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26 November 2018

Mr. Kenneth H. Riddle  
United States Department of Transportation  
Federal Motor Carrier Safety Administration  
Office of Registration and Safety Information  
Federal Docket Management System  
Docket ID No. FMCSA-2016-0102

Subject: Comment - Agency ANPRM for RIN 2126-AC10  
Broker and Freight Forwarder Financial Responsibility

From: Marold Studesville, CEO/Owner  
Transport Financial Services, LLC  
FMCSA Filer NO. 26027

#### **ORGANIZATION:**

As an organizational expedient, this final presentation incorporates by reference the forwarded informal presentation submitted by Transport Financial Services, LLC ("TFS" herein) on 12 May 2018, itself responsive to the original publication of the text of the current RIN 2126-AC10 as since incorporated in the referenced ANPRM (with attachments already a matter of public record deleted). Essentially, such an arrangement facilitates consideration of a preexisting concise outline already evaluated and accepted by the FMCSA's administrative division responsible for such arrangements to the extent of apparently having been reflected in the precise explanatory language of the current ANPRM, Subsection "A" of which is captioned "Two Key Issues Stakeholders Want to be Addressed". To be sure, it's obvious that when referring to such self-identified "Stakeholders" the FMCSA falls short of distinguishing between the always legitimate interests of those relying on collecting future entitlements from BMC-85 surety instrument providers, specifically motor carriers and shippers, and the often questionable benefits of those competing with BMC-85 surety instrument providers, specifically BMC-84 surety instrument providers.

#### **THE FIRST KEY ISSUE:**

In the event, the FIRST such key issue thereby addressed in the text of the current ANPRM states that throughout the previous proceedings and independent inquiries "there was widespread agreement among participants that a significant cause of non-payment among motor carriers and freight forwarders. The ability of motor carriers and freight forwarders is to continue to operate for 30 days after the surety provider notifies FMCSA that it is canceling the broker or freight forwarder's financial responsibility". Hence the evident lack of any significant opposition by any self-identified "Stakeholder" to final regulatory implementation of the "Immediate Suspension" of actual operating authority provisions under 49 USC 13906 (b) (5) and (c) (6). Such was the avenue of (yet to be fully implemented) statutory relief TFS had requested for the very first time on 4 November 2015. More particularly, as already reported to the Agency, one excellent (indeed entirely representative) example of just what can still happen in the meantime would be the case of IGH Logistics, MC-728283, for which TFS had accumulated \$945,739.15 in unpaid motor carrier claims AFTER paying out the full corpus of a \$75,000 BMC-85 Trust.

#### **THE SECOND KEY ISSUE:**

On the other hand, concerning the crucial SECOND issue addressed in the text of the current ANPRM. The FMCSA notes that although (A) "certain stakeholders made it clear to the Agency that there is concern about the financial wherewithal of BMC-85 trust providers, and the sufficiency of the assets within those trusts to pay legitimate claims by motor carriers or shippers. The Agency also has noted that (B) representatives of the BMC-85 trust fund provider community asserted that, with one limited exception, no evidence had been provided showing that BMC-85 providers have failed to pay legitimate claims made on their trusts" by motor carriers or shippers to any significant degree whatsoever. Essentially, NO such legitimate individual "Stakeholders" either (A) willing to testify regarding, or (B) even having been named specifically through any other avenue as suffering any financial losses whatsoever in such regards, have appeared. The same argument would apply to any further rulemaking concerning both (A) "assets readily available to pay claims without resort to personal guarantees." Since no such failure of any such "resort" (itself a hardly subtle legal term of art denoting a "backup" to some primary avenue of collateral any event). Even has been alleged by or on behalf of any BMC-85 claimant so far, and (B) under the unquestioned imperatives of the Uniform Commercial Code receivables are deemed "liquidated" upon purchase. Nothing in any well-established case law would preclude the purchase price thereof then being handed back to the Trustee by the Trustor, for subsequent "investment" under the provisions of BMC-85 paragraph 5. In any event, the ONLY instance of a BMC-85 provider falling short in such regards ever directed to the Agency's attention was when the infamous Oasis Capital merely attempted to "delay" a UCC related trust payment pending "collection", to the

effect no actual continuing shortfall occasioned thereby had been evident by time of Oasis's principal's restitution order.

**SUMMARY:**

Accordingly, further to the premise that it's never a good idea to fix things that aren't broken, particularly if such action would have been sought by the providers of one variety of transportation surety instrument against the providers of another array of surety instruments predicated virtually entirely on a demonstrably nonexistent assemblage of merely presumed economic victims. TFS's at this moment incorporates herein as well the entirety of my own "Post-Event Comments" filed under the same Docket ID, FMCSA-2016-0102, on 16 June 2016, particularly both the "Conclusion" and "Recommendations" Sections on page 8 thereof.

**AFFIRMATION:**

In witness of which I, Marold Studesville, the undersigned CEO and Owner of Transport Financial Services, LLC acting on the date stated in the caption heading above, at this moment swear and affirm that all material representations offer in support thereof are accurate and complete to the best of my knowledge and belief.

Very truly yours,

Marold Studesville  
CEO/Owner

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**DATE: 12 May 2018**

**FROM: Marold Studesville, CEO  
Transport Financial Services, LLC, and TFS Mall**

**TO: Jeff Secrist, Chief  
Registration, Licensing & Insurance Division, FMCSA**

**CC: Other FMCSA Staff  
Including David Miller, Gerald Folsom, Rhonda Scott,  
and  
Antonio Harris**

**RE: Pending Regulatory Initiatives**

**Jeff:**

This formal informational submission pertains directly to matters relevant to both of the exhibits I've included. Exhibit No.1 is a "pasted up" presentation consisting of two FMCSA notices relating to "Broker and Freight Forwarder Financial Responsibility" filed under RIN: 2126-AC10, which with your permission I already had circulated to (and discussed at length during the event) all participants attending the recent Transportation & Logistics Council's 2018 Convention. Next, Exhibit No 2 is the reprinted literal language establishing a "National Hiring Standard" for Broker/Carrier relationships already incorporated as an Amendment to the pending FAA Reauthorization Act (H.R. 4) which passed in the House on 27 April (and is expected to pass in the Senate with the referenced language unchanged sometime in June). Furthermore, by way of background, I'll be citing elements of my own 16 June 2016 "Post-Event Comments" to your agency's 20 May 2016 "Broker &

Freight Forwarder Financial Responsibility Roundtable", filed with the Federal Docket Management System under Docket ID No. FMCSA-2016-0102, the entirety of which is at this moment incorporated herein as an organic component of this submission by this reference

To begin with the "eight separate areas" of "rulemaking action pertaining to the planned implementation" of MAP-21 Section 32918 further to that approved through your agency's "Omnibus Rulemaking" proceeding of September 2013, as itemized in Exhibit No.1 hereof, this submission is intended to express those elements of my own opinion reflective of both (A) more than ten years of experience managing a successful (AAA Rated) BMC-85 surety instrument provider, and (B) consistent advice of experienced transportation counsel and other business professionals, stated as follows:

With respect to area (1) "group surety bonds/trust funds", I respectfully submit that such further rulemaking has already been rendered redundant by functional (as a demonstrably practical matter) full implementation of 49 USC 13906 (b) (3) with respect to brokers, which provides expressly for "financial security of \$75,000 for purposes of this subsection, regardless of the number of branch offices OR SALES AGENTS [emphasis supplied] of the broker, The same can be said of 49 USC 13906 (c) (4) with respect to freight forwarders as well. Accordingly, when considering large agency programs such as CH Robinson, processing some \$12 Billion in freight payments a year with only a single "financial security of \$75,000" statutory requirement, rather than waiting for further rulemaking in that regard the readily available solution for a small "group" of low volume (and/or low net worth) prospective "brokers" is simple: First, organize a member-owned cooperative corporation which could apply for authority. Next, pool the group's resources and credit and secure a surety filing to qualify. Finally, have each of the cooperative members sign up as a "sales agent" for the cooperative and start operating.

With respect to area (2) "assets readily available", please consider again my above referenced 16 June

2016 "Post-Event Comments" to your agency's 20 May 2016 "Financial Responsibility Roundtable" formal fact-finding proceeding To quote from my so far totally un rebutted statement from the last paragraph of page 2 thereof, as a matter of public record " ,,,the sole basis of the conviction and restitution order finalized against the owner of Oasis Capital, the only BMC-85 provider ever to be terminated pursuant to ICC, FHWA, or FMCSA regulatory enforcement action for collateral [i.e. "assets readily available"] related reasons over the course of the past five decades, turned out to be predicated ENTIRELY on imputed fiduciary abuse involving a failure to effect timely REFUNDS" to terminated brokers (emphasis in original). Since to the best of my knowledge, such is still the case, I'd suggest that the "assets readily available" area just might not qualify for the same level of rulemaking priority as the some of the other areas currently identified by your agency as pending consideration.

With respect to area (3) "immediate suspension of broker/freight forwarder operating authority", which as you know from both my un rebutted oral testimony during, and above referenced duly affirmed "Post-Event Comments" submitted following, that "Roundtable" proceeding, "...on 4 November 2015 my BMC-85 provider became the first qualified business entity ever to actually file a formal "Request for Immediate Suspension" of an FMCSA licensed broker's actual operating authority "Registration" pursuant to the express provisions of 49 USC 13906 (b) (5)." To be sure, that term "qualified business entity" is rendered highly significant in this particular context, since in order to preclude functional invalidation of the entire series of long-established collateral reporting and surety filing cancellation procedures established through BMC-85 numbered paragraphs 7 through 9 any report to the effect that "the available financial security of that person [the broker or freight forwarder involved] falls below the amount required" should be further qualified by a verified statement by the surety instrument provider to the effect that the broker or freight forwarder involved "has been deemed to be a bad financial risk generally" (no matter whether \$1 or

\$74,999 had just been paid out).

With respect to area (4) "surety or trust responsibilities in cases of broker or freight forwarder financial failure or insolvency", once more regardless of whether we're talking about 49 USC (b) (6) or (c) (7), both of which require the surety instrument provider to "(C) pay ,,, [within a certain period of time] (i) all uncontested claims received during such period or (ii) a pro rata share of such claims if the total amount of such claims exceeds the financial security available", the fact that once again (as with area (3) referenced above) the necessarily informed opinion of the surety instrument provider should be determinative is obvious, since such would be the ONLY party directly involved which could be relied upon to "contest" an otherwise "uncontested claim" after the "broker or freight forwarder" involved could be expected to be out of business and unavailable (not to mention possibly motivated to fabricate though a co-conspirator THEIR OWN "uncontested claims". In fact, under such circumstances, what would prevent any unscrupulous claimant from asserting, say, an "uncontested" \$1 Million entitlement as the basis of some "pro rata share" calculation for the distribution of the remaining corpus of any by then no longer filed surety instrument?

With respect to area (5) "enforcement authority" for the wide range of such possible economic (as distinct from safety-related) regulatory imperatives, given your agency's current overriding requirement for effective implementation of ELD, drug testing, and other demonstrably far more critical initiatives I'd suggest that at least some degree of actual further economic "deregulation" of certain appropriate interstate motor carrier procedures analogous to (albeit not anywhere as extreme) as the Motor Carrier Act of 1980 might well be in order.

With respect to area (6) "entities eligible to provide trust funds for form BMC-85 trust fund filings", please consider once again my own opinion relative to area (2) set for above, specifically with respect to whether or not such currently defined and enforced requirements

in those regards actually constitute a significant problem to be addressed at some level of priority future rulemaking To quote the relevant elements of my 2016 "Post-Event Comments" once again: "...Oasis Capital [was] the only BMC-85 provider ever to be terminated under... regulatory enforcement action for collateral [i.e. "assets readily available"] related reasons over the course of the past five decades", In other words, if there is indeed some serious flaw with 49 CFR 387.307 (c) as currently published and administered it has yet to be demonstrated (at least to the extent requiring priority regulatory correction).

With respect to area (7) "form BMC-84 and BMC-85 trust fund revisions", while my own experience with BMC-84's is limited, the only possible "grey area" for BMC-85's (and that not immediately fatal) I'm aware of is the series of reports and procedures established through BMC-85 numbered paragraphs 7 through 9, whereby (to cite the second paragraph of my above referenced 16 June 2016 "Post Event Comments"), some unscrupulous financially failing broker could well "...continue booking, dispatching, and billing shippers for movements they probably never even contemplated paying the motor carriers retained during the ensuing sixty (60) day window afforded through that full process." To be sure, proper implementation of an area (3) "immediate suspension of broker/freight forwarder operating authority" along the lines I've suggested above, would resolve that particular issue completely. And,

Concerning area (8) "household goods (HGH) consumer protection", I'm afraid that's an avenue of interstate transportation intermediary regulatory procedures I've yet to encounter enough problems with necessary for any level of cogent comment at this point.

Finally, while certainly not yet having progressed far enough at the legislative level to appear on your agency's desks for actual rulemaking, the House version of the new FAA Reauthorization Act, having passed in that chamber with the proposed "National Hiring Standard" for Broker/Carrier relationships set forth in



Exhibit No.2 hereof still intact, will open yet another avenue of critical possible enforcement relevant to what is becoming an out-of-control broker BI & PD "vicarious liability" problem I'd certainly like to address in detail as such processes develop.

After that, thanks again for the attention you've shown in the past to a number of my concerns, and rest assured any feedback on this informal submission you'd care to extend at this junction certainly would be appreciated.

Regards...

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