GROUPEX
Financial Corporation

14849 FIRESTONE BLVD.
LA MIRADA, CALIFORNIA 90638

*Via E-Mail (regcomments@fincen.treas.gov)*

July 10, 2006

Mr. William F. Baity,
Acting Director
Financial Crimes Enforcement Network
PO Box 39
Vienna, VA 22183

Re: RIN 1506-AA85 /
Provision of Banking Services to Money Services Businesses

Dear Director Baity:

Thank you for your continued interest in the persistent trend of banking institutions to refuse basic banking services to money services businesses (MSBs) and the deleterious effect that this trend will have on regulation and oversight of MSBs under the Bank Secrecy Act (BSA). Your request for public comments concerning the provision of banking services to MSBs is both timely and necessary if a solution to keeping MSBs a part of the formal financial sector is to be found.

You have asked, in part, for descriptions of cases in which bank accounts of an MSB have been terminated where the MSB has provided or was willing to provide the information described in guidance (discussed below) issued by FinCEN last year. In response to your request, I am pleased to submit the following comments on behalf of GroupEx Financial Corporation (GFC).

***Post-Guidance Experience***

In the guidance mentioned above, Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States dated April 26, 2005 (Guidance), FinCEN noted that the MSB industry is extremely diverse, ranging from Fortune 500 companies to small, independent "*mom and pop*" convenience stores in communities where English is rarely spoken. GFC represents an important aspect of that diversity as one of the largest privately-owned MSBs serving Mexico and Latin America. GFC is registered with FinCEN and is licensed as a money transmitter in twenty states, where it serves Hispanic clients in urban and rural areas through a network of almost 2,000 agents, virtually all Hispanic owned small businesses.

GFC recognizes the importance of compliance with the anti-money laundering requirements to the protection of the US financial system and national security. Accordingly, GFC has adopted an anti-money laundering program, undergone an independent review of compliance with that program and is striving continually to improve its systems and processes to detect and report suspicious transactions, and otherwise meet the goals of the BSA and USA Patriot Act. GFC has also expended considerable sums on audits, systems and other processes requested by its banking institution over the past several years.

Despite its commitment and efforts in the above regard, GFC was abruptly notified earlier this year that all of its bank accounts would be closed. GFC had maintained these accounts in good standing for the past eight years and has furnished all information and documents requested by its bank. Moreover, GFC's principal shareholder and affiliates have maintained bank accounts and other commercial banking arrangements with the same bank for the past fifteen years. They were notified at the same time that their bank accounts would also be closed. The bank offered no reason for its action other than a general concern that MSBs present an unacceptable risk for the bank. The bank's action affects not only GFC and its affiliates, but also many agents in GFC's network of almost 2,000 agents who have relied on the same banking institution for banking services. To date, GFC has been able to replace some but not all of the bank accounts and services that it needs. It is working diligently to reestablish the balance of its banking needs, but is difficult in the current environment.

***Guidance Largely Ignored***

GFC learned from sources familiar with its banking institution's policy that the bank is closing the accounts of all money transmitters, having determined apparently that all such MSBs present the same high, unacceptable level of risk. Plainly, this is contrary to the intent of the Guidance which states that "[I]t is essential that banking organizations neither define nor treat all money services businesses as posing the same level of risk." The Guidance also states 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" and that banking organizations are not expected "to act as *de facto* regulators of the money services business industry." Despite these clear admonitions many banking institutions, including GFC's, have reached the conclusion that all MSBs pose unacceptable risks to the banks and have terminated their banking relationships.

The fact that so many banking institutions have reached the same risk-assessment regarding MSBs raises questions about the factors used by the institutions in making these determinations. Of course, the Guidance sets forth risk factors that banking institutions should consider, but these factors have been disregarded, at least in cases where banking institutions have decided to terminate banking relationships with MSBs altogether. In lieu of these factors, banking institutions are terminating banking relationships with MSBs based on a "cost/benefit calculus" according to recent comments by an American

Bankers Association (ABA) representative to Congress.[1] Since banking institutions are using economic factors rather than risk factors in making risk-assessments of MSBs, a further elaboration of the risk factors by FinCEN will only be effective in curtailing the number of account terminations if the factors reduce the cost to banking institutions of monitoring compliance with BSA requirements by MSBs.

***Competition Factors Must Be Addressed***

The ABA representative also noted that a few banks (more than a few in GFC's estimation) have re-evaluated their "business strategies" and concluded that serving MSBs is not an economically attractive option. At the same time the representative notes that there is "a large pool of individuals outside of the financial mainstream" in the United States. The representative then argues for governmental regulations that will mainstream these unbanked individuals and defines that mainstream to include only "banks and other depository institutions." It is clear that the banking institutions view these unbanked individuals as an emerging market for themselves. What also seems clear is that certain banking institutions consider money transmission as a significant business opportunity and are withholding banking services to MSBs as a means by of gaining a competitive advantage over MSBs in that market segment.

FinCEN's prior guidance did not address competition as an underlying cause of bank account closures. Any solution that ignores this cause will be less than effective in ensuring that MSBs have access to adequate banking services.

***Effects of Inadequate Banking Services***

Everyone seems to appreciate that if MSBs do not have banking relationships on a wide scale the money services businesses could go "underground." Obviously, this would seriously undermine the ability of regulators to combat money laundering and terrorism financing, among other things.

Less well appreciated is the fact that the MSBs most affected by the unavailability of banking services are minority owned companies and small businesses in the industry. These firms, widely recognized as a valuable part of the formal financial sector, serve largely low income immigrant communities, unbanked for the most part. They also employ thousands of people. The lack of banking services for these firms can be expected to result in significant economic disruption in the communities served by these firms and to unequally impact minority owned MSBs and small businesses. The Fortune 500 companies in the industry do not seem to have been denied banking services and will presumably not be.

It is also important to note that, in the formal financial sector, the widespread lack of banking services for MSBs will lead to concentration of the money services business in

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[1] See Statement of Wayne A. Abernathy, Executive Director, Financial Institution Policy and Regulatory Affairs, American Bankers Association, to Committee on House Financial Services, Subcommittee on Financial Institutions and Consumer Credit, on June 21, 2006.

the hands of a few public company competitors. This will undoubtedly lead to less competition and higher prices for consumers.

***Recommendations***

The increasing rate at which banking institutions seem to be denying or terminating banking services to MSBs presents a serious issue to FinCEN and other regulators, as well as to MSBs and the customers they serve. To reverse this dangerous trend it would seem necessary to give regulatory life to two principles contained in the Guidance, namely that (a) 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 and (b) banking organizations are not expected to act as *de facto* regulators of the money services business industry.

With regard to responsibility, the statement contained in the Guidance does not seem to have persuaded banking institutions that they may bank MSBs without fear of criminal prosecution for acts of the MSBs and their customers. At a minimum, FinCEN should make clear, through regulations if necessary, that banking institutions acting in good faith will not face prosecution for the misdeeds of MSBs and their customers. This limited immunity seems fair in the sense that it places liability for misdeeds on those responsible for the misdeeds rather than their banking institutions. Of course, FinCEN will need to coordinate this change with state regulators so that a similar immunity applies at the state level.

As for the assertion by banking institutions that they are *de facto* regulators, a due diligence safe harbor should be developed that clarifies what is required of banking institutions when opening or maintaining accounts for MSBs. If the requirements of the safe harbor are satisfied, then the banking institution should be deemed to have fulfilled its duties where customer due diligence is concerned. In the same way, an MSB that has satisfied the requirements of the safe harbor should be presumed to be an acceptable risk to banking institutions absent specific risk factors that cause a banking institution's risk assessment to change. Due consideration should be given to the cost of satisfying the requirements of the safe harbor, both for banking institutions and MSBs. The use of self-certifications by MSBs could be very useful in this regard.

Lastly, a rule is needed that prohibits banking institutions from denying or terminating the bank accounts of MSBs merely because they are MSBs or for reasons other than risk-based assessments of the MSBs. A prohibition of this kind should curtail the actions of banking institutions using account terminations as a means by which to eliminate competitors in a money services business conducted or contemplated by the banking institution. This prohibition could be backed up with appropriate fines and assessments, as a banking institution acting in this fashion is compromising the regulators' ability to monitor compliance with BSA requirements to the extent an MSB is driven "underground." This type of measure is essential to ensuring that MSBs have adequate banking services and thus keeping MSBs a part of the formal financial sector.

Once again, we thank you for this opportunity to relate our experience in the current environment and to share ideas about how to address the increasing inadequacy of banking services to MSBs. If you have any questions or would like to discuss any of the points raised above further, please do not hesitate to contact me. I can be reached by phone at 714.690.8300, ext. 1265, or by reply email.

Sincerely,

Robert Duran
Vice President, Legal and Compliance

RND/
cc: Benjamin Knoll