

SUBJECT: U. S. DEPARTMENT OF THE TREASURY'S REQUEST FOR INFORMATION CONCERNING THE RELATIONSHIPS BETWEEN BANKS AND MONEY SERVICES BUSINESSES AFTER THE "FACT-FINDING MEETING" AND THE PUBLICATION OF THE BSA/AML EXAMINATION MANUAL

TOPIC: BANKING SERVICES FOR MONEY SERVICES BUSINESSES

BY: GILDA M. CHAVEZ, ESQUIRE on behalf of InterTransfers, Inc. and its affiliates.

Background Information:

InterTransfers, Inc. is a money services business offering remittances, wholesale check cashing, and foreign exchange. As such, in March of 2005, InterTransfers felt that it was necessary to attend the fact-finding meeting held by the Financial Crimes Enforcement Network ("FinCEN") to address an industry-wide concern regarding the discontinuance of banking services to money services businesses. The representatives money services businesses present at the meeting, primarily corporate presidents and vice presidents, gave detailed accounts of their experiences with the discontinuance of their existing bank service and the inability, despite enormous efforts, to obtain banking services from other banks. The banks, for the most part, did not deny the fact that the accounts were being closed, essentially across the board, but stated that the banks were closing existing accounts and refusing to open new accounts because they felt pressure from the regulators. The regulators responded by publishing the Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual ("Examination Manual") to address the concerns raised.

Response to FinCEN's Advance Notice of Proposed Rulemaking:

Generally, banks have not imposed different or increased requirements with respect to opening or maintaining a bank account. Specifically, in the last year, we have maintained some of our banking relationships, lost some banking relationships and gained others, but for those accounts that were maintained or gained, the banks did not require additional or new information prompted by the Examination Manual. Similarly, the banks which terminated the banking relationships did not cite any violation or the failure to adhere to any requirement as the reason for terminating the relationship. As a matter of fact, none of the banks have referred to or mentioned that any requested information is so requested pursuant to the recommendations contained in the Examination Manual.

Our company has always offered banks all of the background information and financial documentation required for banks to adequately conduct due diligence. There has never been a situation where requested information or documentation was denied or withheld by us. Since the issuance of the Examination Manual, the atmosphere of rejections and refusals to open bank accounts for money services businesses has not changed. In the past year, six banks have openly told us, that they do not service money services businesses. Two banks opened an account with unreasonable limitations to the amount of transactions and shortly thereafter closed the accounts stating that they were not comfortable with the volume of transactions. We view the transactional restriction as unreasonable because the banks had an opportunity to study our financials and should have been well aware of the volume of our operation in connection with the services that we offer to the public. One can expect the same banks to carry the same or higher volume for larger multinational companies, yet the banks feel quite comfortable with the volume of those clients. Some banks have also stated that they will not service money services businesses because the cost of conducting due diligence and other compliance requirements is too high; however, most of the compliance costs are passed along to the money services businesses since the banks impose on them the responsibility for procuring independent auditing services.

Since the issuance of the Examination Manual, the banks have continued to close bank accounts or refused to enter into new banking relationships under the same excuse as before, "we do not service money services businesses". No bank has ever cited a Bank Secrecy Act, USA Patriot Act, or Examination Manual related grounds for denying the banking relationship. Likewise, the banks have not cited the failure to cooperate with their request for information or documentation as a reason for denial since we openly and freely provide them with financial records and the background information of the company, its owners and officers. In fact, the banks that have reviewed our information have consistently expressed that our compliance is better than theirs and our record keeping exceeds their expectations. Similarly, banks offering merchant services have discontinued all accounts with money services businesses. Some companies offering merchant services for credit card processing (e.g., PayPal) have approved InterTransfers' application online, but then immediately close the account because it was for a money service business.

Over the last couple of years, we had an account with Bank of America which we used to transfer funds internationally. Since Bank of America closed the account last summer, no other domestic bank has been willing to service our money transfer business. Therefore, we have had to resort to the use of foreign banks to transfer funds. Foreign banks offer much costlier service and operate more slowly; thus, we have experienced a decline in business. Although we are very grateful to the foreign banks that have welcomed our business, this alternative is clearly not optimal nor a full replacement of the services we once had with Bank of America. It appears that Bank of America has kept a few money services businesses accounts open so as to not give the impression that it does provide services to money services businesses.

Additional "guidance" to banks or money services businesses would be futile since it has become clear that the refusal by the banks to open accounts for money services businesses is not prompted by any regulation, code, anti-money laundering policy or regulatory recommendation. Instead, it appears, from multiple media reports, that the banking industry's refusal to service money services businesses maybe motivated by the banks' aspiration to dominate the alternative financial services market and attract new customers, principally Hispanics. Since FinCEN's fact finding conference last year, the banks have continued to close the accounts held by money services businesses and made a great effort to capture the Hispanic market by offering remittances services. Of course, the idea is to offer other bank products to the clients who respond to the banks' marketing of remittances services. For example, some banks will even offer free remittances if the client opens a bank account.

The following is a sampling of articles that have appeared in national newspapers since the FinCEN conference which confirm that banks are actively attracting Hispanic customers by offering low priced remittances, "money direct cards", as well as other banking services:

- Banks have created a "money direct card" which allows customers to add value to the cards and mail them to relatives and friends throughout Latin America, where they can be cashed at local ATMs. The Washington Times, Aug. 9, 2005, <http://washtimes.com/business/20050808-085728-4470r.htm>
- The declining mortgage business and lower profits are forcing the countries' major banks to look into ways in which to capture the Hispanic market with a particular interest in remittances to Latin America since this product is less risky than other bank products. CNN, Nov. 22, 2005, http://money.cnn.com/2005/11/22/news/fortune500/banks_hispanics/
- Banks are interested in tapping into the \$45 billion remittance industry by actively marketing to the Hispanic market with attractive remittance prices to Latin America and the Caribbean. Many banks expect that by getting into the remittance industry they can lure new customers to other bank services. "In the last year alone a number of major banks have unveiled an array of new services to court immigrants away from the more than 100 money transfer services operating in the United States." Center Daily Times, Dec. 14, 2006, <http://www.centredaily.com/mld/centredaily/business/13408068.htm>
- "Citibank, HSBC, Bank of America, and other banks are seeking a piece of the \$100 billion immigrants send home each year. Advanced electronic systems and widespread distribution networks - a product of mergers with banks in other countries - have enabled banks in the United States to provide money transfers for lower fees." The Christian Science Monitor, Jan. 26, 2006, <http://www.csmonitor.com/2006/0126/p15s01-lifp.html>

Suggestions:

The best solution for the problems faced by money services businesses is for the regulators to adopt a provision for a federal license which would allow remitters and

check cashers to operate nationally under uniform federal standards which explicitly preempt state law. The preemption of state law would eliminate the multiple and sometimes contradictory systems of regulations imposed on money services businesses that operate in more than one state. Additionally, such federal regulation would be consistent with the purpose of the Bank Secrecy Act and related federal legislation which is to help identify situations when financial institutions are being used to facilitate money laundering, terrorist financing and other illicit financial activities. Thus, there is a national interest in adopting such federal legislation.

The federal license would allow the money services businesses to perform limited banking activities such as check cashing and electronic transfers of funds with minimal or no bank involvement. Also, by placing the regulatory function on the federal government, the burden is removed from the banks to evaluate the anti-money laundering programs implemented by the money services businesses. The proposed federal license system would place on the federal government the burden of auditing the licensees. The auditing process should be standardized and follow the recommendations of the Examination Manual. Additionally, the auditors should confer with the representatives of the money services businesses upon the conclusion of the audit, and before releasing the report, to explain their findings and give said representative the opportunity to accept or deny the findings and provide an explanation. Thus, audits should be a cooperative effort between the regulators and the money services businesses in carrying out the purpose and intent of the federal law governing financial transactions, rather than a situation where the money services business (or other financial institution) is under the fear of the regulators, their findings, and their fines.

It would also be helpful to enact laws which would require the regulators to review the reasons behind the banks denials of banking services in order to make sure that the denial is based on compliance grounds.