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Robert W. Werner, Director
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RIN: 1506-AA85

Dear Director Werner:

MoneyGram International, Inc. (MoneyGram) appreciates the opportunity to submit comments on the Advance Notice of Proposed Rulemaking relating to the ongoing bank discontinuance problem for money services businesses (MSBs). As you know, MoneyGram is an MSB that offers money transfers, money orders and other payment services to millions of consumers in the United States, and more than 170 countries worldwide. In the US, MoneyGram's services are available at more than 54,000 locations including a variety of retail businesses, such as supermarkets, convenience stores, and drug stores, as well as check cashers, banks and credit unions. MoneyGram is a publicly traded company listed on the NYSE with a market cap of approximately $3 billion.

When FinCEN and the federal banking agencies first addressed the bank discontinuance problem last year, the affected entities were mainly small, independent convenience stores referred to as "Mom and Pop" shops, as well as some check cashers. Since then, the situation has not improved for these entities, and in fact it has grown worse for more MSBs, including MoneyGram. This is due mainly to the ongoing perception by too many regulators and banks that all MSBs are high-risk businesses. Most recently, MoneyGram was notified by Bank of America that it was terminating MoneyGram's accounts, even though Bank of America's anti-money laundering staff had previously visited MoneyGram and had expressed satisfaction with its compliance program.

Over the past year, at least three national banks ceased offering services to MSBs, and many other state chartered banks have also discontinued service. Some of these banks have not hidden the fact that the reason they are closing MSBs' accounts is due to pressure they are feeling from their regulators because they provide accounts to MSBs. Unfortunately, none of the banks are willing to publicly admit to such regulatory pressure, but that is not surprising.

This problem is growing and will not go away on its own. It is going to require leadership from the federal government to implement a plan that will eliminate the bank industry's fears, and provide the proper incentive for banks to again serve MSBs. As several current and former federal officials have noted, this is a serious problem because it has the potential of driving key portions of the MSB sector underground. If that occurs, it will be more difficult for regulators to monitor their activity and for law enforcement to gain valuable information needed in the fight against money laundering and terrorist financing.

The termination of MoneyGram's accounts by Bank of America will not have a significant effect on MoneyGram. However, if more banks follow Bank of America's lead it may begin to impact the ability of smaller MSBs to obtain the banking services that are critical to their operations. The potential "ripple effect" among the banking community is the real concern of MSBs.

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?

Two notable requirements that several banks have imposed on MSBs as a condition for maintaining their accounts are: special MSB monthly service fees, and specific approved reviewers of the MSBs' compliance programs. The new fees that we have seen imposed on some MSBs range from $500 to $950 per month. These fees have been imposed regardless of the amount of MSB business the entity conducts, and with no prior or subsequent review by the bank of the MSB's business. Thus, the new fees appear to be simply a method that some banks are using to generate revenue rather than actually funding resources to analyze the MSBs or their compliance programs.

The lists of approved reviewers of MSBs compliance programs are rather interesting as much for the names on the lists, as for the names that are not included. For example, were an MSB to have its review conducted by some of the foremost experts on anti-money laundering compliance, those reviews would not be acceptable since those persons are not on the list. But more problematic is the fact that the persons on these lists charge rates that far exceed the revenue that a small MSB could ever hope to earn from offering MSB services. In fact, that is one of the reasons that the implementing regulations use the term "review" rather than "audit." Treasury recognized that a full-scale audit would be cost prohibitive for many MSBs.

By requiring the use of predetermined reviewers, these banks are in effect forcing small businesses to choose between offering MSB services to their customers, or risk losing their bank account for their entire business. A small business can forsake offering MSB services long before it can afford to give up its bank account relationship. Thus, when these businesses cease offering MSB services the real losers are the consumers who rely on those services to pay their bills, cash their checks and send money home to their families.

2. *Describe any circumstances under which money services businesses have provided or have 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 decline to open or continue account relationships for the money services businesses.*

Some MoneyGram agents have reported that they have provided banks all information requested of them, such as their written compliance program, their designation of a compliance officer, information on their employee training program, and a completed independent review, only to be told by the bank that their account is being terminated. In some cases, the banks have said that despite the quality of the MSB's anti-money laundering materials, they simply are not going to do business with any MSBs. This was certainly the case for MoneyGram which had cooperated with all of Bank of America's requests and had been told by senior officials that the decision to terminate MoneyGram's accounts had nothing to do with MoneyGram's compliance program.

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, account relationships for money services businesses since the issuance of the guidance to money services businesses and to banking institutions in April 2005?*

We are not aware of any banks that have stated they are terminating an MSB's account due to specific Bank Secrecy Act (BSA) issues. Instead, they have informally advised us or our agents that they are terminating the accounts due to pressure from their regulators. The banks have said that their regulatory examiners are placing such high demands on their due diligence efforts with regard to MSB accounts that they no longer feel they can satisfy the regulators' expectations.

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?

Additional guidance may be helpful, but only if it replaces the existing guidance that was issued last year. Last year's guidance was well intentioned, but due to its complexity and length it increased rather than decreased many banks' concerns about conducting business with MSBs. That is why new, straightforward guidance is needed that will tell banks they are not required to police their MSB account holders, nor perform extensive due diligence on the MSB's anti-money laundering compliance programs.

But improved guidance alone will not solve the bank discontinuance problem. It requires a more comprehensive solution that combines three key factors:

First, US Treasury, through FinCEN, should provide compliance assistance to MSBs that will eliminate much of the subjectivity that is currently imposed on banks by their regulators. Those regulators currently require banks to distinguish one MSB's compliance program from another and determine the adequacy of those programs. (See comments to #6 below for further discussion on this point.)

Second, a method to measure how well banks provide services to MSBs needs to be developed. In 1977, Congress enacted the Community Reinvestment Act (CRA) to encourage banks to invest in all areas of their community. A similar tool could be used to measure how well banks serve MSBs, and could even be used to give banks CRA credit for serving certain MSBs as motivation to do so. After all, MSBs serve these communities by providing valuable services to many consumers who are unable or unwilling to establish traditional banking relationships.

Third, is the need for uniform enforcement of anti-money laundering compliance requirements as they are applied to MSBs across the country. Today, there are too many regulators interpreting anti-money laundering laws in their own way which has led to confusion in the MSB industry and diverted MSB resources away from focusing on suspicious activity. Requiring compliance with a hodge-podge of regulatory interpretations that often conflict with one another is weakening the overall compliance efforts being made by many MSBs. It is also causing problems for state chartered banks as they deal with regulators who have different interpretations of what constitutes an adequate compliance program for MSB account holders.

5. Would additional guidance (including, if applicable, clarification of existing guidance) to money services businesses regarding their responsibilities under the Bank Secrecy Act as it pertains to obtaining banking services be beneficial? If so, what specifically should such guidance address?

Additional guidance could be very helpful to MSBs. Specifically, guidance as to what constitutes an effective compliance program and an acceptable independent review. (See comments to #6 below for further discussion on this point.) Prior to the adoption of the USA PATRIOT Act (Patriot Act), most MSBs focused on the monetary thresholds for reporting and recordkeeping that were set by the BSA. Following adoption of the Patriot Act, however, all MSBs – regardless of size – were required to adopt a written compliance program and conduct independent reviews of their program. For larger MSBs, like MoneyGram, this has not been a problem but that is not the case for the thousands of entities around the country that are suddenly deemed an MSB due to the sale of money orders or the cashing of checks.

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, there are steps that could be taken to help reduce the perceived risk. First would be for US Treasury, through FinCEN, to develop a model compliance program that certain MSBs could adopt as their own compliance program. While the trend in anti-money laundering has been to push entities to implement risk-based programs and procedures, there are times when an objective approach is needed. That is particularly true for those MSBs who only conduct a relatively few MSB transactions and for whom MSB services is only a small portion of their overall business. Anyone working in the anti-money laundering compliance field can list all kinds of examples of businesses that only conduct a handful of MSB transactions every month as a courtesy to their customers but which are now struggling to develop a compliance program, as well as figure out what it means to independently review that program.

It may still be appropriate for larger MSBs, like MoneyGram, to develop their own risk-based compliance program, but a standard, FinCEN developed model, is the best solution for thousands of smaller MSBs. The fact that FinCEN develops the model does not reduce the obligation of MSBs to comply with its requirements, but standardization can provide banks with the assurance they are seeking that the program meets regulatory expectations.

Second, US Treasury, through FinCEN, should develop a model compliance review checklist that could be used by certain MSBs to satisfy their Patriot Act

review requirement. Once again, the FinCEN model may not be appropriate for larger MSBs, like MoneyGram, but it would certainly be appropriate for the thousands of "Mom and Pop" stores across the country that are owner/operated and which have no expertise at developing compliance review programs.

Third, US Treasury should firmly establish its preemptive authority to interpret and implement (as well as impose fines for violations) the BSA and related federal anti-money laundering laws and regulations. MSBs are licensed and regulated by the states for safety and soundness, and the Internal Revenue Service has been granted authority to regulate MSBs for anti-money laundering compliance. In recent years, however, more states are attempting to impose their own interpretations of the BSA and related laws on MSBs. This has led to inconsistent and conflicting requirements being imposed between the states and the federal government, as well as among the states themselves, on how MSBs are to comply with the BSA. Thus, MSBs and banks are both confused as to what constitutes an adequate anti-money laundering compliance program, and so for many banks the only solution is to simply terminate MSB account holders.

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.*

There has been a decrease in the provision of banking services to MSBs. As noted earlier, in the past, at least three national banks have discontinued offering services to MSBs. Bank of America specifically stated in its termination letter to MoneyGram that it was discontinuing account services, but it also said that it would continue providing credit and investment services to MoneyGram for the remainder of their agreement through 2010. Thus, it is clear that banks are not discontinuing MSB accounts due to credit concerns but rather out of an abundance of caution brought on by regulatory preoccupation with MSBs.

In MoneyGram's opinion, the leading cause of the bank discontinuance problem is the label of "high risk" that the federal banking agencies have hung on all MSBs. While these same regulators are demanding their licensees use a risk-based approach in formulating their compliance policies, they themselves do just the opposite by calling all MSBs "high risk." It is this label that has caused the bulk of the banking problems for the MSB industry.

On behalf of MoneyGram, we want to thank FinCEN for continuing to take a leadership position on this problem, and we applaud the agency's efforts at finding solutions that are acceptable to both banks and MSBs.

With kindest regards,

Tom Haider