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PROPOSED MODEL REGULATIONS FOR SMARTPHONE APPLICATIONS IN THE FOR-HIRE INDUSTRY

Prepared by Windels Marx Lane & Mittendorf, LLP

Interactive International Forum & Public Hearing

November 16, 2012

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Mission Statement of the IATR Smartphone Apps Committee

The purpose of the App Committee is to develop model regulations to ensure smartphone application technology can exist fairly, safely and with accountability to protect the consumer, while creating a level playing field for transportation providers.

Committee Members:

Professor Matthew W. Daus, Esq., President, IATR, Chair

Marcy Cardona, Austin

Ashwini K. Chhabra, New York City

Mark Cohen, Boston

Tom Drischler, Los Angeles

Tom Downey, Denver

Christiane Hayashi, San Francisco

Benoit Jugand, City of Montreal

Rosemary Krimbel, Chicago

Craig Leisy, Seattle

Ron Linton, Washington, DC

Karl Mortimer Australia

Richard Mucha, Toronto

Jamey Ney, Philadelphia

Tina Paez, Houston

John Scott, San Diego

John Barton, National Institute for Standards & Technology

Don Onwiler, National Conference on Weights & Measures

Background

In July 2012, Windels Marx published a report entitled: **“Rogue” Smartphone Apps for Taxicabs & Limousines: Innovation or Unfair Competition? – A National Regulatory Review of Safety, Accountability & Consumer Protection Legal Issues.** The report was authored by Matthew W. Daus, a Partner and Chair of the Transportation Practice Group at Windels Marx, with the assistance of the group’s attorneys and staff. Mr. Daus, the longest serving Taxi and Limousine Commissioner for New York City, also serves as the President of the International Association of Transportation Regulators (IATR), a group of government officials who license and regulate for-hire ground transportation around the world. As IATR President, Daus called for the creation of a Smartphone App committee comprised of regulators from different cities to draft and develop a model code of regulations governing the use of emerging Apps and related technology.

Technology start-ups have been issuing smartphone applications which allow for the hailing or arranging of a vehicle, removing the dispatch or taxi/limousine company from identification where technology companies interact directly with drivers – sometimes without obtaining proper licenses. Many jurisdictions are struggling to understand the operations of these apps while they roll-out into their communities.

In preparing its report on rogue apps, Windels Marx examined how these apps operate, reviewed the regulations within several cities across the nation, and identified several legal issues as a result of this review. In support of the Apps Committee, Windels Marx conducted additional research for noteworthy regulations or innovative approaches to incorporating technology, defining for-hire services and preserving protections for consumers, which were the foundation for the proposed model regulations submitted to the IATR Committee for consideration. President Daus and the IATR Committee have considered these issues in the final version of the proposed model regulations. The issues raised, and the answers from the App Committee proposed in the model regulations, are as follows:

- *Prearrangement or Electronic Street Hail?* Since some applications may potentially run afoul of industry regulations, the model regulations state that the use of a smartphone is an electronic hail (“e-hail”) if the request for transportation is intended to be for immediate or on-demand transportation service, and may be considered prearranged if the request for transportation service is for more than 30 minutes in the future of the request.
- *Safety Concerns.* Many applications are technology start-ups and many do not hold a specific transportation license. In response, the proposed model regulations, smartphone applications that do not provide transportation will be obligated to obtain dispatch licenses and contract with licensed third-parties and, as such, will be responsible for the service and the transportation provided.
- *Use of “Taxi” or “Taxicab” in the App Name.* In order to prevent consumer confusion and enforce the distinctions as to how taxicabs operate, the proposed regulations, smartphone applications may use the word or words “taxi” or “taxicab” if they are licensed as a dispatch business and affiliated with – and dispatch only – taxicabs.

- *Illegal Service Refusals.* Since some applications may allow a driver to accept or decline potential dispatches and possibly discriminate against consumers, the proposed regulations, smartphone applications would be required to comply with all local laws for licensed transportation services.
- *“Fair” Fares.* In an effort to provide protection for consumers and provide passengers with confidence as to the final fare, the proposed regulations require that smartphone applications may not charge any fees, costs or expenses to the passenger in excess of the fare displayed on the meter or taximeter (as applicable), the prearranged flat fare, or the hourly rate for the service provided.
- *Avoid Responsibility?* Some smartphone applications have attempted to avoid responsibility for their customers by requesting that passengers will waive their rights prior to using the applications. In response, the model regulations state that no entity or Dispatch Business may require passengers to waive their rights relating to the provision of the transportation and/or dispatch services.
- *Is it a taximeter?* Some applications may use their own technology, including Global Positioning System (“GPS”), to calculate the fare based on time, mileage and demand, which does not meet taximeter standards and may or may not be consistent with the fare charged to each passenger using the same application, or passengers using any other application. The model regulations propose that a smartphone application may not act in lieu of a taximeter or meter until it receives approval based on NIST Handbook 44 requirements and such other regulatory approvals, as applicable. In any event, there shall only be one taximeter or meter in any taxicab, and no taximeter or meter shall be permitted in any luxury sedan/limousine.

In sum, the proposed model regulations to be considered at the interactive international forum and public hearing at the IATR 25th Anniversary Conference on November 16, 2012 represent a balanced approach to create fair standards that may be adopted and incorporated into the regulatory framework of most jurisdictions that oversee local for-hire transportation. The proposed regulations *infra* are based on research of best practices to ensure there is a level playing field between taxicab and luxury sedan/limousine sectors and that each sector can operate with technology companies that do not pose a threat to the licensed transportation providers or to consumer confidence in the for-hire industry.



Notice of Public Hearing and Opportunity to Comment on Proposed Regulations

What are we proposing? The IATR Smartphone Apps Committee is proposing model regulations clarifying or expanding the definitions and regulations of for-hire transportation services in order to enhance and modernize such regulations. The proposed model regulations are to be carefully evaluated and may be incorporated, as applicable, into various jurisdictions' for-hire regulations in order to adequately address the use of smartphone applications in transportation services. The current use of smartphone applications¹ creates public safety concerns and raises, *inter alia*, the following questions: (a) Is the use of a smartphone application considered prearrangement or an electronic street hail? (b) Are the smartphone application companies responsible for the transportation they arrange/provide? (c) Are or should smartphone applications be permitted to use the words "taxi," "taxicab," "cab" and "hack" in their names? (d) What obligations, if any, do smartphone applications have to provide accessible transportation and/or not to illegally refuse service requests in such jurisdictions with accessibility requirements? (e) Are the fares charged through the use of smartphone applications consistent with regulations, *i.e.*: can a smartphone application require the passenger to pay a gratuity and/or can a limousine/executive sedan use a meter? (f) Is a smartphone a taximeter, or is its use permitted in taxicabs in lieu of a taximeter?

The proposed definitions and model regulations set forth below attempt to answer each of the forgoing questions with the following general responses: (a) The use of a smartphone is an electronic hail ("e-hail") and if the request for transportation is intended to be for immediate or on-demand transportation service, the request is considered "on-demand booking", but may be considered prearranged if the request for transportation service is for more than 30 minutes in advance of the arrival time; (b) Although there may be some different approaches by regulators, smartphone applications will be obligated to obtain dispatch or other applicable taxi or limousine business licenses (depending on local laws and rules), or in jurisdictions where dispatch licenses do not exist, any licensed taxi or limousine business contracting with

¹ The term "mobile application" is defined and used in the model regulations since these applications are available for smartphones, tablets and other mobile devices.

a third-party app to provide transportation services shall be held accountable for ensuring compliance with the same restrictions as set forth herein pertaining to dispatch license requirements; (c) Smartphone applications may use the word or words “taxi,” “taxicab,” “cab” or “hack” if they are licensed as a dispatch business and affiliated with – and dispatch only – taxicabs; (d) As dispatch businesses, if the jurisdiction has accessibility dispatch requirements, smartphone applications will be obligated to affiliate with a sufficient number of accessible vehicles and be liable for service denials and/or discrimination; (e) As dispatch businesses, smartphone applications may not charge any fees, costs or expenses to the passenger (or payor) and shall not permit its affiliated drivers to charge any fees, costs or expenses in excess of either (i) the fare displayed on the meter or taximeter, as applicable or (ii) the flat fare prearranged or (iii) the hourly rate for the service provided; and (f) A smartphone application may not act in lieu of a taximeter or meter until it receives approval based on NIST Handbook 44 (defined below) requirements and such other regulatory approvals, as applicable. In any event, there shall only be one taximeter or meter in any taxicab, and no taximeter or meter shall be permitted in any limousine/executive sedan.

When and where is the Hearing? The Committee will hold an interactive international form and public hearing on the proposed model regulations. The public hearing will take place at 1:30 p.m. on Friday, November 16, 2012. The hearing will be held at the IATR 25th Anniversary Conference at the Four Seasons Hotel located at 2800 Pennsylvania Avenue Northwest, Washington, DC 20007.

How do I comment on the proposed rules? Anyone may comment on the proposed model regulations by:

- **Mail.** You may mail written comments to Professor Matthew W. Daus, Esq. c/o Windels Marx Lane & Mittendorf, LLP, 156 West 56th Street, New York, New York 10019.
- **Fax.** You may fax written comments to Professor Daus at 212-262-1215.
- **Email.** You may submit your comments in writing via email to: MDaus@windelsmarx.com
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed model regulations at the public hearing must sign-up to speak. You may sign-up before the hearing at the IATR Conference. You may also sign-up in the hearing room before the hearing begins on November 16, 2012. You may speak up to three (3) minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by December 15, 2012.

Statement of Basis and Purpose of Promulgated New Rules

We have reviewed and considered the regulations of the twelve (12) most populated cities in the United States, as well as several smaller cities for which we found that there are noteworthy regulations or innovative approaches to defining various for-hire services.² In light of our review, our proposed regulations will endeavor to present a balanced and uniform standard adaptable to most, if not all, jurisdictions. It is our hope and goal that the proposed regulations embody our understanding of best practices in defining various services and business licensing distinctions, to create a fair and sensible differentiation and playing field between taxicab and limousine (collectively, the limousine and executive sedan) sectors. In our proposed regulations, each sector has a defined role in the for-hire industry, substantially reducing or eliminating the gray areas, loopholes and unfair cross-market competition. We believe the distinctions set forth below are vital elements to a socially and economically successful for-hire industry. In fact, the most notorious complaint about “rogue” for-hire services – whether that refers to unlicensed drivers and/or vehicles or drivers and/or for-hire companies operating outside the perceived and understood regulatory apparatus – is that they create an uneven playing field in providing transportation services.

As smartphone applications continue to evolve and their use is further incorporated into transportation services, there is a need to ensure public safety and welfare and create regulations that appropriately reflect and incorporate the use of such technology. Currently, there are several “rogue” smartphone applications being used in the transportation industry. Most of the rogue smartphone applications are operating in the “gray areas” of the regulatory apparatus, without any or limited regulatory oversight, depending on the jurisdiction. As such, this innovation commands adoption of new regulations authorizing the use of smartphone applications as a means of connecting passengers and transportation services. Such regulations will provide licensure for smartphone applications and ease or eliminate any public safety concerns.

It is our intention to incorporate new definitions and new regulations to bring rogue applications into compliance and incorporate the use of technology into the current regulations to create a fair and even playing field and not to re-write each jurisdiction’s regulations or requirements with regard to specific information not included below. Generally speaking, the model regulations below are tailored to address the “rogue” attributes of smartphone applications and close the gap in any potential gray areas in the regulation of each for-hire transportation sector. As such, the model regulations set forth below do not

² A summary setting forth the regulations in each jurisdiction reviewed will be separately available, upon request.

address or attempt to address the broader and more general scope of regulating the for-hire transportation industry. These model regulations should not be taken alone, but rather, incorporated, as applicable, into existing regulations to form a more complete symmetry among the individual sectors of for-hire transportation.

In consideration of the forgoing, these proposed regulations set forth new definitions creating two separate and distinct sectors in the for-hire industry: limousine/executive sedan and taxicab. First, as the most premium service, the proposed regulations define a limousine and executive sedan as a Limousine that operates with both a minimum fare and a prearrangement requirement, and will assess fares exclusively based on time hired. This sector is reserved for elite vehicles and service. Second, the proposed regulations define a taxicab as a for-hire vehicle which accepts fares by street hail or prearrangement (depending on the jurisdiction), and prearranges fares or assesses fares through the use of an approved taximeter – thereby requiring compliance with Handbook 44 and Publication 14 issued by the National Institute of Standards and Technology (“NIST”), depending on the jurisdiction. For the minority of jurisdictions that have not adopted NIST Handbook 44 (as defined below), the model regulations set forth below may be amended to delete all references to Handbook 44 and incorporate the state regulatory scheme with which such jurisdictions comply. Although our proposed taxicab sector is not vastly different than the general understanding of a taxicab industry, our proposed regulations draw clear, bright-line distinctions between the sectors, venturing beyond what is currently evidenced in many jurisdictions, thereby substantially reducing or eliminating any gray area to operate.

We anticipate there may be limited overlap between the taxicab and limousine industries. Each of the industries primarily targets a different service and market, and if each type of vehicle is operating in compliance with the proposed regulations, these transportation modules will not directly compete with each other. For example, a taxicab will operate to serve the immediate or “on-demand” and for-hire transportation demands to the central business district or the surrounding communities and limousines/executive sedan will operate to serve the luxury or premium service requests. The limited overlap may exist in terms of prearranged transportation for those passengers without preference as to whether the service is premium or not. In such instances, a passenger may arrange for a taxicab or a limousine/executive sedan, depending on market factors such as availability and price.

Limousines/executive sedans may operate in either the central business district or surrounding communities and are not incentivized to do either, but, rather, are encouraged to follow market demands. The minimum prearrangement time will assist in distinguishing between the transportation modes by

