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BANKING DEPARTMENT  
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Financial Crimes Enforcement Network  
U.S. Department of the Treasury  
P.O. Box 39  
Vienna, VA 22183  
Attn: Robert W. Werner, Director

RE: **RIN 1506-AA85 – Providing Banking Services to Money Services Businesses**

Dear Mr. Werner:

The New York State Banking Department ("Department") appreciates the opportunity to comment on this Advance Notice of Proposed Rule Making ("ANPR") soliciting updated facts and recommendations regarding the extent to which ongoing concerns of access to banking services by money services businesses ("MSBs") require additional guidance or regulatory action under the Bank Secrecy Act ("BSA"). We commend FinCEN for its continuing efforts to ensure consistent treatment across all industries.

The ANPR requests information about what has occurred since the issuance of the joint FinCEN, federal banking agencies ("FBAs") guidance and whether additional guidance would be beneficial.

**MSB Banking Relationships Statistics**

The Department licenses, supervises and examines 73 money transmitters and 213 check cashers. In 2005, approximately 30 money transmitters (42% of licensees) and 180 check cashers (85% of licensees) changed banking relationships due to two major banks deciding to exit the servicing of the money services business industry. The migration of MSBs to another banking relationship was accomplished in an orderly fashion with the assistance of the banking industry. Licensees were given extensions to relationship termination dates if they could demonstrate they were actively looking and applying for another banking relationship.

[Note that only two MSBs have closed during this banking relationship transition period, one of which declared Chapter 11 bankruptcy prior to notification of the banking relationship termination.]

Today, 29 banks service money transmitters with two banks providing 42% of the licensees' banking relationships. However, preliminary indications are that these two banks are considering exiting the money transmitter servicing business. For check cashers, only 12 banks provide service with the top two banks servicing 87% of the licensees. As the statistics demonstrate the servicing of MSBs licensed in New York State is concentrated in a small number of banks. Clearly, the exit of the few major institutions currently servicing the money transmitter and check cashing industries would present a significant challenge to the future of the MSBs.

The statistics cited above for licensed MSBs of course do not reflect the considerable activities conducted by unlicensed, illegal MSBs. While the exact effect of the unlicensed MSB activity on the banking relationships of licensed MSBs is hard to measure, there is no doubt that there is some negative carryover. Bank compliance systems have gotten better at identifying and reporting unlicensed activity to regulators and law enforcement, and further improvements in this effort in the long run can only help the legitimate MSB industry.

### Changes in Licensing, Supervision and Examination Procedures

Recognizing the importance of state supervision, the Department has significantly strengthened its MSB licensing, supervision, and examination program. Any applicant must demonstrate the ability to meet all applicable BSA/AML requirements. At the time of application, the MSB must provide BSA/AML policies and procedures, designation of compliance officer, a training program, and an affidavit acknowledging that an independent review is required. We have improved our due diligence process to more rigorously independently verify the information provided by the applicant to ensure that all licensing requirements by law and regulation are met, and that the applicant possesses the character and fitness to operate the MSB.

In order to conduct more effective BSA/AML examinations, a BSA specialist is utilized for all on-site examinations of money transmitters, which are conducted on an annual basis. A BSA specialist is also utilized for the examination of large check cashers, which is conducted every two years, or as required based upon the risk profile of the licensee. In addition, we have made two fundamental changes to the way we conduct BSA/AML examinations. First, we have increased and intensified our pre-examination planning and secondly, the level of transaction testing conducted during examinations has been increased and made more risk focused.

For money transmitters, more information is gathered and analyzed in relation to agent activity and such other elements as geographic location. In addition, transaction thresholds have been significantly lowered (\$2,500 or lower) to coincide with customer identification programs (CIP) used by the transmitters. Also, cradle to grave testing of transactions are performed on a limited basis to test the CIP and the quality of the identification gathered.

For check cashers, CTRS are reviewed to determine if there are any unusual patterns within the reportable transactions; e.g. large checks in excess of \$50,000; cash-in transactions; or unusual categories of businesses. More attention is paid to the patterns of the checks cashed and to customer histories. Again, transaction testing is determined with thresholds starting at \$1,500 or more.

Transaction testing typically includes a minimum sample covering a three-month period which is downloaded to an Excel spreadsheet for sorting purposes. Among the sorts performed: no fee

transactions, blank fields, sender to sender transactions, multiple senders to one beneficiary, single sender to multiple beneficiaries, payee, payor, and large dollar transactions.

Examination results are shared with the IRS and FinCEN is advised whenever the Department is contemplating entering into an enforcement action with an MSB.

### Is More Guidance Needed?

While the statistics presented above indicate that at least in New York, the loss of banking services is a real threat, the Department is concerned that the real work that needs to be done if MSBs are to remain viable is being lost in all the rhetoric and finger pointing. Let's be clear, **all parties involved**, MSBs, the banking industry, state and federal banking regulators, FinCEN and the IRS share some of the responsibility for the current situation and we all need to do more to resolve it. MSBs should recognize that the cash intensive, large transaction volume, transient, and agent driven nature of their businesses makes the assessment of the potential money laundering risk involved in their businesses a primary concern of bankers and regulators alike.

According to the December 2005 U.S. Money Laundering Threat Assessment report composed by an interagency working group of experts from the U.S. Government agencies, bureaus, and offices that study and combat money laundering ( "Assessment Report " ) , the Organized Crime Drug Enforcement Task Force identifies MSBs " as an increasingly-prevalent conduit for laundering illicit proceeds". The report cites FBI field offices as consistently identifying MSBs, particularly money remitters as a money laundering threat. Compliance programs, controls and training at many MSBs need to be strengthened , a situation sadly illustrated by the fact that accordingly to the Assessment Report ...." the majority of MSBs in the United States continue to operate without registering with FinCEN." It is clear to the Department that MSBs need to devote more resources and expertise to compliance programs if they wish to remain in the business. Training at the agent level is particularly important and presents significant challenges to the industry.

We believe that the joint FinCEN/FBA guidance on MSBs goes a long way to clarifying regulatory expectations for banks servicing MSBs. Banks need to follow that guidance and properly assess the risks, put the appropriate controls in place and price the risk accordingly. Bankers need to understand that wholesale abandonment of an industry raises legitimate questions as to the competitiveness of the marketplace. The Department does not and will not ever tell a bank what business it should be doing. We do, however, believe a properly functioning marketplace is one that adjusts to changing supply and demand, assesses the risks and prices the risks accordingly. Economic theory would expect that if the number of banks willing to service MSBs declines, competitive forces will take hold and result in new entrants into the business. That is, afterall, what banks do best, identifying market opportunities, assessing risk and pricing that risk.

At the same time, we would like to suggest that FinCEN consider augmenting its guidance on MSBs with respect to two matters briefly referenced in its Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States (April 26, 2005): appropriate due diligence when maintaining accounts for foreign providers of money services and identifying entities that may be operating covertly as money services businesses. We are encountering a substantial volume of suspicious cross-border wire transfer activity involving either unregulated or illicit foreign money transmitters that maintain accounts with financial institutions in the U.S. The counterparts for these money transmitters include other foreign money transmitters and

both licensed and unlicensed MSBs and other entities in the U.S. FinCEN's December 2004 guidance to MSBs (Anti-Money Laundering Program Requirements for Dealing with Foreign Agents and Foreign Counterparts) addresses certain risk factors associated with cross-border activity. We ask that FinCEN consider updating and comprehensively addressing such matters in additional guidance for banking organizations.

State regulation of MSBs is evolving. While many states license MSBs, the level of supervision is not consistent across the country. State regulators recognize they need to do more. In New York, the Department has supervised and examined check cashers and money transmitters for many years. As discussed earlier, we have recently strengthened our examination and supervisory standards and are applying more consistent safety and soundness protocols to both industries. We are emphasizing BSA/AML compliance and are cooperating more closely with FinCEN and the IRS. We are currently working with the Conference of State Bank Supervisors and the Money Transmitters Regulators Association to devise ways to increase the training opportunities, knowledge and expertise of state examiners. It is clear however, that more resources are needed both at the state and federal level. Given the size of the MSB population, it is questionable whether the IRS has sufficient staff to carry out their delegated examination authority over MSBs. States are willing to assist but need support. Joint training efforts and better examination coordination, much heralded promises of the recently executed IRS/STATE MOU need to become realities. We have made a good start in formalizing the relationship with the IRS but it is now time to make real progress in the field. FinCEN can help by closely monitoring the progress made. Congress can help by allocating the necessary funds.

Finally, both state and federal regulators need to exercise caution in how they criticize BSA/AML programs at banks to avoid giving the impression that account closures are the only viable option when deficiencies are discovered. Unintended consequences can be avoided by the judicious application of enforcement actions. The current guidance and BSA/AML manual have laid a good foundation to correcting any misconceptions which may have occurred in the past in this regard and we believe they need to be given time to work before considering whether any substantial changes are warranted.

Once again, thank you for this opportunity to comment and we look forward to continuing this dialogue.

Very truly yours,



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