

Proposed Changes to the NMLS Disclosure Questions

Request for Public Comments

Proposal 2022-1

June 22, 2022 – August 22, 2022

The Conference of State Bank Supervisors invited public comments on the proposed changes to the NMLS Disclosure Questions during a public comment period from June 22 to August 22, 2022. Eight organizations submitted comments during the comment period.

The comments are included in this document as they were received, without editing. Comments received in email format were copied exactly as submitted and pasted in the comments section of the table with the submitting individual's name and company displayed. Comments received as an email attachment or via USPS are displayed as submitted in their original format. These comments are noted in the table and numbered accordingly as attachments.

Comments are listed in alphabetical order. Comments received without full name or contact information are not included. The comments received will be reviewed with the NMLS Policy Committee. The final response to comments will be posted on the NMLS Resource Center.

Comments Received

#	Company
1	American Financial Services Association (AFSA)
2	Electronic Transactions Association (ETA)
3	Freedom Mortgage
4	InFin
5	Mayer Brown
6	McGlinchey
7	Money Services Roundtable
8	VIP Mortgage

August 22, 2022

Jim Payne
Ombudsman, Nationwide Multistate Licensing System
1129 20th Street NW, 9th Floor
Washington, DC 20036

Re: NMLS Disclosure Questions

Dear Ombudsman Payne:

On behalf of the American Financial Services Association (“AFSA”)¹ thank you for the opportunity to provide comments on the proposed NMLS disclosure questions. We appreciate and share your goal of modernizing the NMLS disclosure process. With more states expanding the use of NMLS for various license types, a streamlined and efficient process will be more important than ever. We welcome the majority of the new and revised disclosure questions but request clarification regarding implementation and the scope of certain questions.

Implementation

We request clarification regarding the implementation of the revised questions. Will licensees be required to update their current responses previously submitted to NMLS to address these new and amended questions, or would the new questions be addressed during a new license application or license renewal? If licensees must update their current submission, will CSBS provide a formal deadline to submit updated responses?

Company Disclosure Questions

We have a few suggestions regarding the company disclosure questions:

Civil Judicial Disclosure Questions:

Questions 1 and 3 are potentially too broad. The current nor revised glossary of terms does not provide a definition of “financial services activity” or “financial services civil action.” We believe the intent of this questions is to ascertain potential violations of the law, and not common business practices such as vehicle repossession that may be challenged by a consumer. As such, this question needs to be more specific about the types of activities against which a company has been enjoined.

¹ Founded in 1916, the American Financial Services Association (AFSA), based in Washington, D.C., is the primary trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including direct and indirect vehicle financing, traditional installment loans, mortgages, payment cards, and retail sales finance. AFSA members do not provide payday or vehicle title loans.

2. Are there any pending financial services civil actions against the entity or a control affiliate that allege the entity or control affiliate:
 - a. made a false statement or omission?
 - b. had been dishonest, unfair or unethical?
 - c. violated a financial services statute or regulation?

As above, this question does not provide a definition of “financial services civil action,” potentially opening up a broad interpretation that does little to advance the intent of the question. In the context of certain transactions, a business or consumer may allege that a finance company has made “unfair” or made false statements, but such allegation may have little merit. There is little benefit to disclose that a civil plaintiff “alleged” any of these things if a civil suit is still in litigation and no judgment has been entered.

Financial Disclosure Questions

11. Does the entity have any unsatisfied liens against it?

We believe this question should be reworded to say “unsatisfied, involuntary liens.” As currently written, “unsatisfied liens” would arguably include any pledge of collateral, including the chattel paper that a company has pledged to lenders as security for the company’s own lending activity.

12. Has a third-party service provider notified the entity or a control affiliate of its intent to modify or cancel an arrangement with the entity or a control affiliate that would materially alter the entity’s ability to conduct its business activities for the license it holds or intends to hold?

We believe that this proposed question should not be a standard license application question. Instead, this should be a requirement to update a license application if this happens during the course of the renewal process of a license application. Furthermore, as written we this question is overly broad. Just because a service provider notifies an entity of an intent to modify or cancel an arrangement does not mean that the arrangement will in fact be cancelled. There may be contractual protections in place that prevent the third-party from modifying or canceling the arrangement. In addition, the entity may have business continuity plans in place to prevent any interruptions to the business.

If this question is retained in the final draft, we instead suggest changing the question to: “Has a third-party service provider modified or canceled an arrangement with the entity or a control affiliate such that the entity’s ability to conduct its business activities for the license it holds has been materially altered, for which there is no business continuity plan in place to ensure continued services?”

Regulatory Action Disclosure – Part I - Questions

15. Is there a pending regulatory action, either administrative or civil, against the entity or a control affiliate that alleges or could result in a finding that the entity or control affiliate has...

The language “could result in a finding” is overly broad and very speculative. We suggest removing “or could result in a finding” from the question, leaving the question to focus on allegations.

Regulatory Action Disclosure – Part II - Questions

22. Have any key individuals or control individuals identified in the entity’s NMLS record ever had a financial services license or any other professional license revoked, suspended or restricted?

The inclusion of “any other professional license” is overly broad. We suggest limiting the question to whether these individuals have ever had a financial services license revoked, suspended or restricted.

Glossary

“Key Individual” is a newly defined term. The proposed definition in the Glossary is as follows: “A key individual within an entity includes the Highest-Ranking Executive and individuals who can exercise control by virtue of ownership, a leadership role, or responsibility for establishing, maintaining and approving policies and procedures for denoted functional areas.”

This definition is very broad. While licensed entities generally monitor the activities of their senior leadership and senior management personnel, including those who maintain policies and procedures could bring employees within the purview of the question who do not have key or senior roles within the company.

We suggest revising the definition to: “A key individual within an entity includes the Highest-Ranking Executive and individuals who can exercise control by virtue of ownership, an officer or director role, or other senior management role.”

Individual Disclosure Questions

In general, our members have concerns over the confidentiality of responses to these individual disclosure questions, as some answers to these questions may include sensitive personal information.

On questions pertaining to control activities, we would like to request clarity on the timeframe to disclose actions that are “based on activities that occurred while you exercised control over an organization.” Without a clearly defined timeframe, there is uncertainty over the information a former control person would have to address. For example, if an organization faced civil action

on a matter decided by a former president months after he or she left the company, would the former president need to address this, even if they do not have access to full information on the suit due to no longer being with the company?

Furthermore, on the civil judicial disclosure questions (questions 23 and 24), we request clarity over the definition of “financial services activity”, echoing our concerns around common business practices like vehicle repossession, as outlined above regarding company disclosure questions 1 and 3.

Thank you in advance for your consideration of our comments. If you have any questions or would like to discuss it further, please do not hesitate to contact me at mkownacki@afsamail.org or at (202) 469-3181.

Sincerely,

A handwritten signature in blue ink that reads "Matthew Kownacki". The signature is fluid and cursive, with the first name "Matthew" and last name "Kownacki" clearly distinguishable.

Matthew Kownacki
Director, State Research and Policy
American Financial Services Association

August 24, 2022

Janine Bjorn
Senior Director, Policy
NMLS Business Services
Conference of State Bank Supervisors
Via Electronic Mail:

RE: CSBS Request For Comments on NMLS Disclosure Questions

Dear Ms. Bjorn,

On behalf of the Electronic Transactions Association (“ETA”), the leading trade association for the payments industry, we appreciate the opportunity to provide comments on the proposed updated NMLS Disclosure Questions (Disclosure Questions). While ETA appreciates the need for targeted revisions to the Disclosure Questions given the forward momentum of the “Model Money Transmission Modernization Act” (Model Law), the current proposal is too expansive and could drastically broaden the scope of disclosures that licensees would be required to make without resulting in an increased benefit to consumers. Accordingly, ETA asks that any new requirements resulting from the amended disclosure questions apply to actions on or after the effective date and asks that CSBS republish the proposal following its review of comments and feedback.

Definitions, Company and Individual Disclosures

The NMLS system and disclosures were aligned with the mortgage industry before the system was used for money transmission licensing. Unfortunately, this has resulted in a system where the disclosure questions do not fully sync-up with types of disclosures required by state money transmission laws. The proposed changes to the Disclosure Questions underscore this fundamental problem.

We have specific concerns in the following areas:

- The definition of “financial services” is expanded to include “consumer protection laws,” which is defined to include “laws or regulations . . . [that] require disclosure to consumers.” This is too broad and should be limited to commonly accepted understanding of consumer protection laws.
- The definition of an “Order” should be revised to expressly confirm that a memorandum of understanding is not an order. This clarification is consistent with the statement that an order does not include “agreements that related to . . . restrictions unless such agreements are included in a written directive that otherwise qualifies as an order.”

Company Disclosure Questions

- Entity-level disclosures should be limited to U.S. located entities and/or U.S. activities. The Model Law recognizes this limitation in primarily focusing on U.S. matters.
- Question 1(c) regarding the entity or a control affiliate being “the cause” of another financial services business “having its license or authorization to conduct a business activity denied,

- suspended, revoked or restricted” is a new concept. It is beyond the scope of current law and should be removed.
- Question 9 regarding the actions of a bonding company should not add the new question regarding denial of “issuance” of a surety bond. What constitutes a “denial” is vague and if an applicant can’t get a surety to agree to issue bonds on terms to which the person is willing to agree, the applicant would not be able to proceed with licensing.
 - Question 12 is not an appropriate or relevant financial disclosure question as it relates to business operations, not financial condition. This question should be removed.
 - With respect to the disclosure questions regarding key individuals and control individuals, the references to whether a pending action “could result” in a certain outcome is too broad and should be removed.
 - Questions around Individual Disclosures Pertaining to Control Activities should be amended to include a qualifier that indicates knowledge at the time.
 - The introductory language of Question 28 should be clarified to reflect that it is asking about the organization over which the individual exercised control. The remainder of Question 28 and its subparts lack clarity and should be reviewed before finalized.
 - Question 29 asks whether there has “ever” been any of the listed actions. The inclusion of “ever” should not be included as the relevant information is pegged to when the person exercised control over the organization.

Again, ETA supports changes to create consistency between the NMLS system, the Model Law, and existing state money transmission laws. However, the proposed expansion of the Disclosure Questions exceeds the scope of what is currently required by statute or regulation for licensed money transmitters.

* * *

We appreciate you taking the time to consider these important issues. If you have any questions or wish to discuss any aspect of our comments, please contact me or ETA Senior Vice President, Scott Talbott at Stalbott@electran.org.

Respectfully Submitted,

Matt Tremblay

Matt Tremblay
Senior Manager, State Government Relations
Electronic Transactions Association
202.677.7417 | mtremblay@electran.org

Janine Bjorn

From: Shelley Adler <Shelley.Adler@FreedomMortgage.com>
Sent: Monday, August 22, 2022 8:55 AM
To: Comments
Subject: [External] Proposal 2022-1

To Whom It May Concern:

Freedom Mortgage Corporation ("Freedom") submits the following comments in response to the Request for Public Comment on Proposal 2022-1 (Disclosure Questions).

Overall, the disclosure questions appear to be made much broader and detailed in an unnecessary, burdensome, and confusing way. It would be beneficial for companies and individuals, without losing the value of disclosure, to have a much more streamlined disclosure process, which would result in the disclosure of all relevant information. Freedom believes that can be accomplished through the submission of a few schedules which would contain the relevant information.

For example, companies can be asked about pending and past material litigation that results from the conduct of their business (which is financial services), which would allow it to list those actions. They can be asked for findings by regulators and courts regarding truthfulness and fraud, in connection with their financial services business. Individuals can be asked about those findings in connection with their current and past employment.

The goal is to disclose allegations and findings of fraud and wrongdoing. That goal can be achieved with far fewer, but more targeted, questions and ways of presenting the information.

Company

Civil Disclosure --

Question 1: Freedom believes that the definition of "found" is very confusing as it relates to a settlement agreement. Whether a settlement agreement is a matter of public record is often hard to determine. For example, if a court approves a settlement agreement, does that make it a matter of public record even though the parties intended for the settlement agreement to be confidential? This is particularly troublesome where the company specifically does not admit or deny guilt and/or liability. In that sense, the agreement is not a finding.

Freedom also believes that the inclusion of the term "consumer protection" both separately and as now included in the definition of "financial services" is ambiguous and far too broad. "Consumer protection" is defined as "Consumer protection or Consumer protections refer to laws or regulations designed to protect a consumer, including **but not limited to**, laws or regulations which limit or prohibit unfair, deceptive, abusive or fraudulent practices, or require disclosures to consumers." Financial services is a more tailored definition which lists specific categories. "Consumer protection", as defined, is embedded in literally every action and/or complaint brought against a mortgage banker by a consumer because a consumer believes he/she has been harmed and/or a regulatory entity believes that a consumer has been harmed.

Question 1c: It is very difficult to think of a circumstance where there would be a specific finding that a company caused another company to lose its license or authorization to do business. It's unclear what the purpose of this disclosure is supposed to be.

Questions 2 and 3: These questions raise the same issues with respect to the definition of “financial services” as discussed above. In addition, Freedom suggests that these questions be revised to require only disclosure of pending “material” litigation. It is the nature of the business that mortgage banks often have a number of individual lawsuits (which can often be characterized as nuisance lawsuits) at any given time. It would be extremely onerous to have to continuously disclose each and every one of those actions, regardless of whether the outcome would be material to the company.

Financial Disclosure –

Question 12: This question raises two issues. First, as written, it encompasses all notifications, regardless of whether there is a legal right to cancel or modify an arrangement. Second, the question does not take into account whether the company has an ability to put into place a new arrangement should the original be cancelled or modified.

Question 13: The wording on this question (“involved in”) is unclear. Is the question supposed to be limited to any litigation that was disclosed on an audited financial statement?

Regulatory Actions Disclosure – Part 1—

Question 14: See comments to Question 1 and Question 1c above. With respect to the term “found” as it relates to regulatory agencies, there is no clear guidance as to when a settlement agreement is a public record as the various statutory regulatory agencies could have very different conceptions of what is a public record and the company is guessing as to whether an agreement is public or not. Moreover, an agreement that may not have been a public record under any definition may become one if the agency decides to upload the agreement to the NMLS, which could not have been predicted in advance by the company. Finally, there could be agreements which the parties intend to keep confidential as outlined in the agreement, but the regulator posts the agreement.

Individual

Civil Judicial Disclosure

3. It is not clear why this question is necessary when it is entirely repetitive of Question 2. The only difference is that it seeks to isolate a subset of actions already disclosed in the previous question. It is highly likely that an equitable remedy, such as an injunction, will be sought in virtually all cases. Moreover, the wording of the question is complicated “legalese” that many loan officers will not understand and could cause them to unintentionally answer incorrectly.

Regulatory Action – Part 1

15i. The term “regulatory action” is not defined and is overbroad. Since the third clause does not limit “regulatory action” to certain types of actions due to the use of the term “including”, a “regulatory action” can be as insignificant as a deficiency placed on a license. Finally, civil actions are already captured in the previous section.

16 and 17. Civil actions are previously covered in Questions 1-3.

Regulatory Action – Part 2

21. It is not feasible to ask the LO to determine what sanctions might result (“could result”) from a pending action unless that remedy is specifically sought.

Civil Judicial Disclosure

23a. This is overly broad. See comments to Questions 2 and 3 above.

24a. This is overly broad. See 23a.

Regulatory Action Disclosure

28a and b. The use of the term “any organization” does not follow and, if meant to be included, is vastly overly broad.

Glossary – New Terms

“Key Individual” is an unnecessary and confusing addition. The NMLS uses the term “Control Persons” and it is hard to figure out the difference between these terms and if they are meant to be different.

Please let me know if you have any questions regarding the above comments.

Thank you for your consideration.

Very truly yours,

Shelley Adler



Shelley Levitan Adler
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August 22, 2022

SUBMITTED to the Conference of State Bank Supervisors at comments@csbs.org.

Conference of State Bank Supervisors (CSBS)
State Regulatory Registry, LLC
1129 20th Street, NW
9th Floor
Washington, DC 20036

Re: Request for Public Comment on NMLS Disclosure Questions Proposal

Dear Board of Managers:

INFiN appreciates the opportunity to provide comments on the CSBS' proposed changes to the NMLS Disclosure Questions ("Proposal" or "Questions" or "Proposed Changes").

INFiN, A Financial Services Alliance

INFiN, a Financial Services Alliance, is the leading national trade association representing the diverse and innovative consumer financial services industry. INFiN includes more than 350 companies, operating approximately 8,000 locations throughout the United States and online. Headquartered in Washington, DC, INFiN serves as the voice of the vital and rapidly evolving consumer financial services industry to advocate on behalf of its customers.

INFiN members offer critical access to financial services to millions of Americans, particularly middle-income working families, who are often underserved by banks and credit unions and value the wide range of services provided by community-based financial service providers. Consumers choose these providers because they are affordable, offer integrated services through multiple convenient channels, and deliver services in a transparent and regulated environment.

Those consumer financial services include check cashing, pre-paid cards, money transfers, electronic bill payments, and small-dollar loans, among others. These simple, popular financial solutions play an integral role in the financial lives of millions of American households, helping them to manage their financial obligations and challenges and providing essential financial inclusion and stability. Consumer financial services are available across a range of platforms and channels – from community-based storefronts to online tools powered by the latest technology.

INFiN's membership includes some large companies that operate hundreds of locations in multiple states, but also consists of small businesses, including "mom and pop" operators.

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INFiN members are licensed and regulated in the jurisdiction in which their customers reside and, as such, are subject to consumer protection laws throughout the U.S. In addition, INFiN members are classified as money services businesses (“MSBs”) and are subject to the Bank Secrecy Act’s anti-money laundering provisions.

INFiN understands that the NMLS Company and Individual Disclosure Questions may require review and updating if there are concerns about the current set of questions becoming outdated. We view this process as an admirable one if it ultimately serves to create clarity, remove inconsistency, conform to new laws and regulation, and make necessary improvements.

However, we are concerned that the proposed revisions to the questions serve to greatly expand the amount of information requested – information that will be duplicative, unnecessary, or confidential. Such an expansion to the question set will undoubtedly raise many questions and create difficulties for companies and individuals alike. Additionally, the “Explanation Document,” which purports to provide detail and rationale for each of the proposed revisions, often fails to provide sufficient justification or rationale as noted below. Therefore, INFiN offers the following comments about the Proposal:

General Concerns

Overall, the proposed changes to the NMLS Disclosure Questions create unnecessary and repetitive questions, as well as confidentiality concerns and problems. For example, there are many instances in which the revised questions would be expanded by breaking down the question areas into several different sub-sections for both the company and the individual. With perhaps the goal of increasing specificity with these changes, the proposed revisions would serve to often repeat the same questions over again and lead to much duplication. Additionally, by expanding the scope of the regulatory questions, even minor exam findings could be required to be reviewed, disclosed, and subsequently updated each year. These proposed changes, many of which appear unnecessary and duplicative, would serve to create additional burdens and costs on licensed entities, especially on small businesses.

There are also confidentiality concerns with the Proposal. For instance, with the revised changes, companies would be required to disclose even those third-party vendors with which they are negotiating and have confidentiality agreements.

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Specific Concerns re. Company Disclosure Questions

- *Question #12. Has a third-party service provider notified the entity or a control affiliate of its intent to modify or cancel an arrangement with the entity or a control affiliate that would materially alter the entity's ability to conduct its business activities for the license it holds or intends to hold?*

Question 12 creates concern by intruding into private business contractual arrangements and negotiations. Most all lending entities will have financing agreements with third parties, and these agreements are generally subject to negotiations, modifications, and renewals. These matters are not the regulators' concern; rather, at the end of such negotiations, the licensee/control affiliate has secured such funding. Additionally, the "explanation document" does not provide sufficient rationale, including, for example, disclosure of information that will aid in supervisory or enforcement activity, for defining "third-party service provider" in such a broad manner. For these reasons, we do not believe this is a necessary question.

- *Question #22. Have any key individuals or control individuals as identified in the entity's NMLS record ever had a financial services license or any other professional license revoked, suspended or restricted?*

Question #22 is overly broad in that it seeks information regarding any and all professional licensing, notwithstanding whether it is relevant or not. For example, requesting information about a prior barber license or pilot's license or other type of unrelated professional license, which is clearly not relevant, should not have to be disclosed here. Requiring such information will result in burdensome reporting.

The "explanation document" merely states that: "Questions 22 and 23 are new and refer to the ability to act pursuant to a financial services license or any other professional license." This explanation is inadequate and does not sufficiently explain why these questions are necessary.

- *Question #23. Is there a pending regulatory action, either administrative or civil, against any key individual or control individual as identified in the entity's NMLS record whereby the remedy being sought is or could result in the revocation, suspension or restriction of such individual's financial services license or any other professional license?*

Here too, question #23 is also overly broad and will result in burdensome reporting. Most all regulatory actions hold the potential of resulting in such possible sanctions as revocation,

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suspension of restrictions of one's license; notwithstanding that such remedy is remote, it is set forth *pro forma* in nearly any complaint against a licensed entity.

Specific Concerns re. Individual Disclosure Questions

- *Question #20.* Have you ever had a financial services license or other professional license restricted, revoked, debarred or suspended?

Similar to the Company Question #23 discussed above, this question is duplicative, and overly broad in that it seeks any and all professional licensing information regardless of whether it is relevant. Again, why should a prior barber's license or pilot's license be required? Additionally, the reason that has been provided in the explanation document seems inadequate and does not provide sufficient rationale for the proposed revision.

- *Question #21.* Are there any pending regulatory actions against you whereby the remedy being sought is or could result in the restriction, revocation, debarment or suspension of your financial services license or other professional license?

Similar to the Company Question 24, this question is also overly broad and will result in burdensome reporting. Most all regulatory actions hold the potential of the possible sanctions of revocation, suspension of restrictions of one's license; notwithstanding that such remedy is remote, it is set forth *pro forma* in nearly any complaint. Additionally, the reason that has been provided in the explanation document seems inadequate and does not provide sufficient rationale for the proposed revision.

- *Question #23. Based on activities that occurred while you exercised control over an organization: a. is there a pending financial services civil action against such organization which alleges a violation of a financial services statute or regulation? b. was the organization found to have violated a financial services statute or regulation?*

Question 23(b) is over broad and will also result in burdensome reporting. In addition, it would seem that the answer to this question will nearly always be 'yes,' as over time all organizations undergoing a regulatory examination or action will have violated a financial services statute or regulation. No doubt the follow-up question will be to list them, which would result in a listing of all such past actions being recited each year. Additionally, the explanation document provides no reasons or justification for adding 23(b).

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Finally, INFiN is concerned about the expected increase in cost and resources that would be required to comply with many proposed changes to the questions. The proposal is certain to create additional burdens and requirements that could be challenging for some INFiN members and others.

INFiN appreciates the opportunity to provide comments and feedback with respect to this Proposal.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. D'Alessio".

Edward D'Alessio
Executive Director

August 22, 2022

BY EMAILNMLS Policy Committee
Conference of State Bank Supervisors
1129 20th Street, N.W., 9th Floor
Washington, DC 20036**Krista Cooley**
PartnerT: 202-263-3315
kcooley@mayerbrown.com**Re: NMLS Disclosure Questions Public Comments**

Dear Sir/Madam:

On behalf of the Mayer Brown LLP Consumer Financial Services Group, we are writing to respond to the Conference of State Bank Supervisors' ("CSBS") invitation to submit comments related to proposed revisions to the Nationwide Multistate Licensing System ("NMLS") Disclosure Questions. As we understand, the NMLS Policy Committee and State Regulatory Registry LLC ("SRR") worked diligently to propose amendments to the current Disclosure Questions in an effort to offer clarification and consistency as part of NMLS modernization efforts, and to incorporate requirements of the Money Transmission Modernization Act ("MSB Model Law"). Our office appreciates the opportunity to provide our remarks to the proposed changes, and offers comments on some of the changes or additions to the Disclosure Questions and newly defined terms.

Company Civil Judicial Disclosure Section, Questions 2 and 3

The expansion of the civil judicial questions 2 and 3 should be limited to civil action brought against the entity or control affiliate "by a State or foreign financial regulatory authority" or Governmental entity. Alternatively, there should be some means by which the respondent can exclude consumer-initiated civil actions relating to foreclosures or civil litigation that that has a has not agreed to dismiss. Otherwise, as currently proposed, the entity and control affiliate would need to report each and every litigation matters that alleges that the that the consumer was treated unfairly or alleges a violation of a law to delay a pending action, such as a standard judicial foreclosure proceeding.

Company Financial Disclosure Section, Addition of Question 12

Based on our understanding, the current proposal would add a new question to the Financial Disclosure questions, which would read:

"[h]as a third-party service provider notified the entity or a control affiliate of its intent to modify or cancel an arrangement with the entity or a control affiliate that would materially alter the entity's ability to conduct its business activities for the license it holds or intends to hold?"

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Page 26 of the Request for Public Comment: NMLS Disclosure Questions confirms that this is a new question, going “to the very core of an applicant’s ability to conduct its business.” Page 26 further notes that “Third-party service provider” will be a newly defined term:

“[a]n individual or company, including subsidiaries or affiliates, that provides goods or services to an entity in connection with the operation of its business. Goods or services, include, but are not limited to, lines of credit, whether warehouse or operating, regulatory compliance services, customer facing services or documents, technology solutions, accounting or financial services.”

Respectfully, we believe this question is too broadly worded and it is not entirely clear what it is intended to capture. For example, if a control affiliate provides data storage services and is informed that its third-party cloud hosting service provider that it is planning to exiting the business, this has the potential to impact the entity’s ability to conduct its business activities. However, the entity could easily find another data storage provider. This does not seem like something a regulator would expect a licensee to report. Perhaps it would be helpful if the question is tied to the eligibility criteria for licensure. In this regard, the question could ask if the there is a third-party service-provider relationship that the entity relied upon to meet the eligibility criteria for licensure. This would capture a change in a warehouse line of credit or a subservicing relationship or agent or other service provider relationship that would be material to the entity’s licensing status.

Also, licensees should be provided with clear instructions with respect to when it would be appropriate to amend an affirmative response to this newly proposed question to a negative response. As currently drafted, the question requires an affirmative response when the licensee is “notified” of a modification or cancellation to an arrangement that would materially alter the entity’s ability to conduct licensable activities. After such notification, the licensee likely would take steps to renegotiate the contract or find a new third-party service provider to provide the goods or perform the services. If the entity is notified that the service-provider will be terminating the relationship six (6) month in the future, it appears the entity would be obliged to report within thirty (30) days of notice even though it has more than adequate time to replace the third-party provider and this matter continue to be reflected in the Company MU2 record for a ten (10) year period. Again, it does not seem that this would be the type of matter that a regulator would want to review.

Company Regulatory Action Disclosure – Part II, Questions 18 – 23

The proposed revisions to the Disclosure Questions include the addition of several questions which “pertain to entities who have key individuals or control individuals who are or have ever been licensed as attorneys or accountants or who hold or have ever held a financial services professional license.” Specifically, Company MU1 would add the following questions as Questions 18, 20, and 22.

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18. Have any key individuals or control individuals as identified in the entity's NMLS record ever had their license to act as an attorney revoked, suspended, or restricted?

20. Have any key individuals or control individuals as identified in the entity's NMLS record ever had their license to act as an accountant revoked, suspended or restricted?

22. Have any key individuals or control individuals as identified in the entity's NMLS record ever had a financial services license or any other professional license revoked, suspended or restricted?

Each of these questions are limited to key individuals or control individuals “identified in the entity’s NMLS record” and there are similar questions in the proposed Individual MU2 disclosures. Specifically, the Individual MU2 would include the following disclosure questions:

18. Have you ever had an ability or authorization to act as an attorney, accountant, or a contractor on behalf of a federal, state or local government entity restricted, revoked, debarred or suspended?

20. Have you ever had a financial services license or any other professional license ever restricted, revoked, debarred or suspended?

Given the inclusion of these questions in the proposed Individual MU2 disclosure section, it seems redundant to include the same questions in the Company MU1 disclosure questions when the Individual MU2 Disclosure questions could be modified slightly to capture the same information.

Also, it seems more appropriate that these disclosure questions appear in the Individual MU2 disclosures section for several reasons. First, a Company may not have knowledge of events that occurred while a Control Person / Key Individual was employed with another entity. Second, if an entity reports such a matter on the Company MU1 Record, the individual may not have knowledge of the disclosure or be in a position to address any questions concerning the matter. Historically, questions relating to individuals have been separate from the company disclosure questions, which gives the individual the power to control any personal data that is reported. Third, if this information is reported in the Company MU1 Record it will remain on the Company MU1 Record for a ten (10) year period which would not necessarily be relevant to a regulator evaluating the Company MU1 after the individual is no longer associated with the entity.

If the SRR nevertheless determines that it is necessary and appropriate that Regulatory Action Disclosure – Part II, Questions 18 – 23 remain part of the Company MU1, the language should be similarly phrased to ensure that the responses are consistent. On the Company MU1, Questions 18-23 ask if a license has been “revoked, suspended, or restricted,” whereas the Individual MU2 asks if the individual has ever had a license “restricted, revoked, debarred or suspended”. In addition, it may be worth noting that governmental agencies typically take action to debar an individual or entity, as opposed to debarring a license.

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Finally, we note that “control individual” does not appear to be a defined term. If the term “control individual” is intended to mean something different than “key individual,” which is a defined term, it should be specifically defined so as to make clear the distinction between key individuals and control individuals. Otherwise, it will serve to create more confusion.

Glossary – Addition of Defined Terms

The addition of a the term “key individual” is helpful and appreciated. However, the definition seems to introduce the concept of a ‘leadership role’ that is likely to create confusion. The MSB Model Law defines “key individual” as an “individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.” In the commentary to the MSB Model Law, it makes clear that key individuals are limited to the natural persons responsible for establishing or approving policies and procedures relating to material functional areas of the licensee or applicant, such as compliance, finance, information security, and operations, and strongly encourage states to utilize the NMLS Key Individual Wizard to ensure consistency, including that only the minimum number of key individuals with ultimate responsibility for policies and procedures are identified. On the Contrary, the definition of key individual for purposes of the NMLS Policy Guidebook Glossary defines the term to include the ‘Highest-Ranking Executive’ **and** individuals who can exercise control by virtue of ownership, a leadership role, or responsibility for establishing, maintaining, and approving policies and procedures for denoted functional areas. The reference to leadership role is very broad and is likely to capture lower level officers, team leaders, supervisors and even branch managers. Also, it is our understanding that the Key Individual Wizard seeks to identify those individuals who are *ultimately* responsibility for *establishing or directing the policies and procedures* of the licensee. By adding the term “maintaining,” the question may cause entities to go beyond the highest-ranking officers or individuals with ultimate responsibility to establish and direct the entity’s policies and procedures.

We also are concerned about the change to the definition of “Found” because it fundamentally alters the response to several existing Company MU2 and Individual MU1 disclosure questions. While consent degrees and orders have prompted affirmative responses to disclosure questions without limitation, agreements and settlement agreements where the respondent has neither admitted nor denied the findings or for which there are no findings have not necessitated an affirmative response to regulatory action disclosures. It will be a burdensome task for key individuals, multistate licensees and entities with multiple control affiliates to re-examine their responses to these questions going back for a period of ten (10) years. Also, some of the key individuals may have changed employers and no longer have access to these materials for their former employer to re-evaluate.

As SRR is likely aware, there are many circumstances where the licensee adamantly disagrees with the alleged findings but due to the time and expense associated with defending and appealing regulatory actions, both the regulator and the entity mutually agree not to devote time and resources to debating the matter. In these circumstances, the licensee should not have to answer affirmative to a question that suggests that a final determination was made with respect to violations of law or

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any of the other questions that use the term “found” because it is inherently inaccurate regardless of how the term “found” is defined. Rather than altering the definition of “found” as proposed, SRR could create a distinct set of questions that asks whether the entity, control affiliate or key individual on or after [date new questions are added to the NMLS] has entered into an agreement or settlement that is a matter of public record in which the respondent has neither admitted nor defined the findings, where a Governmental Entity alleged [insert variations of the questions that contain the word ‘found’].

Finally, we appreciate the addition of the term “Material litigation” because it provides a uniform standard. However, this could present challenges for control affiliates, sole proprietors or smaller organizations that are not have audited financial statements prepared because these entities, which may include sole proprietors, may not be familiar with or have on staff someone with the necessary credentials to render an opinion that requires an interpretation of an accounting standards.

* * * * *

Again, we appreciate the opportunity to offer feedback. Should you have any questions or would like to discuss the proposed disclosure questions in more detail with our team, please feel free to contact me via telephone at (202) 263-3315 or via email at kcooley@mayerbrown.com. Thank you.

Regards,

A handwritten signature in blue ink that reads "Krista Cooley". The signature is written in a cursive, flowing style.

Krista Cooley

8/22/2022

SENT VIA ELECTRONIC MAIL

Tim Doyle
Senior Vice President State Regulatory Registry LLC
Conference of State Bank Supervisors
1129 20th Street, N.W, 9th Floor
Washington, DC 200036
comments@csbs.org

Dear Mr. Doyle:

We appreciate the opportunity to submit comments to the State Regulatory Registry LLC's ("SRR") Request for Public Comment for the proposed revisions (the "Proposal") to the NMLS Disclosure Questions. We provide comments to the Proposal below for your consideration.

1. Prospective Reporting for Material Changes: Any proposed change that produces a material request for new reporting information should be prospective.

The scope of the disclosures has expanded, and many entities have longstanding disclosure responses. We request that changes in disclosures that result in a material request for new reporting information for both companies and individuals be prospective only. Otherwise, existing entities and their associated individuals will have to conduct significant and invasive historical reviews to identify items not previously captured. This increases the likelihood that entities and individuals would inadvertently make inaccurate disclosure as they would now have to answer questions they would not have considered previously. In addition, the changes may have regulatory implications due to new items that previously did not require disclosure, despite an absence of any change to state law.

We suggest that requests for new information should be reported as of the date the disclosure questions are put into place within the system and not retroactively. For example, we suggest that proposed Company Civil Judicial Disclosure question 1. would read:

1. Has any court:

a. since [NMLS implementation date], found the entity or a control affiliate to have made a false statement or omission or been dishonest, unfair or unethical?

b. in the past 10 years, found the entity or a control affiliate was involved in a violation of any financial services statute or regulation?

c. since [NMLS implementation date], found the entity or a control affiliate to have been a cause of another financial services business, having its license or authorization to conduct a business activity denied, suspended, revoked or restricted?

d. in the past 10 years, enjoined the entity or a control affiliate in connection with any financial services activity?

e. in the past 10 years, dismissed, pursuant to a settlement agreement, a financial services civil action brought against the entity or control affiliate by a State or foreign financial regulatory authority?

f. since [NMLS implementation date], dismissed, pursuant to a settlement agreement, a financial services civil action brought against the entity or a control affiliate by a Federal, Local authority or any consumer protection authority?

Providing a means to report new disclosure requests as of the date of NMLS implementation would result in the transparency sought, permit future applications to be evaluated based upon the new disclosure questions, but also preclude unnecessary regulatory impacts for companies and individuals. In addition, while obtaining the requested information for the entity itself may be less burdensome, expanding the request for new information to control affiliates and individuals with a retroactive date may be challenging for some entities to report accurately. Many entities would not have necessarily tracked these specific items as they were not previously reportable. These entities have been in existence for a long period of time, many whose existence even predates the existence of the NMLS system. For items that were not previously subject to specific tracking it will be very difficult for those entities and individuals to report with accuracy and not be subject to a false attestation claim.

In addition, clarifying the timing of new disclosure requests as of the date of NMLS implementation would allow for NMLS to implement mapping to pull over existing disclosure responses within an entity or individual's record. Pulling over existing responses would assist not only entities and individuals with accurately responding to disclosure questions but also assist regulators with their review of the disclosure question updates. It is our understanding that, in past disclosure question updates, there have been issues with entities and individuals mistakenly marking answers to "new" disclosure questions because they did not have an easy way to reference previous responses. While the ultimate burden lies on the individual attesting to the record to ensure that they have closely reviewed disclosure questions, providing a point of reference for past responses will ease the burden of responding to a newly formatted set of disclosure questions.

2. "Found" Definitional Amendment: How does one identify what is a matter of public record?

The term "found" has been newly defined to provide that it expressly includes agreements or settlements that are a matter of public record. What is a matter of public record has not been defined, and without clarity, it will be difficult for an entity to identify what must be disclosed. Although many state regulatory agencies clearly and consistently identify to the parties whether an agreement is a matter of public record, not all do so. In addition, some regulatory agencies have initially not disclosed actions publicly and subsequently made public disclosure. Although some regulatory agencies have informed the companies when they are doing so, again, not all do so. As a result, we have concern that this change will place companies in a position of being unable to control when the answer is correct, or be forced to unnecessarily disclose non-public

actions for fear of a subsequent publication of the order. We also believe that this definition is unnecessarily difficult. We propose that a licensee should be able to rely on whether or not the regulatory agency has uploaded the action to Regulatory Actions section of the NMLS separately. Ideally, actions uploaded by the regulatory agency would automatically tie to the appropriate disclosure question(s). Absent the addition of such system functionality, allowing the licensee to rely on the presence of uploaded actions retains the ability of the regulatory agency to make a determination of whether the action should be public, but also ensures that the company will have notice of such publication and be able to adjust appropriate responses to disclosure questions. If the agency consistently does so, the entity's record should be considered accurate.

3. "Court" Definitional Amendment: We request express confirmation that the change regulating in the addition of a definition of the term "court" does not materially change the disclosure questions.

The term "any court" has replaced the list of courts within several disclosure questions. The term "court" is now defined to include, but is not limited, to a domestic, foreign, military or tribal court. We believe that the change to this term has not substantively changed the questions. However, we request confirmation that there is no expected effect on previous disclosure questions resulting from this change.

4. "Order" Definitional Amendment.

The proposed definitional changes state that an "order" now includes orders agreed to by the parties, including consent orders and stipulated orders. The former definition excluded special stipulations, undertakings or agreements relating to payments, limitations on activity, or other restrictions unless they are included in an order. Based upon the new definition, companies or individuals could believe that they would now need to disclose previously excluded stipulations. We recommend that the definition be amended to clarify that stipulations remain excluded, unless they otherwise qualify as an order. Otherwise, this would be a material change and companies would have challenges in accurately answering the relevant disclosure questions if they have not specifically tracked voluntary stipulations that previously did not qualify as an order.

5. "Key Individual" Definition: We recommend elimination of the "key individual" term, or clarification be provided on its affect upon the scope of the disclosure answers.

A "key individual" is a newly defined term, which expands the disclosure obligations beyond disclosed control persons. This definition includes, notably, any individual who can exercise control within an organization by virtue of responsibility for establishing, maintaining, and approving policies and procedures for denoted functional areas. This extends the reach of disclosure questions broadly, as many individuals are tasked with maintaining policies and procedures, but who in no way exercise control over an organization, and thus extends the question to include individuals not presently included in the control person definitions. We recommend this definition be eliminated, and the questions be limited to disclosed control persons. Alternatively, we recommend clarification be provided that this does not extend to individuals who are not control persons.

6. "Unsatisfied" and "Lien" Definitions: We recommend these definitions be clarified to exclude routine security interests.

These terms "unsatisfied" and "lien" are newly defined. The term "lien" lists different types of liens, but the definition also states that it is not limited to this list, other than excluding mortgage liens. The term "unsatisfied" incorporates is any item that is not paid in full. We believe these definitions are overbroad, and

should be amended to exclude all security interests or liens that merely secure an obligation, where the obligation is not in default. For example, if there was a fixture filing financed purchase of installed goods, this would need to be reported since payments are being made, and the underlying obligation has not yet been paid off in full. As another example, construction and mechanics liens are filed, or exist as a matter of law in some cases, with respect to in-progress construction. Lien waivers are routinely obtained during the construction process, but disclosures could be required under the present definition. However, a definitional change that speaks to a default on an underlying obligation, rather than simply “not paid in full”, would clarify the intended, more limited, scope of the disclosure question.

7. Company Financial Disclosure, Question 12: the scope and definition of “material.”

Question 12 asks whether a third-party service provider notified the entity of its intent to modify or cancel an arrangement with the entity that would materially alter the entity’s ability to conduct its business activities. The term material is subjective and creates a circumstance where the company and a regulatory agency could disagree on when such modification or cancellation is material. We request that the question be changed to ask whether a third party service provider notified the entity of its intent to modify or cancel an arrangement with the entity that would substantially impair or prohibit the entity’s ability to conduct its regulated business activities. With this question clarified, disclosures can be made more accurately.

8. Company Disclosure Questions 18-23: Elimination of Duplicative Disclosure Questions.

We propose that questions 18-23 of the Company Disclosure Questions should be removed as they are duplicative in nature. The questions relate solely to individual disclosures. Each individual who is subject to these questions has already responded to these questions (or very similar questions) in their individual record and attested to their accuracy. The individuals are in the best position to answer these questions. The removal of the questions from the company disclosure would not remove any oversight by the regulatory agencies over the company or key individuals.

The scope of the individual disclosure obligation is large, and the amended disclosure questions only increase it. The ability of licensees to track individuals’ records is limited and relies upon the individual. We recommend that the disclosure questions make clear that the obligation is on the individual, and confirm that licensees are able to rely in good faith on attested individual records with respect to actions that occurred outside of the individual’s relationship with the licensee.

9. Necessary addition of definition of “Professional license”.

We note that Questions 22 and 23 of the Company Disclosure Questions ask about the status of individual’s professional licenses. While the heading that appears prior to Questions 18-23 indicates that they pertain to key individuals or control individuals who are or have ever been licensed as attorneys or accountants or hold or have ever held a financial services professional license, Questions 22 and 23, themselves both contain language with respect to “a financial services license or any other professional license.” We note that the same issue is present within the Individual Disclosure Questions, specifically as relates to Question 20 and Question 21. However the applicable header include prior to the Individual Disclosure Questions includes not only financial services professional licenses and authorization to act as an attorney or account, as in the mirrored Company Disclosure Questions, but also includes an individuals that “are or have ever been authorized to act as a contractor on behalf of a federal, state or local government entity.” If the duplicative Company Disclosure

Questions are left in place, [see comments above suggesting removal], then, at a minimum, the introductory headers should match between the Company Disclosure Questions and the Individual Disclosure Questions.

In addition, while the term “financial services” is defined, the term “professional license” is not. If the intent is to capture only non-financial professional licenses that relate to attorneys or accountants, as mentioned in the header relating to Company Disclosure Questions, then that should be clarified by the addition of a definition of “professional license” that includes the same scope. Without this clarification, the term “professional licenses” is quite broad and could include numerous licenses, and individuals would be left to decide what licenses qualify as “professional” licenses. This will result in unnecessarily inconsistent disclosures across individuals.

10. Civil Judicial Disclosures for Individuals: Prior companies and regulatory actions.

The revised proposal questions ask that individuals disclose regulatory actions taken against companies they exercised control over. We understand that these amendments are generally clarifying in nature and that these obligations exist at present. However, we recommend that these disclosure questions be eliminated, or limited to actions of which they are informed by the applicable regulatory agencies. Outside of actions that occur while an individual is with a company, individuals would typically not be aware of actions taken against prior companies they exercised control over. Once an individual takes a new position, they are not typically monitoring whether regulatory actions have been taken against one or more of their prior employees by state regulatory actions. In addition, some state agencies do not publicize the actions beyond their own websites. As a result, this question places individuals in a position where they are likely unable to answer accurately. We believe this is unnecessary. Accordingly, we recommend these questions be eliminated, or limited to actions individuals are informed of by the applicable regulatory agency during the time frame that the individual served as a control person for the prior entity. For example, we would suggest that the phrase “while you exercised control over an organization” be replaced with “at the time you exercised control over an organization.” Given that the agencies are the ones taking these actions, and also have a complete record of all control persons, the agencies themselves are the only parties that actually have sufficient accurate data to answer these questions.

McGlinchey Stafford appreciates the opportunity to provide these comments in request to the Request for Public Comment with respect to NMLS Disclosure Questions. If you have any questions concerning our comments, or if our firm may otherwise be of assistance, please do not hesitate to contact us.

Tim Doyle
8/22/2022
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Sincerely,

McGlinchey Stafford PLLC

A handwritten signature in blue ink that reads "AGreenwood-Field". The signature is written in a cursive, flowing style.

Amy Greenwood Field
Attorney at Law

/s/ Jeffrey Barringer

Jeffrey Barringer
Attorney at Law

/s/ Robert Savoie

Robert Savoie
Attorney at Law

20945983.1



Adam J. Fleisher
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August 22, 2022

Conference of State Bank Supervisors
1129 20th Street NW, 9th Floor
Washington, D.C. 20036
comments@csbs.org

Re: Request for Public Comment: NMLS Disclosure Questions

To Whom It May Concern:

This letter is submitted on behalf of The Money Services Round Table ("TMSRT")¹ in response to the request for comments on the NMLS Disclosure Questions (the "Disclosure Questions") issued by the Conference of State Bank Supervisors ("CSBS").

TMSRT supports the fair, efficient, and effective regulation of money services companies that helps ensure that customer funds are protected as appropriate, financial services providers are safe and sound, and money laundering, terrorist financing, and other illicit activity is detected and prevented to the extent reasonably possible. Consistent with that position, we have sought to consistently engage with and provide feedback to CSBS throughout the course of its Vision 2020 initiative. Our efforts included supporting CSBS' drafting of the "Model Money Transmission Modernization Act" (the "Model Act"), which is an effort to harmonize regulation of money transmitters based on a single set of nationwide standards and requirements. TMSRT supports the implementation of the Model Act on a state-by-state basis, as appropriate, to facilitate harmonized licensing, examination, and supervision of money transmitters.

The Model Act establishes, among other things, specific information that must be included in licensing applications regarding an applicant (and then a licensee's) criminal convictions (including pending convictions) and material litigation. The Model Act also requires applicants to provide information regarding any disciplinary actions in other states, and information regarding bankruptcies and related issues. Individuals that are either in control of a licensee or applicant, or are otherwise key individuals, must also disclose information regarding criminal convictions (including pending convictions) and "[i]nformation related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract."

The Disclosure Questions proposal states that some of the revisions to the current NMLS disclosure questions, such as relating to material litigation, are needed because of the Model Act. However, TMSRT is concerned that the disclosure questions go *well beyond* what is currently required by statute or regulation for licensed money transmitters, and if expanded as contemplated by the proposal would increase the complexity, challenges and burden of applicants and licensees, and relevant personnel, without material benefit to the safety and soundness of licensees or the protection of consumers. That is, the Disclosure Question proposal would drastically expand the scope of disclosures that licensees would be required to make about the entity and its control affiliates, including the parent corporation

¹ TMSRT is comprised of the leading non-bank money transmitters RIA Financial Services, Sigue Corporation, American Express Travel Related Services Company, Inc., Western Union Financial Services, Inc. and Western Union International Services, Inc., and MoneyGram Payment Systems, Inc.



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In this regard, as TMSRT has stated before, we believe it is essential that disclosure questions in NMLS for money transmission companies be amended and narrowed to track the types of disclosures required under state money transmission statutes. The NMLS disclosures were prepared for the mortgage industry before NMLS was used for money transmission licensing. Not only do the questions not align with the types of disclosures that are required by state money transmission statutes (or the Model Act, for that matter), but they also are not expressly limited to the U.S. activities of the licensee. Legal regimes of other countries do not map to U.S. legal concepts and it can be very challenging, if not impossible, for licensees to ascertain whether non-U.S. matters are responsive (and licensees often cannot consult underlying statutes to make a determination because there are no such corresponding disclosure requirements in the underlying statutes). The breadth of the disclosure questions exacerbates these challenges.

TMSRT believes, therefore, that disclosure questions should be U.S.-specific, more limited to matters relevant to the safety and soundness of the licensed money transmitter, and drafted with precision so that they are easily understood by licensees as well as regulators. Additional comments on specific items are provided below.

New Definitions

The definition of “financial services” is expanded to include “consumer protection laws,” which is in turn defined to include “laws or regulations . . . [that] require disclosure to consumers.” There may be countless laws or regulations that impose requirements to make disclosures to consumers and it is not practical to expect covered entities to be able to ascertain whether any particular law could be deemed to constitute a “consumer protection law” by virtue of requiring something to be incidentally disclosed. This definition should be limited to the more common understanding of consumer protection laws as laws preventing unfair, abusive, and deceptive practices only.

Additionally, the definition of an “Order” should be revised to expressly confirm that a memorandum of understanding is not an order. This clarification is consistent with the statement that an order does not include “agreements that related to . . . restrictions unless such agreements are included in a written directive that otherwise qualifies as an order.”

Finally, the definition of a “governmental entity” (relevant to items including Question 14 of the Company disclosures) includes any entity that “regulates financial services activity.” This definition creates a redundancy because the relevant question asks about both a “regulatory agency” or a “governmental entity.” An entity that regulates financial services activity is a regulatory agency and the definition (and the corresponding question) should be streamlined accordingly.

Company Disclosures

Civil Judicial Disclosure

- As noted above, entity-level disclosures should be limited to U.S. located entities and/or U.S. activities because of the complexity, diminished relevance, and inability to reasonably map non-U.S. matters to the United States legal regimes. The Model Act recognizes this limitation in primarily focusing on U.S. matters, and requires information regarding matters outside of the United States only in connection with an individual that has resided outside of the United States (and only then in the context of a third-party investigative background report).
- New question 1(c) regarding the entity or a control affiliate being “the cause” of another financial services business “having its license or authorization to conduct a business activity denied, suspended, revoked or restricted” is a new and undefined concept. It is also beyond the scope of

current law and suggests an extrajudicial notion of liability. We believe this question should be removed.

Financial Disclosure

- Question 9 regarding the actions of a bonding company should not add the new question regarding denial of “issuance” of a surety bond, as what constitutes a “denial” is vague and undefined. For example, this can be a purely commercial matter (e.g., the surety’s pricing is not amenable to the entity) and should not be the subject of a disclosure as it does not directly implicate the safety and soundness of the licensee. If an applicant cannot get a surety to agree to issue bonds on terms to which the person is willing to agree, the applicant would not be able to proceed with licensing in any event.
- New Question 12 is not an appropriate or relevant financial disclosure question. This question asks whether “a third-party service provider notified the entity or a control affiliate of its intent to modify or cancel an arrangement with the entity or a control affiliate that would materially alter the entity’s ability to conduct its business activities for the license it holds or intends to hold.” This question pertains to business operations of the licensee, not its financial condition. It is not grounded in any statutory requirement for a money transmitter of which we are aware; if it was a matter of such significance, it should have been discussed and addressed through the Model Act process. Furthermore, the activities of a control affiliate in this context appear to be extremely out of scope, and it is not clear what a regulator would do with this information and how it informs the evaluation of the financial condition of the licensee.

Regulatory Action Disclosure

- We reiterate our comment above regarding the entity being a “cause” of (by implication) another financial services business having its license or authorization to conduct business being revoked, etc. It is also not clear how an applicant or licensee entity would be able to discern an answer to this question with respect to a pending action given the open-ended nature of the question.
- With respect to the disclosure questions regarding key individuals and control individuals, the references to whether a pending action “could result” in a certain outcome is broad, vague, and ambiguous. The question should only be required to be answered with respect to whether the specific remedy is being sought, or else entities (and the relevant individuals) will be required to make unfounded and potentially baseless speculations.

Individual Disclosures

Regulatory Action Disclosure

- With request to the questions in Part II of the regulatory action disclosures, we reiterate our comments above that asking whether a matter “could result” in a particular outcome is too speculative and ambiguous and should not be part of the relevant questions.

Individual Disclosures Pertaining to Control Activities

- As a general comment, these questions have a timing incongruity in the sense that they ask whether, based on activities that occurred when a person exercised control over an organization, there are *currently* certain pending actions. If the individual is no longer affiliated with the relevant organization, the individual may not have a basis to answer or answer with certainty; certain matters may be

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confidential and not disclosable to former employees, even high-level employees. These questions should therefore be amended to include a knowledge qualifier, e.g., “Based on activities that occurred while you exercised control over an organization, **are you aware of ...**”

- The introductory language of Question 28 should be clarified to reflect that it is asking about the organization over which the individual exercised control, and not “any organization.”
- Question 28(a)(iii) is unclear. It asks whether a regulatory agency, etc., has ever “entered an injunction from association with a financial services business.” We request that CSBS revise and clarify what is contemplated by this question.
- Similarly, Questions 28(a)(v) and (vi) are broadly drafted, use language that does not map to either of the introductory provision (i.e., with respect to the types of relevant authorities), and appears to overlap with the other questions. We request that CSBS revise and clarify what is contemplated by this question as well.
- With respect to Question 28(b) and (c), we reiterate our opposition to the use of the speculative language “could result” in a finding and believe it should be deleted.
- Question 29 asks whether, in relevant part, there has “ever” been any of the enumerated actions. The inclusion of “ever” is inconsistent with the time-bar based on when the person exercised control over the organization, and therefore should not be included.

+ + +

As a final matter, TMSRT believes that, with respect to any new disclosure questions that are ultimately added, or that are otherwise materially modified to be potentially more expansive than currently, such disclosures should apply only prospectively. In other words, existing licensed money transmitters should not be required to go back 10 years, on a global basis, to identify any additional matters that may be disclosable as a result of new questions.

Additionally, in light of the significance of the proposed changes, and the extent of the comments, we respectfully request that CSBS republish the updated disclosure questions, with modifications, before finalizing them, so that industry participants have an opportunity to review the updated proposed final versions.

The Model Act creates an opportunity to harmonize the regulation of money transmission in the United States through a single electronic system based on consistent statutory authority. However, we believe that NMLS must be consistent with the Model Act, and with underlying harmonized state money transmission laws, as opposed to attempting to create *de facto* requirements untethered to law. TMSRT intends to continue to support efforts to harmonize the regulation of money transmission companies based on consistent state statutory authority through the Model Act, but the implementation of NMLS must be consistent with this underlying authority. Should you have any questions concerning the above comments please do not hesitate to contact me at afleisher@cooley.com or (202) 776-2027.

Sincerely



Adam J. Fleisher
Counsel to The Money Services Round Table

Janine Bjorn

Subject:

FW: Comments on Disclosure Questions

From: Nancy Pickover <nancyp@vipmtginc.com>
Sent: Friday, August 12, 2022 1:08 PM
To: Janine Bjorn <jbjorn@csbs.org>
Subject: [External] Comments on Disclosure Questions

Hello Janine,

It was so good to finally see everyone again!

As we discussed, VIP does not have any comments on the proposed changes to the disclosure questions. Thank you.



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IMPORTANT NOTICE TO OUR VALUED CUSTOMERS: We advise you to never trust wiring instructions sent via email. Cyber criminals are hacking email accounts and sending emails with fake wiring instructions. These emails are convincing and sophisticated. Always independently confirm wiring instructions in person or via a telephone call to a trusted and verified phone number. Never send money without double-checking that the wiring instructions are correct.

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