



A First Data Company

Western Union Financial Services, Inc.  
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May 8, 2006

VIA E-MAIL (regcomments@fincen.treas.gov)

Robert W. Werner  
Director  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, Virginia 22183

Re: RIN 1506-AA85  
Provision of Banking Services to Money Services Businesses  
Advanced Notice of Proposed Rulemaking

Dear Mr. Werner:

Western Union Financial Services, Inc. ("Western Union") appreciates the opportunity to comment on the above-referenced Advanced Notice of Proposed Rulemaking ("ANPR"). Western Union is one of the leading providers of consumer payment services in the United States. Through our extensive agent network and various electronic channels, we provide money transfer services to people who periodically send funds to family and friends in other locations, who need to send and receive cash quickly in emergencies, or who want a convenient way to pay their monthly bills. Our agents range from large national and regional companies to small independently owned retail businesses. All of them require access to banking services in order to carry out their money transfer business and serve their communities. As a result, Western Union, our agents, and the consumers who rely on our services all have a significant interest in the subject matter of the ANPR.<sup>1</sup>

#### **General Comments**

As recounted in the ANPR, the problem of money services businesses being denied access to banking services led to a series of meetings and congressional hearings

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<sup>1</sup> Money transfer services are also provided by our sister companies, Orlandi Valuta ("OV") and Vigo Remittance Corporation ("Vigo"). Both OV and Vigo offer their services and products through agent networks and, like Western Union, both they and their agents have experienced problems with either securing or maintaining banking relationships.

Mr. Robert W. Werner  
May 8, 2006  
Page 2

in early 2005 and culminated in the issuance of formal guidance by FinCEN and the federal bank regulatory agencies. Although the guidance was welcome, it has failed to stem the tide of account closures and related problems. The situation has reached the point where further action is necessary. While more guidance would be helpful, FinCEN and the bank regulatory agencies need to consider additional measures to ensure that money services businesses are able to obtain access to the banking system.

The seriousness of the problem is underscored by the fact that account closures have not been limited to money services businesses that, viewed by some set of objective criteria, arguably pose an unreasonable risk to banks. As discussed below, Western Union has had certain of its corporate banking relationships terminated, and many of our agents have lost long-standing banking relationships, been unable to establish new ones, or been subjected to burdensome demands in order to maintain or open an account. Western Union is a nationally recognized and respected company. We are registered with FinCEN, subject to the full array of Bank Secrecy Act ("BSA") requirements, and are licensed, regulated, and examined by nearly every state and the District of Columbia. We have a comprehensive anti-money laundering program which includes monitoring of transactions and oversight of our agents. Our agents themselves are money services businesses subject to BSA requirements, have anti-money laundering programs in place, and are licensed and examined by the majority of states. If banks are unwilling to offer their services to us or our agents, then clearly something is wrong.

The primary cause of the problem appears to be banks' continuing concerns about their obligations and liability under the BSA with respect to money services businesses. First, banks apparently feel the need for more definitive guidance in this area. In particular, we understand they would like a clearer statement that they are not expected to police the activities of the customers of their money services business accountholders. In other words, so long as they conduct appropriate due diligence into the money services business, they will not be held accountable should a customer of the money services business engage in money laundering or other illegal activity. Second, banks have reported conflicts between the 2005 guidance and what they are being told by their bank examiners. For example, we have heard reports that examiners continue to consider *all* money services businesses to be "high risk," thus requiring heightened due diligence and oversight in all cases. In addition, examiners have allegedly told banks that they are in fact responsible for monitoring the activities of a money services businesses' customers. Finally, banks' concerns about potential liability are understandably heightened by the size of recent civil penalties in BSA cases and the trend towards criminalizing BSA violations. Faced with potential fines in the tens of millions of dollars and possible criminal prosecution, many banks have concluded that the risks of offering services to money services businesses are simply too great.

Mr. Robert W. Werner  
May 8, 2006  
Page 3

As FinCEN is aware, when money services businesses lose access to banking services, the consequences fall disproportionately on those who are least able to bear them. To a significant degree, the people who use and rely on money services businesses are the so-called “unbanked” – lower income individuals and families, immigrants who send money back to their home countries to support spouses, children and other family members, and members of minority and ethnic communities. These individuals have traditionally been underserved by the U.S. financial system and are most in need of access to financial services. In addition, many money services businesses that have lost their banking relationships are themselves small business owners who operate in and serve economically disadvantaged and low-income communities. The legitimate needs of these communities should drive FinCEN’s and the other regulatory agencies’ commitment to pursuing effective solutions to the current situation.

#### **Western Union’s Experience**

Over the last year and a half, hundreds of Western Union agents have either had their banking relationships terminated or have experienced significant difficulties in establishing or maintaining banking relationships. During this period, Western Union has responded to over 2000 requests from agents seeking help finding banks who will accept their business or satisfying new and sometimes onerous requirements for opening or maintaining accounts. Many of our agents have been forced out of the money services business, either because they cannot establish or maintain a banking relationship or because the costs of doing so have become prohibitive. The following summarizes our experience.

In 2005, a major national bank apparently adopted a policy of refusing to provide bank accounts to any business that derived more than a certain percentage of its revenues from money services activity. Although the bank denied that it was exiting the money services market, the implementation of its policy resulted in the termination of scores of money services business accounts. In addition, its policy disproportionately impacted small, locally-owned businesses. This same bank also advised Western Union that it was closing all of Western Union’s corporate accounts that were related to our money services business.<sup>2</sup> The bank refused to provide any explanation for its actions other than to state that they resulted from a “portfolio review” and were based on a “risk-reward”

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<sup>2</sup> The bank also advised that it was closing all corporate accounts of our sister companies, Vigo and OV, that relate to their money services business. In the case of Vigo, this resulted in over 2000 long-standing accounts being closed. Although Vigo has been able to establish new banking relationships for many of these accounts, the time and resources necessary to do so have been significant.

Mr. Robert W. Werner  
May 8, 2006  
Page 4

assessment. It refused to provide any details about the assessment and refused to disclose whether its action stemmed from anti-money laundering or BSA compliance concerns.

Some banks have sent letters to our agents advising them that their accounts are being closed, often providing no more than 30-days notice. The letters generally offer no explanation as to why the accounts are being closed. When we have contacted these banks offering to provide them with information to address any concerns they may have, some have been open to working with us, but many others have simply stood by their decision. Other banks have told us that they will continue servicing existing agent accounts but will not establish new ones. Some banks have told us that their decision stems from a concern over BSA obligations and potential liability. Smaller banks in particular have expressed concern that, in the current regulatory and enforcement environment, if a bank makes one mistake, it risks a penalty in the millions of dollars and damage to its reputation. Many say they simply cannot afford to run that risk.

Other banks have sent letters notifying our agents that they must provide various types of information in order to maintain their accounts. Examples of information requested include evidence that the agent is licensed, evidence that the agent or Western Union is registered with FinCEN, copies of the contract between Western Union and the agent, copies of or information about the agent's or Western Union's anti-money laundering program, and information about the agent's money services business activities. For the most part, these requests appear to be designed to satisfy the banks' due diligence obligations as described in the 2005 guidance and the FFIEC BSA Examination Manual, although some ask for information significantly beyond the scope of the guidance.<sup>3</sup> While these requests are often time-consuming and burdensome, we generally have not experienced situations where a bank has refused to provide banking services after the requested information has been provided.<sup>4</sup>

In some cases, banks have imposed other, more onerous requirements in order to continue servicing agent accounts. One bank demanded that our agents agree to be audited, at the agents' expense, by a third party selected from a list provided by the bank. In addition, although we have offered to meet with banks and explain our agent oversight and transaction monitoring programs, some banks have requested that we agree to

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<sup>3</sup> The variety of requests we have received from banks appears to reflect a general confusion as to the type and extent of due diligence required by the regulatory guidance.

<sup>4</sup> Adding to the difficulties is the fact that many agents who receive such requests are small business owners for whom English may be a second language. The letters are often legalistic and hard for agents to understand, and many banks have offered little or no help in determining what is being requested. Although Western Union provides extensive assistance in addressing these requests, the agents often feel intimidated and embarrassed by the process and in some cases simply abandon the effort.

Mr. Robert W. Werner  
May 8, 2006  
Page 5

indemnify the bank should any problems develop. Other banks have significantly increased their account servicing or maintenance fees for money services businesses, ostensibly to compensate them for the heightened due diligence and monitoring they feel they are required to perform by the regulatory guidance. For many smaller agents, these fees have been prohibitively expensive, in some cases more than the revenues they derive from their money services activities. In such cases, the new fees effectively result in the termination of the account.

By far, the most disturbing aspect of our experience is the nature of the agents who are losing or having difficulty maintaining their banking relationships. Few of our larger national or regional agent networks have been affected. Whether this is because banks consider them lower risk or because banks do not want to jeopardize other commercial banking relationships they may have with these companies, we can only guess. Instead, the agents who are experiencing problems are almost exclusively small, independent businesses located in low or moderate income areas in large cities and urban corridors, such as Boston, New York and Miami. These agents are predominantly minority-owned and serve minority, ethnic and immigrant communities. As a result, the very communities to whom banks are supposed to be extending services under the Community Reinvestment Act are the ones who are being adversely impacted by the current situation.

### **Specific Recommendations**

The following are our specific recommendations as to the actions we believe FinCEN and the bank regulatory agencies should take to address the current problem.

A. Issue Additional Interagency Guidance That More Clearly Defines and Limits Banks' Obligations With Respect to Money Services Businesses

We are concerned that, despite the 2005 guidance, banks feel they are being sent a mixed message by regulators as to their compliance obligations. On one hand, regulators have said that the majority of money services providers are legitimate businesses serving the legitimate financial needs of their customers. Regulators have also stated that international remittances, including those from domestic immigrant populations to their home countries, serve important and legitimate needs. Yet, on the other hand, regulators have identified international money transfers and cash-intensive businesses as raising heightened risks of money laundering, and money services businesses as a class are apparently still considered by some to be inherently high-risk entities. In addition, while the 2005 guidance states that banks are not expected to serve as *de facto* regulators of the money services business industry, the FFIEC BSA Examination Manual imposes risk-

Mr. Robert W. Werner  
May 8, 2006  
Page 6

based due diligence obligations on banks that are sufficiently ill-defined and open-ended as to lead banks to believe they are required to closely monitor all money services business accounts and effectively police the customers of their money services business accountholders.

Both banks and money services businesses are financial institutions for BSA purposes and both are independently subject to the full array of BSA requirements. There is simply no reason why one of those financial institutions – the bank – should be required to police the other financial institution’s compliance with its independent BSA obligations. On the contrary, banks should be able to take comfort in and rely on the fact that their customer is a regulated entity subject to both BSA requirements and examination on the state and federal level. Indeed, the fact that money services businesses are regulated and subject to the BSA should be a factor that results in a lower risk rating and reduces or limits a bank’s due diligence obligations accordingly. If banks are not allowed to rely on the fact that money services businesses are regulated and subject to the BSA to reduce their oversight obligations, then notwithstanding any statements to the contrary, they may well be justified in concluding that they are being asked to serve as *de facto* regulators of money services businesses.<sup>5</sup>

To remedy this problem, we recommend that additional interagency guidance be issued along the following lines:

- First, banks should be required to perform specifically defined due diligence when opening an account for a money services business. This should consist of obtaining evidence that the money services business is properly licensed and, if required, registered with FinCEN; basic information about the nature of the business and the expected activity in the account; and, if the bank deems necessary, confirmation that the money services business has an anti-money laundering program in place. With respect to the last item, the bank should not be required to assess the adequacy or quality of the anti-money laundering program or otherwise “audit” the money services business’ internal controls or procedures. Otherwise, the bank is in effect being asked to serve as an examiner, a function it should not have to perform. Unless there are specific “red flags” – which must be something more than an inherent characteristic (such as providing international remittance services or dealing

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<sup>5</sup> Western Union neither wants nor expects banks to supervise our business or our compliance with regulatory obligations. To the extent that regulators believe oversight of money services businesses needs to be strengthened or enhanced, they should deal with those issues directly through rulemaking, guidance, or the examination process.

in cash) of the money services business – this should satisfy the bank’s due diligence obligations.

- Second, banks should only be required to monitor account activity to identify unusual or suspicious changes in the nature of such activity, such as a sudden and significant increase in the amount of money being deposited on a daily or weekly basis. A bank’s monitoring obligation should be based on the type of information that will normally be available for such accounts, such as bulk deposits and payments activity. It should be made clear that banks are not required to “look through” the money services business and somehow monitor the transactions conducted by the business’ customers.
- Third, banks should be given reasonable assurance that, if they satisfy these basic due diligence and monitoring obligations, they will not be held accountable should a customer of their money services business accountholder engage in money laundering or other illegal activity.

As was the case in 2005, this guidance should be issued jointly by FinCEN and the bank regulatory agencies, and it should be made clear that it supersedes anything in the FFIEC BSA Examination Manual that could be construed to the contrary. It is essential that the regulators speak with one voice on this issue, especially since the present problem stems in part from perceived differences among the agencies as to their views on this issue.

B. Give Banks Community Reinvestment Act Credit for Opening and Maintaining Accounts for Money Services Businesses

As previously stated, the Western Union agents who are being adversely impacted by the current situation are predominantly minority or ethnic owned businesses located in low and moderate income urban areas serving minority, ethnic and immigrant communities. We doubt that our experience in this regard is unique. In addition, FinCEN and other regulatory agencies have repeatedly acknowledged that money services businesses provide essential services to low and moderate income communities that have traditionally been underserved by banks. Since these are the very communities that the Community Reinvestment Act (“CRA”) is designed to ensure receive banking services, we believe the federal bank regulatory agencies should explicitly recognize the provision of banking services to money services businesses as a qualified CRA activity. By so doing, they would send a clear message as to the value of such services and would give banks a significant incentive to provide them.

Mr. Robert W. Werner  
May 8, 2006  
Page 8

The federal bank regulatory agencies have already acknowledged that remittance services serve an important community need for many low and moderate income individuals, particularly those who use such services to send money to family members in other countries.<sup>6</sup> In recognition of this and to give banks an incentive to provide such services, the agencies recently interpreted the CRA regulations to permit favorable consideration of remittance services in a bank's CRA evaluation. Specifically, in addition to being a retail service under the regulations, international remittance services that increase access to financial services by low and moderate income persons now qualify as a community development service for CRA purposes.<sup>7</sup> In recognizing the importance of international remittances to this underserved community, the agencies have by definition recognized the importance to this same community of businesses that provide such remittance services. Giving banks CRA credit for opening and maintaining accounts for money services businesses is therefore a logical and appropriate extension of action already taken.

Extending CRA credit to banks that provide accounts for money services businesses may also be necessary to avoid discriminatory treatment among banks. As things currently stand, a bank that offers remittance services directly to low and moderate income persons may receive CRA credit for doing so. A bank that provides such services indirectly by offering accounts to money services businesses receives no such credit. Thus, even though both activities serve a distressed and underserved community, only one bank receives CRA credit. Moreover, it is most likely large banks that currently have the advantage since few small- or medium-sized banks offer remittance services. Finally, giving CRA credit only for the direct provision of remittance services could provide banks with a regulatory incentive to deny banking services to money services businesses and to instead market their own remittance services to those businesses' customers.

C. Allow Money Services Businesses to Maintain Accounts at Federal Reserve Banks

Currently, numerous money services businesses are being forced out of the business because of their inability to obtain new or replacement banking relationships. Others are having to endure significant hardships, including suspending operations, while seeking out a bank that is willing to take their account. In order to alleviate this crisis, we believe that action should be taken at the legislative and regulatory levels to allow money

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<sup>6</sup> See letter dated June 3, 2004, from Alan Greenspan, Donald E. Powell, John D. Hawke, Jr., and James E. Gilleran to The Honorable Barney Frank, located at [www.ffiec.gov/cra/pdf/060304.pdf](http://www.ffiec.gov/cra/pdf/060304.pdf).

<sup>7</sup> See Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment, 71 Fed.Reg. 12424 (March 10, 2006).



Mr. Robert W. Werner  
May 8, 2006  
Page 9

services businesses to open accounts directly with the Federal Reserve Banks. We believe such action is justified by present circumstances, particularly since the problem has arisen in large part because of the regulatory environment created by the federal banking agencies. Although we can understand why private banks might have competitive objections to Federal Reserve Banks providing banking services directly to money services businesses, private bankers cannot be allowed to refuse to provide banking services on the one hand and at the same time block money services businesses from obtaining those services from an alternative provider.

Precedent for the Federal Reserve Banks providing account services to non-members was established in the late 1970's when savings and loan associations, non-member banks and credit unions were allowed direct access to the Federal Reserve's account services. At that time, the infrastructure, including pricing and operating guidelines, was put in place to accommodate the provision of such services to non-members. That same infrastructure could be used immediately by the Federal Reserve to provide account services to money services businesses. In addition, because it is the primary federal regulator of state member banks, the Federal Reserve has the expertise in its examination division to review money services businesses applying for accounts for compliance with applicable BSA requirements. Furthermore, the Federal Reserve Banks and branches are located in virtually every major city in the United States. That network footprint ensures that those money services businesses most in need – namely, those in low and moderate income urban areas serving minority, ethnic and immigrant communities – are able to continue in business.

Depending on what other actions are taken and how successful they are in alleviating the current situation, this could be an interim solution. However, there is simply no justification for any money services business having to cease operations because it cannot obtain access to the banking system. Access to the Federal Reserve Banks would at least provide them with the safety net they currently need.

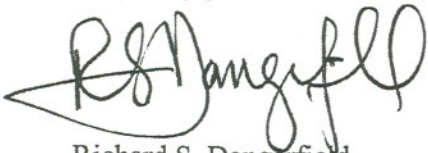
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We appreciate the opportunity to provide our thoughts and recommendations on this critically important issue. We urge FinCEN and the bank regulatory agencies to take quick and effective action to ensure that money services businesses have access to the banking services they need to serve their communities. We look forward to continuing to

Mr. Robert W. Werner  
May 8, 2006  
Page 10

work with FinCEN on this issue and would be happy to answer any questions you may have regarding our comments.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard S. Dangerfield". The signature is stylized and cursive, with a large initial "R" and "D".

Richard S. Dangerfield  
Senior Counsel

cc: Honorable Wayne Allard  
Honorable Spencer Bachus  
Honorable Robert Bennett  
Honorable Luis Gutierrez  
Honorable Chuck Hagel  
Honorable Tim Johnson  
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Mr. Robert W. Werner  
May 8, 2006  
Page 11

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