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## SOMALI FINANCIAL SERVICES ASSOCIATION-NA

July 6, 2006

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

**Re: FinCEN: Provision of Banking Services to Money Services Businesses  
RIN 1506-AA85**

Dear Sir or Madam:

The Somali Financial Services Association- North America, Inc. (SFSA-NA) is an umbrella organization that seeks to promote the lawful business activities of its members who comprise of money transmitters doing business primarily with immigrants from the Horn of Africa. These Money Services Businesses (MSBs) operate within the law by seeking and getting licenses through the various states which regulate the industry. As part of the licensing process, our members also follow all the requirements of federal law including the Bank Secrecy Act and the US PATRIOT Act.

### **Background**

For the last two years our members have had their accounts closed by their bankers citing regulatory requirements outside the letter and spirit of the laws that govern the industry. We believe the unjustified closing of our accounts by banks at will, has now come to a crisis proportions. The banks have cited their own re

The SFSA-NA believes the denial of banking services to our constituency is a social injustice and a blow to the public interest. What may have started out as legitimate money laundering concern on the part of banks, has turned into nothing less than a denial of civil rights, not only to the community-based businesses we represent, but to the broader public they serve.

The closure of the banks accounts borders discrimination. One only needs to look around to see that the transmitters losing their accounts are the smaller, independently-owned money transfer businesses. These businesses also just happen to be ethnically-owned and serve ethnic communities. Discrimination can never be adequately judged on a case-by-case, alone, and in a vacuum. Only after time, in the aggregate, and by comparison to the way others are treated, can one say whether discrimination is taking place. We believe it clearly has and is.

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### **SFSA-NA's Position**

Shortly after FinCEN and the federal banking agencies issued the "Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States" on April 26, 2005, banks took upon them to be the role of regulators of MSBs and started demanding multitude of documents. Despite statements to the contrary, FinCEN and the banking agencies have made banks the de facto regulator of MSBs. Citing high regulatory demands, many banks have closed the accounts of existing MSB customers or are declining requests to provide banking services to new MSB customers. SFSA-NA is concerned that banks are being used as a substitute regulator for MSBs due to staffing and budget shortfalls at state and federal agencies. It is our belief that banks do not have the authority to serve a regulatory function.

Therefore, SFSA-NA requests that FinCEN work with the federal banking agencies to delete the due diligence items listed in Part II of the April 26, 2005 interagency interpretive guidance on providing banking services to MSBs. We also request that FinCEN re-craft the guidance and the BSA/AML exam manual to explicitly state that banks are not required to evaluate a MSB's anti-money laundering program because these businesses are already regulated by the states that license them, FinCEN, and the Internal Revenue Service (IRS).

### **Existing Regulations**

SFSA-NA believes that the current regulatory demands placed on banks with MSB customers are too high. Furthermore, SFSA-NA finds the interagency guidance on MSBs to be contradictory. On one hand, the guidance states, "banking organizations will not be held responsible for their customers' compliance with the Bank Secrecy Act and other applicable federal and state laws and regulations." In addition, when referring to the due diligence that institutions should conduct on higher risk MSB customers, the guidance states that these requirements are "no different from requirements applicable to any other business customer and do not mean that a banking organization cannot maintain the account". On the other hand, Part II of the interagency guidance suggests several types of due diligence that banks may perform on higher risk MSBs. Suggested steps includes:

- Reviewing the MSB's AML program;
- Reviewing the results of the MSB's independent testing of its AML program;
- Conducting on-site visits;
- Reviewing a list of agents, including locations, within or outside the U.S., that will be receiving services directly or indirectly through the MSB account;
- Reviewing written procedures for the operation of the MSB;
- Reviewing written agent management and termination practices for the MSB; or
- Reviewing written employee screening practices for the MSB.

rather, we strongly believe it would be more effective for FinCEN to delete portions of the April 26, 2005 interagency guidance that recommended depository institutions evaluate an MSB's AML program, its training and independent audit, and the MSB's operational procedures. These kinds of measures greatly exceed the due diligence that banks conduct for other types of cash intensive commercial depositors.

SFSA-NA also believes that bank should be required to conduct basic due diligence at account opening (e.g., determine projected business volumes, cash needs, wire transfer activity, etc.), assess the MSB's AML risk, and monitor an MSB's banking activity in a manner that is commensurate with the account volume and the AML risk posed by that business. This approach would treat MSBs like other commercial accounts.

- Expressly Recognize the Responsibility of MSB Regulators