

May 8, 2006

Ezra C. Levine
Partner

T 202.383.7055

F 202.383.6610

levinee@howrey.com

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

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

Dear Director Werner:

These comments are filed on behalf of the Non-Bank Funds Transmitters Group ("Group") which is composed of Western Union Financial Services, Inc.; MoneyGram International; Travelex Americas; American Express Travel Related Services; RIA Financial Services; Comdata Network, Inc. and Sigue Corporation in response to the above-referenced Notice relating to the closure of MSB bank accounts. At the outset, please note that individual members of the Group will be filing more detailed comments which reflect their experiences with regard to bank closures.

I. Bank Closure of MSB Accounts is Accelerating

There is no reason to recount the history of this issue since it is accurately summarized in the Notice. Likewise, FinCEN's conclusion that the matter "continues to be an issue of concern" is, unfortunately an understatement. The fact is that banks are canceling MSB accounts with increasing frequency and some banks are canceling all MSB accounts. The problem is of epidemic proportions and, if the tide is not reversed, MSB operations could be curtailed to the point that funds begin to flow through the underground -- a prospect that is contrary to public policy and a threat to national security.

II. Banks Should Not Be Obligated to Police the Customers of MSB Account Holders

The Group does not believe that bankers are the issue. In the post "AmSouth" regulatory era, banks are legitimately sensitive to the need to be exceedingly cautious in all facets of BSA compliance. The overall failure to

provide regulatory relief is literally causing the once-effective BSA recordkeeping and reporting system to be eviscerated through over-regulation (see, for example, the vast increase in “defensive” SAR filings). This over-regulation of banks extends to the formal designation by the FFIEC of MSBs as “risky” businesses demanding of more attention.

With regard to the “risky” business characterization, no credible evidence has ever been produced which demonstrates that MSBs are disproportionately utilized by either narcotics traffickers or terrorists as a conduit for illegal sums. In fact, the entire premise that MSBs are “risky” is suspect in light of the average transaction amount of money transmission (under \$300) and the fact that MSBs are highly regulated. One need only review the magnitude of the alleged multiple billion dollar allegations relating to the Bank of New York to realize that MSBs do not pose a disproportionate risk.

In the Notice, FinCEN reiterated the point from the March 30, 2005 “Joint Statement” that neither the BSA nor the regulatory agencies “expect banking institutions to serve as the de facto regulator of the money services businesses industry.” However, notwithstanding the further edification that banks, in opening or maintaining MSB accounts “should apply the requirements of the [BSA] on a risk-assessed basis, as they do for all customers . . .” (emphasis added), in practice, this guidance has been totally ineffective. In large measure the reason the policy has not had the desired effect is that in the issuance of the final inter-agency policy statements, an express and clear articulation of the fact that banks are not expected to police the customers of their MSB account holders was omitted. (Such a clear statement of intent was reportedly proposed by FinCEN but deleted due to objections raised by the OCC.) Therefore, in practice, MSBs are not subject to the same risk assessment as banks “do for all customers.” Rather, the MSBs are subject to assessment under an impossible standard.

Stripped of excess verbiage, the issue boils down to the continuing pervasive practice of federal bank regulators admonishing bankers that they have an affirmative obligation to police the customers of their customers, only in the case of MSB accounts. The bankers are told to either step up to this compliance burden or eliminate the issue by closing the MSB accounts. It is not surprising, therefore, that banks have closed MSB accounts faced with this unconscionable regulatory pressure.

It is clear that these federal bank regulatory activities are on-going. One need only refer to the testimony of numerous bankers at the March 2006 FinCEN-sponsored

public hearing, recounting such warnings and not so subtle pressure to close MSB accounts. While banking regulators in Washington deny that such conduct is sanctioned, the fact remains that they have failed to grasp the severity of the situation or taken any effective steps to remediate the problem. In sum, to date no federal banking regulator has taken the leadership to assist in fixing the problem. Banks, for their part, are justifiably reluctant to push back and complain to regulatory headquarters about individual examiner conduct because they are concerned about punitive repercussions.

III. Creative Solutions Are Needed to Avoid National Security Issues

What is needed is clear and unequivocal guidance from the federal bank regulators that banks need not police the customers of their licensed MSB account holders. Moreover, other creative measures could be devised by these regulators to provide an incentive for banks to maintain MSB accounts, such as giving the banks CRA "points" for serving MSBs, etc. Another possible option (which might require a minor legislative tweak) would be to allow MSBs to open accounts with the Federal Reserve Banks which can perform all of the financial account services needed for MSB operations (see, e.g. Federal Reserve Operating Circular OC1).

Unless action is taken quickly, MSB customer funds will migrate to the underground channels which are not easily accessible to law enforcement. This obvious result does not serve the national interest and will undermine the ability of law enforcement to track funds transfers.

The current regulatory morass is counter-productive and is inconsistent with the long-term security interests of the United States. It is also inconsistent with the remittance policy of the United States announced by President Bush that the administration was committed to "promoting competition between providers of remittance transfers" and "eliminating regulatory obstacles and other restrictive measures that affect the cost of sending . . ." funds abroad (See, White House Fact Sheet, "Lowering the Cost of Remittances"—Presidential Action, January 13, 2004).

Sincerely,

Ezra C. Levine

