

Department of the Treasury
Subject: RIN 1506-AA85

To the Honorable
John W. Snow
Secretary of the Treasury
of the United States of America

Mr. Secretary:

This is in response to the Advance Notice of Proposed Rulemaking (Federal Register, Vols. 71, No. 47; March 10, 2006). It is presented by and on behalf of Motran Services, Inc., a licensed money transmitting business located in Santa Fe Springs, California, and licensed in California, Washington, Oregon and Arizona.

Federal government regulation always has the potential of providing a vast and pervading benefit to not only citizens but to businesses within our shores. Certainly, a level playing field is no more than fair and is desired by virtually every person involved in private business. We are confident that these principles and notions are shared by the Department.

This Department has, in fact, extended itself admirably, to promote a healthy, honest and low-risk service, through licensed money transmitters, to the public who wishes to transmit funds abroad. It was proper and courageous for the Department to respond to the “unbanking” of many money service businesses by providing a forum in March of 2005 to air issues. Nonetheless, the results of the march, 2005 meeting and subsequent publications have not fully lived up to the hopes of the MSB industry.

Motran is grateful for this opportunity to present its views.

Issues for Comment

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?

Motran was required by its existing bank to obtain the services of a different compliance consultant from our existing one at greater expense. The former consultant had been deemed acceptable by that bank’s compliance department, our outside auditors and by the California Department of Financial Institutions for approximately seven years.

2. Describe any circumstances under which money services businesses have provided or 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 declined to open or continue to cut relationships for the money services business.

Initially, it should be noted that neither Motran's existing bank nor any Bank we have applied to, has requested information regarding our agents. Supplying agency information would be onerous. Such information, to a money transmitter, is so sensitive that should it become publicly known, it may well mean the end of that transmitter's business.

Having said that, Motran has had the experience of having new relationships refused by two major business banks in the past year. In both instances Motran stood ready to, and did, supply all requested information, including of course all information suggested by the guidelines. Agency information was neither requested nor given.

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, a common relationship for money services businesses since the issuance of the guidance to money services businesses and to banking institutions in April 2005?

Yes. In two instances in our search for new banking relationships, officials of the respective banks have cited the difficulty and complexity of complying with the requirements in dealing with money service business accounts. It was clear that since the March, 2005, meeting, these banks believe that providing banking services for money service businesses would be much less profitable because of the additional regulatory burden which they perceived. In the material which appears in the response to paragraph number 4, below, we have included some further thoughts on those subjects, not necessary to repeat here.

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?

Yes. The guidance documents which were developed following the march, 2005, meeting were clearly well-intentioned. And Motran hopes that the reader will excuse this effort as much which appears below is inferred from the point of view of a bank customer, and not from that of a banker. The guidelines failed to meet their intended goals in several respects:

1. A bank to do business with an MSB must assess the level of due diligence that is required for each MSB customer. Many ambiguities present themselves.

- a. Does a bank have the right to take the MSB's word for such things as level of activity?
- b. Does a bank have to be suspicious? Investigate?

- c. Risks associated with the customer create an issue: How does a bank assess that? What if they're wrong? What will be the consequences to the bank?
 - d. Is this different from other customers? Are those customers as regulated as are MSBs?
- 2. Banks need to know the categories of money services engaged in by the particular MSB. However, are they responsible to determine whether the MSB is telling the truth? Again, there are ambiguities.**
- a. Do they have to investigate?
 - b. Do they have the right to the MSB's information provided?
- 3. An MSB must disclose information, including agents. In some circumstances, they would have to provide names and locations. While the number of agents may acceptably be transmitted to a bank, under conditions of *strictest confidentiality*, their actual location and name remains a trade secret whose divulgence must be avoided.**
- a. The length of time an MSB has been in operation
 - b. Whether the MSB only engages in transmittal of funds.
 - c. The size of the marketing area, when combined with the locations of their main offices and branches, affect the level of due diligence since a smaller business presents less risk.
 - d. All these issues are factors which the bank must take into account when deciding whether to provide banking services to an MSB. And the bank must determine how to verify all this information.
- 4. Banks should obtain an estimate of the level of activity anticipated by the MSB customer**
- a. This is a difficult position to put the bank in.
 - b. What if the estimate is not reliable?
 - c. Or if it is not believable?
 - d. Do they have a duty to go and investigate?
- 5. Higher risk customers:**
- a. The agency, at page 6 of the Guidelines, cites several factors in determining whether an MSB presents potentially higher risks. Those are:
 - i. Allowing customers to conduct high amount transactions with moderate frequency
 - ii. Money transmitter that offers only, or specializes in, cross-border transactions. Especially, two jurisdictions posing heightened risk for money laundering or the financing of terrorism.
 - (1) This specifically describes Motran

- (2) An MSB located in the High Risk Money Laundering and Related Financial Crimes Area or a High-Intensity Drug Trafficking Area.
- b. An expensive and time-consuming list of suggestions is very likely the reason why banks are now hesitant to do business with MSBs. Here is what they are expected to do, and what they do not WANT to do. Motran must sympathize with our banks:
 - i. Review the money services business's anti-money laundering program
 - ii. Review results of the MSB's independent testing of its NT money laundering program
 - iii. *Conduct on-site visits!!!!!!!*
 - iv. Review list of agents, including locations
 - v. Review operations and procedures manual
 - vi. Review written agent management and termination practices
 - vii. Review written employee screening practices
- c. Any Bank would have to think twice before taking on an MSB as a customer under these requirements. And likely, they are seen as requirements.
- d. Although the Guidelines state at p. 7 that "the agencies do not expect banking organizations to act as the de facto regulators of the money services business industry," nonetheless it seems that a prudent banking institution must act precisely as if FinCEN had exactly that expectation.
- e. IT CANNOT BE OVERSTRESSED, that most MSBs are subject to strict regulation by their respective State agencies, with two levels of auditing a requirement in many States.

6. Risk-based monitoring of accounts has distinct levels, depending on the risk assessment.

- a. They must confirm that the initial projections of a cost activity have remained consistent.
- b. Variances may indicate that further review is necessary.

7. The March 2005 guidance document was not intended to make banking institutions into a separate layer of police, with jurisdiction over the MSBs.

- a. The following has the effect of tempering the guidelines' good intent: "the guidance does not affect the banking organization's existing anti-money laundering compliance program obligations to assess risk, including periodic risk assessments of existing money services business accounts to update risk factors such as licensing and registration status. At p. 9.
- b. The above sentence points out the Bank's duty to provide a second layer of anti-money laundering policing, above that provided by the state license and FinCEN compliance provided by the MSB.

5. Would additional guidance (including, if applicable, clarification of existing guidance) to money services businesses regard-

ing their responsibilities under the Bank Secrecy Act as it pertains to obtaining banking services be beneficial? If so, but specifically should such guidance address?

No. Money transmittal, in the states in which Motran is licensed, at least, is highly regulated and the relations between the MSBs, their State authorities and FinCEN are clearly understood. Additionally, outside consultants and multiple layers of auditing provide for abundant security.

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?

Yes. The it appears to Motran that the guidelines as presented make banks police money service businesses. No one can be completely happy with that arrangement. Policing, as described by the regulations and guidelines, must be left to the responsible agencies and the banks should be left to conduct their business as profitably as they can.

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.

A decrease. The causes, as in any human activity, are multiple and complex. To distill the same, however, three factors take precedence:

- A. The perception by the banks that they must now police money services businesses which they bank;
- B. The banks, to the extent that they believe that following the guidelines makes banking MSBs less profitable than is worth their while, are probably correct; and,
- C. The incursion by some major banks into the money transmittal business has made making their competition much less attractive to them, from a business point of view.