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July 10, 2006

Via Electronic mail – regcomments@fincen.treas.gov

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

Re: RIN 1506-AA85
ANPR on Provision of Banking Services to MSBs

Dear Mr. Werner:

I am pleased to write on behalf of Viamericas Corporation ("Viamericas") to comment on the advanced notice of proposed rulemaking referenced above. Viamericas is an international money transfer company headquartered in Bethesda, Maryland, with operations in ten U.S. States. Through our agent network in the United States we originate money transfer transactions that are paid through a correspondent network throughout Latin America.

Viamericas has been impacted directly over the last several years by the account discontinuance problem. We have worked with Senator Sarbanes' office beginning in early 2004 to attempt to address what we saw as en emerging tendency toward account closures, and we appreciate the seriousness with which FinCen is now approaching the issue. We see this problem as a serious threat to transparency and competition in the money transfer arena, and see a need for immediate and significant regulatory action to rectify the problem.

The specific areas on which you have requested comment follow (for brevity's sake we have paraphrased the questions):

1. What requirements have banks imposed on MSBs since the issuance of the joint guidance in April 2005?

Candidly, we have seen little or no impact from the joint guidance. As will be described below, banks that provided services to MSBs before the guidance was issued have since decided to stop providing such services, and those banks that provided service before and after the guidance have not significantly modified their requirements in the wake of the guidance.

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2. Describe circumstances in which MSBs have provided or been willing to provide the BSA related information specified in the April 2005 guidance and yet have had banking organization decline to open or continue account relationships for the MSBs.

We have had several account closed since the issuance of the guidance. Specifically, we have had accounts closed by Bank of America, SunTrust, Chase and Sovereign Bank and have been advised by banks too numerous to mention that they are simply not opening accounts for MSBs because of their perception of the "regulatory risk": inherent in those accounts. Account closure have severely impacted out operations in many markets, most significantly in New Jersey and in Florida, where it is virtually impossible to locate a bank with an extensive branch network that is accepting any new MSB clients.

The refusal of the banks to maintain our accounts, or of many banks to open new accounts, has been in spite of our willingness and readiness to demonstrate to those banks that we meet and exceed all licensing, documentary and programmatic requirements necessary under the guidance and under the law. Essentially, these banks have made a blanket decision to exit the MSB market, and no compliance program – no matter how comprehensive and well executed – is sufficient to convince them to maintain or open an account.

3. Have BSA related grounds been cited for why banks have decided not to continue or not to open accounts for MSBs since the issuance of the guidance?

Yes. In the case of our accounts actually closed, each of the four banks explicitly cited BSA related risks as the reason for the account closure. In each case we were assured that the closures had nothing to do with our individual business, but instead were the result of a general policy decision of the bank based on the bank's perception of the regulatory risks inherent in banking money service businesses. In the case of banks that indicated an unwillingness to open accounts, BSA concerns were the single most frequent reason cited.

It is important to note here a radical divergence between what the federal banking agencies are saying at the policy making level and what bankers indicate that they are hearing at the examiner level. While the general sentiment expressed in the April guidance that as a policy matter MSBs should have access to banking relationships might be policy at the headquarters level, we respectfully submit that that policy sentiment has simply not filtered down to the examiner level. Bankers are reacting to what they are being told by their examiners, and (while for obvious reasons they are not willing to say so on the record) they are telling us that their examiners are no less hostile to MSB

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accounts now than they were before the guidance was issued. The generals may have spoken, but the platoon leaders haven't gotten the message.

4. Would additional guidance or clarification to the banking industry regarding the opening and maintenance of MSB accounts within the BSA framework be beneficial? If so, what specifically should such guidance address?

Thank you for asking. Yes. In my opinion, the guidance that is necessary is an explicit statement that a bank needs to follow some specifically defined enhanced due diligence procedures to open and maintain an MSB account. These procedures should be limited to:

- Confirming that the MSB has a valid state licenses as required for the type of business it operates, and that such licenses are renewed as necessary;
- Confirming the current FinCen registration of the MSB, and renewal as necessary;
- Applying the bank's standard CIP to the persons responsible for the management of the MSB account;
- Confirming that the MSB has an anti-money laundering program, (but NOT requiring the bank to validate or otherwise pass judgment on the adequacy of that program, which is inherently a regulatory function).
- Obtaining basic account profile information (expected volumes and destinations), updating that information as needed, and monitoring the account to flag major unexplained variations from these expected values and destinations.

The guidance should further state that in FinCen's view, and in the view of the federal banking agencies, if a bank follows these procedures in opening and maintaining an MSB account, there arises a rebuttable presumption that the bank should have no liability for any illegal activity engaged in by their customer, or their customer's customer, through that account. This presumption should be rebuttable ONLY if the regulatory agency or prosecutor seeking to impose liability on the bank can show, by a preponderance of the evidence, willful malfeasance or active collaboration of the bank in the alleged illegal activity.

This approach would serve to put legal force behind the sentiment expressed in the April 2005 guidance to the effect that FinCen and the federal banking agencies to not seek to make the banks serve as de-facto regulators of their MSB clients. Because the guidance would issue from the baking agencies themselves, this approach would insulate banks from the perceived risk of unfair regulatory sanctions from those very agencies based on 20-20 hindsight in the wake of some future-discovered illegal activity occurring in an MSB account. As for the perceived risk of liability to the banks arising from prosecutors seeking to impose civil (and even criminal) liability on a bank for illegal activity

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occurring in an MSB account, this approach would provide innocent banks with an effective defense against such prosecution. A statement in the guidance to the effect suggested above, since it would issue from the federal agencies actually responsible for the management of the nation's BSA regulatory framework, would serve as uniform guidance to all U.S. courts that might be called on to address these types of cases, and thus remove the ambiguity (and attendant risk) from the situation by clarifying as a federal policy matter the exact limitations of a bank's due diligence and account oversight responsibilities. Absent this type of guidance, the extent of these responsibilities is a matter for the judge to determine on a case by case basis, and to the extent a judge is ambiguous in the decision, is a matter that might be left to a jury. That is clearly not a good situation for a bank seeking to measure and manage regulatory risk. A bank that actively participated in an illegal operation would have no such protection.

In terms of the actual due diligence requirements, the essence of what we propose is a greater level of respect from the federal banking agencies and FinCen for the state licensing and examination authorities and for the IRS in its Title 31 capacity. The fact is that money transfer companies are extensively and effectively regulated at the state level through the licensing and examination process, as well as examined for AML compliance by the IRS, and the guidance should allow banks to rely on the efficacy of that regulatory structure.

5. Would additional guidance to MSBs regarding their responsibilities under the BSA as it pertains to obtaining banking services be beneficial? If so, what should such guidance say?

No. The problem does not lie in the lack of understanding on the part of MSBs as to what they are required by law to do. As noted above, banks continue to close accounts in spite of MSBs readiness and willingness to meet and exceed all legal and regulatory requirements. Further clarification to the MSBs will accomplish nothing if the banks continue to be unwilling to provide account services.

6. Are there steps that could be taken with regard to regulation and oversight under the BSA that could operate to reduce the perceived risks presented by MSBs?

Yes. In the case of international money transmitters, one of the risks that is difficult for any one company to completely manage is the risk of undetected structuring of transactions from one or more agents across multiple money transfer companies. In other words, it is not possible for Company A to know if client 1 has initiated transactions with several different companies on the same day. If this activity occurs at the same agent, then the compliance programs of each company should instruct the agent that this activity is suspicious and should be reported. If, however, the activity occurs at several agents

(one for Company A, another for Company B, etc.), there is no feasible way for any company or agent to detect it.

An appropriate supervisory role for the federal oversight of BSA compliance would entail the daily reporting of all transactions by all licensed money transfer companies to FinCen. Transactions could be reported in a uniform format, as specified by regulation, and data analysis tools applied by FinCen to detect potential structuring across companies. We believe that this type of requirement would not be overly burdensome for the industry, would provide federal authorities with excellent real-time information to facilitate the detection of improper activity, and would therefore represent a real and substantial advancement of the nation's ability to detect and prevent illegal financial flows. This would, in turn, lessen the perceived level of risk by the banking industry of MSB accounts, as banks would take comfort in the fact that the government would have the tools and data to detect illegal flows structured across companies, and thus the logical responsibility for the detection of such flows would not, as some banks fear it does today, fall to the banks.

7. Since the issuance of the 2005 guidance has there been an overall increase or decrease in the provision of banking services to MSBs? Why?

As noted above, and emphatically repeated here, there has been a decrease of availability of banking services to MSBs since the guidance was issued. In our view this is because of two basic problems: First, the line examination personnel of the federal banking agencies have not taken to heart the general sentiments expressed in the guidance as to the importance of banking MSBs. They continue to be hostile to MSB accounts. Second, the guidance itself is not sufficiently clear as to what a bank's due diligence and oversight responsibilities are. That clarity need to exist, and the nature and extent of the responsibilities so imposed on banks needs to be consistent with the sentiment expressed in the guidance that banks are not expected to be the de-facto regulators of their MSB clients. Moreover, banks need to be afforded specific and explicit protection from potential regulatory, civil and/or criminal liability if they act in accordance with those specifically defined responsibilities.

* * *

In conclusion, we believe that this ANPR reflects the evident concern of FinCen and the federal banking agencies with the alarming and accelerating trend toward account discontinuance that currently exists. The 2005 guidance did not, unfortunately, solve the problem. More sharply defined requirements (and commensurate protections) for banks are needed.

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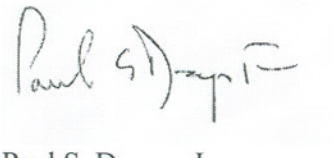
If effective changes are not made in the policy environment, and if banks continue to close accounts, the policy interests of the United States in ensuring that international financial flows remain transparent and detectable will be poorly served. As reputable companies are forced out of entire markets like Florida and New York/New Jersey, the gap they leave will be filled by unlicensed, illegal service providers. That is a bad result for all concerned. Moreover, as money transfer companies are forced to curtail operations in certain areas due to a lack of accounts, competition suffers and consumers suffer.

In that light, the current dissonance between the stated policy of the federal banking agencies and the apparent actions and attitudes of the line examination staff in their interaction with the banks they regulate is directly undermining two important stated policy priorities of the United States government: to ensure that international financial flows remain in the legal economy and are not driven underground, and to ensure the continued evolution of competition and price reductions in the remittance market. Reputable money transfer companied stand ready to help meet these policy objectives. We hope that you will help us convince the banks to allow us to do so.

Best regards,



Paul S. Dwyer, Jr.
CEO

cc: The Hon. Paul S. Sarbanes
cc: Joseph E. Rooney, President, National Money Transmitter Regulators Association
cc: Nick Kyrus, National Money Transmitter Regulators Association

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