

**Via: regcoments@fincen. treus.gov RIN 1506-AA85**

**To: DEPARTMENT OF TREASURY**

**AGENCY: FINCEN, Department of the Treasury.**

**ACTION: Advance notice of proposed rulemaking; Provision of Banking Services to Money Services Businesses**

**From: Abdirizak Omar-godane<sup>1</sup> “CAMS”**

**Subject: RIN 1506-AA85, Provision of Banking Services to Money Services Businesses,**

**Dear Sirs;**

**We appreciate the opportunity given to express our experience in dealing with Banking institutions, opening demand deposit account and or maintaining account. It's encouraging to witness your continued effort to ensure that our businesses (MSBs) that comply with the law have reasonably access to Banking services.**

**I wish to let you know, even after the substantial efforts and clarification that have been stressed by Fincen and other Federal Agencies on March 8<sup>th</sup> 2005 meeting, and the subsequent passage of the decisions and guidelines, in which perhaps was the first step to resolve some of the stumbling blocks, and if there were any regulatory confusion, we are experiencing resistance from Banking institutions to deal with our MSB Businesses.**

**I trust, in the event of March 8, 2005, both parties have clearly articulated their concerns and accordingly, proper guidelines were provided to the Financial Institutions and MSB Companies<sup>2</sup>.**

**I also trust, some financial institutions are not rightly construed the revised Bank Secrecy Act requirements, as a result, their actions have adversely affected the MSBs ability to continue their businesses.**

**I like to share with you my personally experience, I will refrain from identifying any one or any Bank's name, and I will without prejudice tell my experiences after March 08 2005 meeting. With respect to your fact finding enquiry, I will also respond those specific questions in the order you have provided.**

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<sup>1</sup> Abdirizak Omar-godane, Kaah Express, F.S. Inc.

<sup>2</sup> Financial Crimes Enforcement Network, Board of Governors of the Federal Reserve System  
Federal Deposit Insurance Corporation, National Credit Union Administration  
Office of the Comptroller of the Currency, Office of Thrift Supervision  
April 26, 2005, doc. entitled: Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses  
Operating in the United States, see also follow-up to the joint statement issued on March 30, 2005

**A large financial institution was proactive to implement the suggested guidelines prior to the meeting. But, after March 8<sup>th</sup> 2005 the same Bank has changed its policy.**

**This specific Bank has allowed MSB companies to do business with the Bank as long as the MSB companies provide the following:**

- 1. Written compliance program,**
- 2. Designated compliance officer and contact information of the MSB's compliance officer,**
- 3. Internal control procedures,**
- 4. Information about customers that the MSB is dealing with,**
- 5. Company's correspondent services (alias: foreign agents or clearing House) and other supporting documents.**

**This information is good enough to support Bank's due diligence guidelines. But, the Bank has discarded this policy and by coincidence, has erratically closed MSBs accounts.**

**After the Bank gave us a notice for account closure, I have personally contacted this Banker, I asked; the basis of Bank's decision. The response was; "When the Bank opened the account for you (our MSB business in this case), the Bank reserved the right to close the account any time in the future. You "customer" have the same right to exercise, if you find it necessary".**

**Among others, I have stated the meeting of March 8 2005, and the subsequent joint rulemaking by Fincen and relevant Federal agencies. The officer of the Bank has restated the same responses. "The Bank reserved the right....."**

**The Bank gave us 30 days notice and after providing a written request, the Bank has extended the deadline for the account closure to additional 30 days.**

**We switch our business to other smaller Bank. It was nice transition and we appreciated the opportunity.**

**The same Financial Institution has recently opened its doors for local ethnic community to send money to their respective countries of origin. The Bank has offered better rates (lower than prevailing rates), additionally, the same Bank has offered same customers to remit money with no charges.**

**Several Financial Institutions have aligned themselves with globally diversified MSB companies. In light of the MSB's new relationship with those Banks, the MSBs companies have their terminals inside those Banks and are serving their customers inside the Bank's premises. One of those financial Institutions has closed all MSB accounts including our account.**

**When you experience these types of incidents, you will seriously question whether some Banking Institutions' actions are justified, or if they have regulatory concerns by closing MSB accounts.**

Part of the answer lies if Banking Institutions are reserved from possible legal consequences by arbitrarily closing or rejecting MSBs customers' account. Perhaps, They are also using the opportunity (the Revised BSA) to send these emerging financial service companies out of business or they are punishing us to vent their frustration to smaller guys like us, or perhaps... both. I am almost certain, prior to September 11, 2001; it was unusual for Financial Institutions close or refuse customers' personal or business accounts without a practical cause.

#### Questions & Answers.

**Q: 1.** What requirements have banking institutions imposed on money services businesses to open or maintain account relationships since the issuance of the joint guidance by us and the Federal Banking Agencies in April 2005?

**A:** As mentioned elsewhere in this writing, some have totally ignored the joint guidance issued by Fincen and federal banking agencies. I have personally; enclosed April 26, 2006 joint guidance issued by Fincent other federal agencies to both Banking institutions and MSBs. I also provided other relevant materials requested by those Banks. Yet, they either refuse to open the account or have closed our existing one.

**Q. 2.** describe any circumstances under which money services businesses have provided or have been willing to provide the information specified in the guidance issued by us to money services businesses in April 2005, concerning their obligations under the Bank Secrecy Act, and yet have had banking institutions decline to open or continue account relationships for the money services businesses.

**A:** Banks have closed our existing accounts, on the basis that we are MSB, even after we have provided them the required or requested information. The information material given to the financial institutions were among others and as required by the State and federal regulatory bodies:

1. Written compliance program.
2. officially designated compliance officer and contact information:
  - a) Name and where the compliance officer can be reached.
  - b) Have shown willingness to cooperate with the banker.
3. Detailed training programs, individuals trained for the program and their positions in the company and sample certificates.
4. Independent reviewer's report.
5. Foreign clearing houses, names, address, telephones numbers, in Most cases, we provide detailed information about those clearing Companies Or foreign agencies. We provided their business activity, certificate of Authorization evidencing those foreign agencies are properly authorized to offer financial service in their respective jurisdictions.

**Q: 3.** Have Bank Secrecy Act-related grounds been cited for why banking institutions have decided not to open, or have decided not to continue to maintain, account relationships for money services businesses since the issuance of the guidance to money services businesses and to banking institutions in April 2005?

**A:** In my experience, Banking institutions do not provide the reasons for the account closure or refusal. Often they provide paltry responses, such as “we reserve the right”.

**Q: 4.** Would additional guidance [including, if applicable, clarification of existing Guidance] to the banking industry regarding the opening and maintenance of accounts for money services businesses within the Bank Secrecy Act regulatory framework be beneficial? If so, what specifically should such guidance address?

**A:** I am not sure about additional clarification, because I am confident that the Financial Service Communities by now understand their responsibilities. The encompassing regulatory requirements are most clear. But, I strongly feel that guidelines will be helpful such as; Banking Institutions should provide specific reasons for account closures or why they refuse to open an account for potential MSB customer. In this way, Banking Institutions can justify their actions. It also clarifies if the perceived notion of risk associated with MSB companies and their activity may further be justified.

#### **1. Additionally input: To MSBs**

- ✓ By way of rising Bankers comfort level and confidence, MSBs Companies should provide banking institutions the required documents when applying a new accounts or maintaining an existing account.
- ✓ MSBs should recognize that the EDD is required mandate from Global Banking Institutions therefore; their queries are not to be assumed as personal.
- ✓ If the Banker asks detailed information about your company’s daily activities or if the Banker shows interest to visit your business location or requests your company’s US Form 1120 for the last two years. The rule of thumb is to provide your Banker the requested information.  
Cooperating with your Banker will allow you to establish or maintain relationship with your Financial Institutions.  
To further intricate the issue, my personal attitude is to provide my Banker not only the requested US Form 1120, but also I provide them the receipts of payment if our business owed money to IRS in those two years.  
Remember, some Financial Institutions are only doing their jobs to help their customers to continue conducting business with the Bank, while remaining in line with the required guidelines.  
When Banks ask me questions about my business, I feel that they are willing to help me. Lastly, in the current regulatory environment, nothing is considered as personal, specially, when your company transmits money to a foreign country.

## **2. And to Financial Institutions:**

- ✓ **In contrast, most Financial Institutions' compliance and surveillance divisions, which facilitate services from remote locations, are staffed with people who have no face to face contact with MSB account holders. While, their assessment and conclusion are not altogether incorrect, their decisions adversely affect our MSB Businesses. Often, when our accounts are closed by Bank's compliance division, the local manager and local Banking personnel who deal with us, are not happy with their decisions.**
- ✓ **The MSB account type and related account activities indicate risk. MSB accounts are demand deposit accounts, large cash deposits are made and large cash wire transfers are made within short period.**
- ✓ **MSB's main users are from South-Central America, South East Asia, Middle East and Africa. They are largely immigrant communities and they send money to regions traditionally associate with money laundering or other criminal activities.**

**Fortunately, it's not prohibitive to do business with those countries or relevant communities in USA. Those countries and their respective governments have regulatory authorities which are FATF members or have regulatory bodies which act same as FATF. Most countries in those regions have signed UN Vienna and Palermo conventions. If MSBs are conducting business or wiring money to regulated jurisdictions, and the country is not listed as NCCT, and if Banking Institutions conduct their EDD, I think, those conditions are good enough to reduce Banker's concern of regulatory risk<sup>3</sup>.**

**Q: 6. Are there steps that could be taken with regard to regulation and oversight under the Bank Secrecy Act that could operate to reduce perceived risks presented by money services businesses?**

**A: before stressing steps necessary to improve the regulatory oversight under BSA or its related revisions, its important to perceive that we are emerging businesses that have economic value through out USA and internationally. We are also citizen and resident of USA. We have to be trusted as law abiding people. We have assets and reputations to protect from legal and regulatory risks. The notion of perceived risk presages that MSBs have insufficient organizational structures. They lack the managerial experts and technical system to deal with the revised BSA. This view is partly true, but it is almost five years since the implementation of the revised BSA (April 2002). MSBs Companies are spending money to lawyers,**

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<sup>3</sup> BCBS: See customer Due Diligence for Banks: Doc October 2001  
See also document entitled: Working Group on Cross-border Banking  
FATF: Annual and overall report review of non-cooperatives countries and territories  
For June 10, 2005

accountants, auditors, consultants and independent reviewers and IT consultants. More and more MSBs companies are hiring qualified and experienced customers services personnel and internal accountants. We are determined to build skilled management that hold and fully comply with the revised BSA.

Bank institutions have stressed concern about the perceived lack of regulatory guidelines for MSB, or cost to human resources and time required to verify information about potential MSB business customers. In light of the current conditions, the revised BSA is for all financial services community and more importantly AML/CTF is a global issue. It's a collective effort to prevent criminals using the financial system. We all have responsibilities to fulfill and required guidelines to comply with. Lastly, implementing the new regulatory requirement is not economical to any one. Rather, the revised regulatory regime is causing more financial burden to MSB companies.

7. Since the March, 2005, hearing and the issuance of guidance in April, 2005, to banks and to money services businesses, has there been an overall increase or decrease in the provision of banking services to money services businesses? Please offer any thoughts as to why this has occurred.

Large banks in USA are unwilling to offer services to MSB, while smaller local banks are more willing to follow the guidelines. The process they are using is more in line with the global trend to conduct Enhanced Due Diligence.

- ✓ The MSB company provides specific material to Bank's local branch
- ✓ The branch passes the material to senior management to approve the account.
- ✓ They are also taking the time to visit MSB's principal business location.

I wonder why some bigger Banking Institutions are unwilling to follow the same pattern! Because, some times we have to do business with bigger Financial Institutions, they are:

- ✓ Conveniently located closer to our businesses or are diversified within the city or have branches in several states.
- ✓ Technologically advanced to facilitate international service, and
- ✓ Staffed with knowledgeable personnel who are well versed with international banking activities.

Their lack of enthusiasm is a big concern to MSB Companies.

CC: Nick Kyrus

Kaah Express, F.S. Inc.

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