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Via Electronic Mail

July 7, 2006

Financial Crimes Enforcement Network
P.O. Box 39,
Vienna, VA 22183

Re: Money Service Businesses; RIN 1506-AA85

Dear Sir/Madam:

The California Bankers Association (CBA) appreciates this opportunity to submit these comments on behalf of its member depository financial institutions. CBA is a professional non-profit corporation established in 1891 representing most of the depository financial institutions in the State of California. As the largest bank trade association in the state, CBA regularly provides comments on regulatory initiatives affecting the banking industry in California.

CBA and its members take seriously the need to prevent the nation's financial institutions from being used to conduct illegal transactions. At the same time, we recognize that money service businesses ("MSBs") provide important services to consumers, many of whom are minorities, persons in low economic communities, and those who are "unbanked." We appreciate that the agencies have listened to concerns voiced by the banking industry, the MSB industry, and others through outreach programs, and are now soliciting comments on ways to improve access by MSBs to banking services.

General Comments

As indicated by the concerns underlying the Advance Notice of Proposed Rulemaking, banks are reluctant to provide financial services to MSBs. The risks of regulatory criticism are too high. Much of the industry's anxiety is grounded in the Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the U.S. (hereafter, "Guidance") and the subsequent BSA examination guidelines.

The Guidance sets forth the broad policy statement that "banking organizations will not be held responsible for their customers' compliance with the Bank Secrecy Act and other applicable federal and state laws and regulations." It reaffirms that "FinCEN and the Federal Banking Agencies do not expect banking organizations to act as the *de facto* regulators of the money service business industry." Unfortunately, the substance of the Guidance tells another story.

CBA whole-heartedly agrees with these policy statements, and we have heard them reiterated in public and private meetings with FinCEN and banking regulators. But the Guidance also sets forth in great detail a range of bank responsibilities with respect to MSBs that can only be described as "regulatory" in nature, except only in name. We urge that FinCEN now take this opportunity to spur a re-evaluation of the interagency examination procedures and other guidance related to MSBs, and firmly align them with the policy statements.

CBA members have consistently informed us that it is highly impracticable for banks, in the course of providing routine banking services, to ensure that customers comply with their own legal obligations. Over the years banks, by necessity, have developed systems and procedures to monitor *transactions* for suspicious activities. And while suspicious activities suggest illegal behavior by customers or other parties, they do not necessarily inform banks of the nature and extent of their customers' compliance obligations.

Banks can and should continue to fulfill their BSA/AML obligations by monitoring MSBs, along with other bank customers, for suspicious activities. But it is the responsibility for the agencies having the responsibility to supervise MSBs to register and license them, to monitor them, to examine them, if necessary, and ultimately to take appropriate enforcement actions.

Specific Comments

Definition of MSB. We urge FinCEN to consider seriously whether the dollar and frequency thresholds of the MSB regulation should be revised. It is evident that there is a lack of direct regulatory supervision of "non-core" MSBs, which are businesses that might conduct a single qualifying transaction and thus fall within the federal regulations codified at 31 CFR 103.11(uu)(2). Unless the responsible agencies are prepared to invest resources toward tangible supervision of non-core MSBs, FinCEN should consider raising the dollar threshold from $1,000 to $3,000, and the frequency threshold from a single (or aggregate) transaction to a fixed number of transactions made over a 30 day period.

Those CBA members that continue to provide banking services to non-core MSBs (such as grocery stores) are educating them on BSA and AML requirements, helping them register, and even passing along sample policies. In essence, these banks are acting as their *de facto* regulators.

Clearly identify responsible agencies. Since it is clear federal policy that MSBs must comply with AML and BSA regulations, then the responsible agencies should be directly responsible for monitoring and enforcement. It is not acceptable for the responsible agencies to fulfill their responsibilities indirectly through the nation's banks. Therefore, the federal banking agencies must make it clear to the banking industry and to their own examiners that FinCEN, the Internal Revenue Service, and the various state licensing departments are responsible for regulating, supervising, and examining MSBs for BSA/AML compliance.

This regulatory gap is most apparent with regard to non-core MSBs. Because these customers are primarily engaged in another business, the strong likelihood is that they know practically nothing about their BSA/AML requirements. Faced with this yawning gap between what these businesses know and what they are required to do, banks have little choice but to act as their primary source of regulatory information and guidance. The alternative is to close their accounts. There is no substitute for the appropriate agencies to assume their regulatory responsibilities.

Registration of MSBs. Any check casher, money transmitter, payday lender, or other entity that operates without proper registration is clearly operating in violation of law and presents heightened money laundering risks. We appreciate and concur with the Guidance that a bank, when confronted with this knowledge, should file an SAR.

We suggest that the Guidance and examination procedures are revised to state that banks' responsibilities in this regard are limited to ascertaining licensing and/or registration status. Once a bank notifies appropriate authorities of the absence of appropriate licensing/registration through an SAR, the burden should shift to the appropriate agency or agencies to take appropriate actions. Banks should not be required to continue filing SARs in the absence of evidence of other suspicious activities. Enforcement of registration requirements in itself is a regulatory function; to require continuous SARs would be burdensome to banks and, moreover, unnecessary as long as the responsible agencies fulfill their duties.

Other bank obligations. Because banks' responsibilities with regard to MSBs, except for ascertaining their licensing/registration status, are to monitor for suspicious activities, we recommend withdrawing the provisions of the Guidance as follows:

Monitoring of agents. Determining whether and how well MSBs screen and monitor their own agents are regulatory questions and should remain the responsibility of MSB regulatory agencies, not banks.

Dissemination of BSA/AML procedures. The Guidance requires banks in certain circumstances to do the following: (1) review the MSB's AML program; (2) review the results of independent tests of the program; (3) conduct on-site visits; (4) review agent lists; (5) review written operating procedures; (6) review agent management practices; and (7) review employee screening practices. No one can doubt that these functions, even if limited to "high risk" MSBs, are regulatory functions. They should be eliminated and assumed by MSB regulatory agencies.

CBA appreciates FinCEN's effort to address the serious issue of MSBs' diminishing access to banking services, without which legitimate check cashing and other money transactions may not be conducted in the open. The nation's individual financial institutions are poor substitutes for a uniform regulatory framework designed to regulate entities that are deemed to pose money

laundering and perhaps terrorist financing risks. We wholly support and any all efforts to ensure that appropriate government resources are marshaled and focused toward supporting federal policies, which in turn would encourage banks to offer services to MSBs.

Sincerely,

Leland Chan
General Counsel