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Sent: Tuesday, May 02, 2006 2:19 PM

To: Comments, Regulation

Subject: Financial Crimes Enforcement Network RIN 1506-AA85

Dear FinCEN:

I am a consultant for the banking industry specializing in BSA and consumer compliance issues. In my practice as a consultant, I have noted that there is a consideration that non-bank financial institutions and MSBs do not present sufficient positive over negative attributes as customers based on several factors relating to the Bank Secrecy Act and the expectations so stated in the various guidances and in examinations. Among those factors are:

1. MSBs are a subset of non-bank financial institutions that require substantive administration (day-to-day monitoring, significant account-opening staff training, related software costs, etc.) and ongoing enhanced due diligence, due to BSA requirements. The opening and administration of these accounts produce additional expense over any other type of customer, particularly in staffing for research and software costs, due to enhanced due diligence expectations.
2. Regulatory risk remains to be a significant consideration in light of regulatory criticisms if due diligence isn't perceived as sufficient in administering non-bank financial institutions and MSB accounts, along with possible substantive penalties that may be administered under the Bank Secrecy Act (banking institutions are expected to assure these accounts are identified as higher-risk and that the enhanced due diligence expected of these accounts are considered adequate).
3. Many MSBs and non-bank financial institutions are convenience stores that submit abundant items for processing in exchange for cash, but may not maintain large balances to produce profitability of the account compared to the labor costs and risks associated with the account, primarily based on Bank Secrecy Act requirements.
4. There is a general lack of knowledge by MSBs and nonbank financial institutions regarding the regulations and requirements that apply to them under the Bank Secrecy Act. This forces banking institutions to act as both educators and *de facto* regulators of the industry (regardless of the intentions stated in previous guidances), particularly since there is an expectation under the *Joint Statement* that banking institutions determine if MSBs have registered and complied with the State licensing requirements (ongoing enhanced due diligence frequently uncovers that nonbank financial institutions are acting as unregistered/unlicensed MSBs, even unknowingly). Not only does this produce additional labor requirements, it has sometimes caused strained relationships with customers that do not understand the law and view banking institutions as law enforcers. Additional labor requirements and regulatory risk issues are also realized if this action triggers the obligation to file and record SARs if there is a suspicion that a law is being violated with regard to registration or licensing requirements (and to file a SAR every 90 days if the action that gives rise to the suspicious activity continues).
5. MSBs and nonbank financial institutions are cash intensive businesses that typically require filings of CTRs, more than any other group. This also increases the cost of maintaining these accounts and increases the regulatory risk due to possible filing errors in CTR completion.
6. There is difficulty in exempting cash-intensive accounts of MSBs and nonbank financial institutions regarding CTR filings, since MSBs and nonbank financial institutions participate in non-exemptible activities, such as check cashing and lottery ticket sales, in which the "50% rule" must be applied for entities that are involved in multiple or combined business activities. This means that financial information must be obtained from MSBs and nonbank financial institutions to review the distribution of gross revenue to determine eligibility for an exemption. These entities often refuse to provide this information, or provide it with much reluctance or protest.

The request for comments asks if additional guidance to the banking industry and to money services businesses regarding opening and maintenance of accounts for these entities would be beneficial. It would appear to me that the sum of guidance to date is sufficient, and more substantive steps could be taken for the industry to be willing to undertake the risk inherent with these accounts. For instance, if truly there is no expectation that banking institutions are not *de facto* regulators, then there should be no expectation that banking

institutions must review these accounts to assure the accountholders have registered with FinCEN or have met with State licensing requirements, nor continue to review the accounts of non-bank financial institutions to determine if the accounts rise to the level of a MSB. In addition, it would be a substantive move to relax the determination and documentation requirements of exempting accounts of non-bank financial institutions and MSBs for CTR filings, such as a revision of the 50% rule that in practice requires banking institutions to review the financial information from the accountholder.

P.H.