our agents;
- registration or licensing of the company or our agents with a state or federal agency in the United States or with the central bank or other proper authority in a foreign country; and
- minimum capital or capital adequacy requirements.

Anti-money laundering regulations are constantly evolving and vary from country to country. We continuously monitor our compliance with anti-money laundering regulations and implement policies and procedures to make our business practices flexible, so we can comply with the most current legal requirements.

MoneyGram has a strong interest in working with the Finance Ministry and the Gouvernement du Quebec to ensure that policymakers have the benefit of industry knowledge when considering the proposed legislation. We are concerned that the legislation as written could have unintended consequences that could negatively impact consumer choice and the costs for money transfer services. As such, MoneyGram respectfully offers the comments and requests for clarification below regarding the proposed Act. The following is not intended to be an exhaustive list of MoneyGram's comments and concerns. We look forward to engaging in future dialogue regarding developments in the legislative process and after the proposed legislation is enacted.

Section 2 - Exemptions

This Act does not apply to the Gouvernement du Quebec or any other government in Canada, to a department or agency of such a government or to a municipality or a metropolitan community or an agency of a municipality or metropolitan community.

Nor does it 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.).

MoneyGram's largest agent in Canada is Canada Post Corporation (which operates under the statutory framework of the *Canada Post Corporation Act* and the *Financial Administration Act*). It is MoneyGram's interpretation of the first paragraph that this Act would not apply to Canada Post because it is a federal Canadian Crown corporation. It is also our interpretation of the second paragraph that an agent who offers financial services as part of its main business is exempt from the Act. We respectfully request confirmation that our interpretations are correct.

Section 5 – Licensee Conditions

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.

The proposed legislation does not provide any indication regarding possible fees for license applications. Any potential fees should be specifically delineated in the legislation in order to determine whether it is economically feasible to operate as a money services business in Quebec.

The condition that a respondent must "be domiciled in Quebec or have a place of business or a place of work in Quebec" to obtain a license is a troublesome requirement for MoneyGram because we do not have a place of business in Quebec. It would require a significant investment for us to establish a place of business and resources in order to comply with the Act, which could lead to increased prices and reduced choice for Quebec consumers. Although we do not have a place of business in Quebec, MoneyGram does offer its services to Quebec residents through our agent network. Would this section also apply to businesses that do not have a place of business in Quebec?

Section 6 – License 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.

The information required under this section is far beyond the scope of what MoneyGram is typically required to provide as a licensed money service business. This section is very concerning because it not only requires information from MoneyGram and its employees, but it also requires an extraordinary amount of information from our agents and their employees. The information required creates a burden for MoneyGram because we may have an ongoing obligation to provide and update agent information, which changes on a regular basis. MoneyGram agents would also have an administrative burden because of the difficulty in maintaining accurate information due to employee turnover and for smaller agents (with only one or two locations), it may be a challenge to provide business plans, financial statements, or information regarding financial institutions and lenders with whom they do business.

Section 11(1) and Section 13

Section 11(1) The Authority refuses to issue a licence to a money-services business if it (1) does not meet the requirements of this Act and, in particular is not of good moral character as determined under section 23; . . .

Section 13 – The Authority refuses to issue a license to a money-service business if one of its officers, directors, partners, or branch managers, a person or entity who directly or indirectly owns or controls the money-services business or any other person specified by regulation, is in any of the situations described in paragraphs 1 to 4 and 6 of section 11.

Although MoneyGram acknowledges that meeting a “fit and proper” standard is a common condition to obtain a money service business license, the proposed legislation is concerning because it creates a condition that not only applies to the applicant but to all “officers, directors, partners, or branch managers. . . or any other person specified by regulation. . .” with respect to the applicant. The reach of such language may make the “fit and proper” conditions apply not only to our agents, but also to our agent’s employees whose functions are related to money transfer. The language is troublesome because it casts a wide net to capture all persons involved with a money services business (regardless of whether the involvement is direct or indirect) and potentially makes them subject to the Act.

Section 12 – License Conditions

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 (2) could make obtaining a license in Quebec even more difficult because the language is very broad and could include any government or regulator with any type of authority or oversight of MoneyGram and any of its agents in any jurisdiction. The denial of a license for any type of negative action by a regulator is also disconcerting because regulatory actions are common practice in many jurisdictions in which we operate. This would most likely make it difficult for a money service business to obtain and maintain a license in Quebec.

Section 14 – License Conditions

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.

Our concerns related to section 13 also apply to this section. The ability for a money service business to obtain a license would be difficult because the conditions are dependent not only on the applicant's "fitness", but equally dependent on the "fitness" of its agents and their employees.

Section 16 – License Conditions

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.

This condition is overly broad and burdensome as it could be interpreted to include all of our worldwide employees because of MoneyGram's status as a money service business. Is it the intent of the Act to make every employee's criminal background and history part of the analysis in determining whether or not to grant a money services business license in Quebec?

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 certain jurisdictions, MoneyGram does not require identification until certain transfer amount thresholds are met. The requirement to show identification for all transactions could potentially affect if and how consumers continue to use our services. We respectfully request clarification regarding what is meant by "other co-contracting parties."

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.

As mentioned in our comments to section 5, MoneyGram does not currently have a place of business in Quebec. Therefore, it would be financially and administratively burdensome to maintain records and registers in Quebec solely for the purposes of complying with the Act. It

may be more reasonable to make such records and registers readily available to the Authority with proper notice, regardless of where the records are kept.

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.

It would be prudent to set an overall maximum bound amount, which would be consistent with other licensing jurisdictions. A reasonable approach to determine the amount would be to define a maximum bond based on factors such as the number of agents or the amount of outstanding funds being held by the licensee during a certain period of time.

Conclusion

Thank you for providing us with the opportunity to offer our initial comments. The legislation as currently proposed could have the unintended consequence of making the money transfer business less transparent to regulators because it may force consumers to seek underground or unregulated ways to transfer funds. However, we are confident that with a few changes and clarifications to the legislation we can continue to offer money transfer services to consumers in a competitive environment and at a reasonable cost. Although we have provided our comments regarding some of the most significant issues, this submission is not intended as an exhaustive list of all of our comments and concerns. As such, we welcome the opportunity to work with you as the Act is refined to help address the concerns of all affected parties.

Respectfully Submitted,



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