

MIKE BEEBE  
GOVERNOR

A. HEATH ABSHURE  
COMMISSIONER



HERITAGE WEST BUILDING, SUITE 300  
201 EAST MARKHAM STREET  
LITTLE ROCK, ARKANSAS 72201-1692  
TELEPHONE: (501) 324-9260  
FACSIMILE: (501) 324-9268

## ARKANSAS SECURITIES DEPARTMENT

October 14, 2014

Joseph Brady, General Counsel  
North American Securities Administrators Association, Inc.  
750 First Street, NE Suite 1140  
Washington, DC 20002

RE: Request for No-Action Letter Regarding Money Transmitter License  
No-Action 14-NA-0003

Dear Mr. Brady:

The Arkansas Securities Department ("Department") has received your request dated September 29, 2014 regarding the proposed activities by the North American Securities Administrators Association, Inc. ("NASAA") operating the Electronic Filing Depository ("EFD") to process Form D notice filings and fees for our state. The request seeks confirmation that the Staff of the Department ("Staff") will neither take nor recommend enforcement action regarding licensing provisions of the Uniform Money Services Act, Ark. Code Ann. §§ 23-55-101 through 23-55-1006, ("Act"), if NASAA undertakes activities as described in your request. A copy of your request is attached to avoid reciting or summarizing the facts that you have presented. Based upon the opinions and representations set forth in your request, the Staff will not recommend enforcement action under Section 23-55-803 of the Act should the proposed activities take place as set forth in your request.

Please note that the position of the Staff is based solely upon the representations made to it in your request and applies only to the facts set out therein. Different facts or circumstances might, and often would, require a different response. The Staff only expresses its position as to the recommendation of formal enforcement action and does not purport this position to be a legal opinion or formal conclusion.

If you should have any questions or need additional information, please contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "David H. Smith".

David H. Smith  
Chief Counsel

Attachment



NASAA

**NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.**

750 First Street N.E., Suite 1140

Washington, D.C. 20002

202/737-0900

Fax: 202/783-3571

www.nasaa.org

September 29, 2014

A. Heath Abshure  
Arkansas Securities Department  
Heritage West Building  
201 East Markham, Suite 300  
Little Rock, AR 72201-1692

RECEIVED  
14 OCT -3 AM 8:14  
ARKANSAS SECURITIES DEPT.

Dear Commissioner Abshure,

The North American Securities Administrators Association, Inc. (“NASAA”), in conjunction with state securities regulators, is developing the Electronic Filing Depository (“EFD”). Because of the ambiguity of state money transmitter laws, it is possible that some states may consider EFD to be a money transmitter, requiring state registration. As explained more fully below, NASAA takes the position that EFD is not a money transmitter, and does not need to register as such. NASAA requests that you concur that EFD does not need to register as a money transmitter in your respective jurisdictions. NASAA also requests your assistance in securing similar opinions for the other states that regulate money transmitters.

EFD is a web-based solution that will allow state securities regulators to collect securities and other related filing notices and filing fees in compliance with state and federal law. The EFD system will move issuers from a paper based filing system to an electronic system. Upon release EFD will allow filers to submit Form D for Regulation D, Rule 506 offerings and will provide a public-facing website allowing members of the public to search and view filed Form Ds. EFD will provide filers a complete management tool for their Form D filings, allowing filers to generate reports on filing activities including filing history, payments, and payment history. Similarly, EFD will provide state regulators with the tools necessary to manage Form D filings in their respective states.

Ancillary to EFD’s functionality as a Form D filing and management tool, EFD will transmit state mandated Form D filing fee payments from filers to the states using Automated Clearing House transactions (“ACH”). Filers will enter their bank account and routing information into EFD. Upon making a Form D filing and incurring state mandated filing fees, EFD will write that

President: William Beatty (Washington)  
President-Elect: Judith M. Shaw (Maine)  
Past-President: Andrea Seidt (Ohio)  
Acting Executive Director: Joseph Brady

Secretary: Kathryn Daniels (Ontario)  
Treasurer: Michael Rothman (Minnesota)  
Ombudsman: Keith Woodwell (Utah)

Directors: Joseph P. Borg (Alabama)  
Melanie Senter Lubin (Maryland)  
Gerald Rome (Colorado)  
Daphne D. Smith (Tennessee)

information to a NACHA<sup>1</sup> file with Metropolitan Bank<sup>2</sup> to withdraw funds from the filer's bank account. Using the FedLine Advantage<sup>3</sup> ACH system, these funds are then deposited into a Metropolitan Bank account established, maintained and held by NASAA exclusively for such purpose (the "Clearinghouse Account"). The funds are subsequently distributed by ACH to accounts designated by the states.

Generally, state money transmitter laws regulate the business of receiving money for the purpose of transmission to another person or location.<sup>4</sup> Although the EFD system will transmit state mandated Form D filing fee payments from filers to the states, EFD should not be captured by the state money transmitter laws because (1) EFD is not the type of entity those laws are designed to regulate, and (2) the EFD transactions will be suitably regulated by other state and federal banking laws.

#### 1. NASAA is not in the Money Transmitter Business

Money transmitter statutes, and the definitions of money transmission, are broad and capture many forms of money transmission. However, "the only explicit limitation within the definition itself is the requirement that the money transmitter provide money transmission as a business."<sup>5</sup> Money transmission services that are incidental to non-commercial activity are thus not captured by the money transmitter laws.<sup>6</sup>

As an initial matter, NASAA is a non-profit organization subject to the District of Columbia Nonprofit Corporation Act and section 501(c)(3) of the federal tax code, restricting NASAA from commercial activity.<sup>7</sup> Article III of NASAA's Articles of Incorporation limits NASAA's allowable purposes and objectives strictly to certain securities market related activities. This includes investor protection, preserving the integrity of the financial markets and promoting uniform policies for NASAA's members, among others. Article IV of NASAA's Articles of Incorporation states that "[n]o part of the net earnings of the Corporation shall inure to the benefit of any director, trustee, creator or organizer of the Corporation, or substantial contributor to it or any private individual." NASAA developed the EFD system to further its broader mission of investor protection and promoting uniform policies for NASAA members, as outlined in the Articles of Incorporation. Thus NASAA's

---

<sup>1</sup> NACHA is a self-regulatory organization that manages the development, administration and governance of the ACH network.

<sup>2</sup> Metropolitan Bank is a Mississippi state chartered bank.

<sup>3</sup> FedLine Advantage is operated by The Federal Reserve Banks.

<sup>4</sup> Kevin V. Tu, Regulating the New Cashless World, 65 Ala. L. Rev. 77, 86 (2013).

<sup>5</sup> *Id.* at 88.

<sup>6</sup> *Id.* at 90. This concept is also explicitly codified in some money transmitter statutes. *See, e.g.*, Kan Stat. Ann. §9-511(b) (2001) ("This act also shall not apply to the distribution, transmission or payment of money as a part of the lawful practice of law, bookkeeping, accounting or real estate sales or brokerage or as an incidental and necessary part of any lawful business activity."); 31 C.F.R. §1010.100(ff)(5) (stating that a money transmitter shall not include a person who "[a]ccepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.).

<sup>7</sup> Both the federal tax code and the District of Columbia Nonprofit Corporation Act limit nonprofit corporations to operating primarily or exclusively for one or more charitable purposes. *See* I.R.C. § 501(c)(3) and D.C. Code § 29-401.02(3).

own Articles of Incorporation, as well as local and federal law, constrains NASAA from conducting any commercial business, including money transmittal business.

Further, any money transmittal services in connection with EFD are incidental and necessary to the larger regulatory purpose of the system. As previously stated, filers will be able to submit their Form D filings and any related state filing fees through the EFD system. NASAA will charge filers a fee for using the EFD system to cover related expenses such as hosting, maintenance and support. The goal of the EFD system is to simplify the Form D filing process, as filers will be able to make all of their Form D filings and payments in one place, rather than undertaking the time and expense of making separate filings with multiple states. The state related fees, as well as the EFD system fee, are merely incidental to these larger services provided by EFD and NASAA.

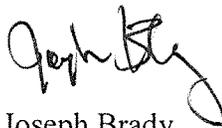
## 2. The EFD Transactions will be Regulated by State Banking Laws

Upon release of the EFD system, all payments will be managed through ACH transactions. As noted above, all payments by filers using EFD will be collected using the ACH system into the Clearinghouse Account. The funds are subsequently distributed by ACH to accounts designated by the states. The Clearinghouse Account will be held in Metropolitan Bank and will be governed by title 81 of the Mississippi Code and regulated by the Mississippi Department of Banking and Consumer Finance. The ACH transactions are regulated by the NACHA Operating Rules and Guidelines and the Federal Reserve System. Thus each step of the transmittal process is fully regulated by a state or federal regulator. This oversight will sufficiently protect EFD users from losses, obviating the need for additional oversight of the EFD system.

The EFD system will greatly benefit Form D filers, state securities regulators and the securities markets as a whole by simplifying the filing process. Choosing to regulate NASAA as a money transmitter potentially limits EFD's benefits and will not provide any additional protection to EFD filers.

Thank you for your consideration in this manner.

Sincerely,



Joseph Brady  
General Counsel and  
Acting Executive Director