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June 27, 2006

Robert W. Werner, Director  
Financial Crimes Enforcement Network  
Department of Treasury  
P.O. Box 39  
Vienna, VA 22183

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

Dear Director Werner:

We write on behalf of Dahabshil, Inc., a small, African-American owned money service business (MSB) headquartered in Columbus, Ohio that provides remittance services to the Somali immigrant community in the United States.

Dahabshil is aware of FinCEN's outreach to both the money service and the banking industries in an effort to facilitate the maintenance of account relationships between reputable money service businesses and their banks. Unfortunately, Dahabshil's experience suggests that FinCEN's guidance has been largely ignored by many banks. Over the past year, Dahabshil has been the victim of indiscriminate account closures by several reputable national and community banks. At least one of these banks has acknowledged in writing that its account closing decisions are the result of a corporate policy to close all money service business accounts and not the result of any individualized risk assessment performed on Dahabshil's account. It is not clear to Dahabshil whether more guidance will curb this trend; however, if the banking industry is allowed to continue the wholesale closure of MSB accounts, companies such as Dahabshil will be forced out of business.

Dahabshil appreciates the opportunity to submit comments in response to the issues raised in the Advanced Notice of Proposed Rulemaking (RIN 1506-AA85).

#### **Background**

Dahabshil is one of only a few licensed and registered MSBs serving the Somali community in the US. Dahabshil's average customer is a member of the Somali diaspora, working in the United States and making a monthly transfer to help support family members left in Somali. Dahabshil's average customer transfers between \$50 and \$300.



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Dahabshil provides him or her with a safe, convenient, familiar, and low-cost way to transfer these funds to a very unstable part of the world.

MSBs like Dahabshil fill a unique niche and are essential to the future of Somalia and the Somali people. At present, remittances from abroad – from Somali expatriate communities and from international development and charitable organizations such as the United Nations, Save the Children, the Red Cross and CARE – are the principal source of funds in Somalia. These remittances ameliorate the crippling effects of Somalia's civil war, which include pervasive unemployment, hunger, disease and poverty. Recent UN studies have estimated that, on average, remittances from abroad provide 22.5% of a family's annual income in Somalia.

#### **Issues for Comment**

*Issue 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.*

Dahabshil voluntarily provides banks with evidence of its licensure and registration, anti-money laundering compliance program, employee training manual and a copy of its annual independent audit. Despite the quality of Dahabshil's compliance program and its commitment to compliance and training, many banks remain inflexible and firmly hold that they will not do any business with MSBs.

During the past six months three banks with whom Dahabshil had long-standing account relationships – AmSouth, JP Morgan Chase and RBC Centura – closed Dahabshil's accounts without performing an individualized assessment of the risk posed by Dahabshil's business. These accounts were closed despite Dahabshil's provision of all information requested by the banks, despite Dahabshil's requests for meetings to discuss any problems with its account, and despite Dahabshil's referring the banks to the Interagency Guidelines issued by FinCen and the other banking regulators last year.





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Here is an illustrative example. In May 2006, Dahabshil received a letter from JP Morgan Chase stating that it intended to close Dahabshil's account as part of a blanket decision to "discontinue providing banking services to money service businesses." Dahabshil attempted to discuss the issue with Chase and to meet with them. After numerous telephone calls and emails, Chase sent Dahabshil another letter, reiterating that it had decided to close Dahabshil's account because it had decided "not to maintain relationships with and/or provide financial services to money services businesses, generally. . . ." Wholesale closures such as this are a threat to the existence of all money service businesses.

None of the banks that have closed Dahabshil's accounts in the past year have cited any concerns regarding Dahabshil's business administration, nor have they requested more documentation concerning Dahabshil's compliance programs, licensing or any other aspect of its business. The issue for these banks is not that they need more information. Indeed, banks dealing with Dahabshil have expressed hostility to receiving additional information. They have no interest in undertaking an individualized assessment of MSBs, but would rather close the accounts without further investigation or discussion. This reaction from banks is extremely disheartening given the amount of time and financial resources that Dahabshil and other MSBs devote to compliance, licensing and other legal and regulatory matters.

*Issue 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?*

Although the Bank Secrecy Act has not been specifically mentioned by the banks that have closed Dahabshil accounts, their letters and statements reflect that the account closings are being motivated by the regulatory burden placed on banks by the BSA. These concerns, however, are generally reduced to vague comments about paperwork, expense, lack of resources to monitor the accounts, and general regulatory concerns and pressures. For example, JP Morgan Chase recently represented to Dahabshil that it has adopted a blanket policy in respect of MSBs due to the burden of managing the risks associated with MSB accounts. Chase suggested that it was not feasible for the bank to spend the amount of time and money necessary to comply with federal



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regulations regarding MSBs, because assured compliance would require the bank to hire and train people to monitor the accounts. Chase's explanation suggests that it finds the supervisory expectations under the BSA unduly burdensome.

*Issue 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? If so, what specifically should such guidance address?*

Dahabshil's experience suggests that, although a reasonable first effort, FinCen's March 2005 meeting and April 2005 Interagency Interpretive Guidelines did not serve their intended purpose of providing banks with sufficient guidance and comfort concerning MSB accounts. Dahabshil submits that guidance will not, on its own, encourage banks to open and maintain MSB accounts. Regardless of how much the regulators seek to reduce the perceived risk of the banks, banks are fundamentally weighing a perceived actual risk against no risk (if they simply close all MSB accounts). Thus, Dahabshil submits that, without an affirmative regulatory incentive to provide services for MSBs, banks will continue to adopt blanket policies closing MSB accounts.

Dahabshil would like to suggest that FinCen and the other regulatory agencies could provide banks with an incentive to maintain MSB accounts – or at least a disincentive to close them wholesale – through application of the Community Reinvestment Act of 1977 ("CRA"). The CRA is the only legislation of which Dahabshil is aware that encourages banks to serve the needs of the communities in which they are located, including, in particular, low- and moderate-income persons and underserved populations. Under the CRA, banks are evaluated periodically by the federal agencies that are responsible for their oversight (FRB, FDIC, OCC and OTS). Perhaps recognizing the importance of international remittance services, such as Dahabshil, in 2004 the federal agencies agreed to give banks CRA credit for providing low-cost services to these businesses.

Although banks are given certain credit under the CRA for providing low-cost services to international remittance companies, the Act has never been interpreted to require banks to provide services to reputable, licensed MSBs. Nor does the CRA, as currently interpreted, penalize





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banks for adopting corporate policies that call for the wholesale closure of MSB accounts. In Dahabshil's this should chance. There is no reason why an assessment of banks' services to MSBs – which are vital to low-income and immigrant communities – should not be included in CRA evaluations.

*Issue 6: Are there steps that could be taken with regard to regulations and oversight under the Bank Secrecy Act that could operate to reduce perceived risks presented by money services businesses?*

It has been Dahabshil's experience that banks express uncertainty concerning their supervisory responsibilities under the BSA. Given the hostility of banks to MSB accounts, the perceived risk of reputational damage, and the perceived expenses and complications of maintaining the accounts, Dahabshil suggests that the only guidance that will be of use in this circumstance is guidance that is very clear concerning what risks, if any, banks are taking on in maintaining MSB accounts. In particular, Dahabshil suggests that banks be informed that their responsibility begins and ends with an evaluation of the MSB's licensing, registration and compliance program; i.e., that "know your customer" does not require the bank to know its customer's customers, provided the bank has verified that the MSB has an acceptable compliance program. It would also help if guidance could be provided that the banks are permitted to rely on state regulatory oversight conclusions, or the conclusions of outside compliance audit companies, in judging the effectiveness of an MSB's compliance program.

*Issue 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.*

Dahabshil cannot speak for the industry as a whole, but as an individual MSB, it has experienced an overall decrease in the availability of banking services. As discussed above, since the issuance of the Interagency Guidance, three banks have closed Dahabshil's accounts solely because it is an MSB and without performing an individualized risk assessment of Dahabshil's business. A fourth bank threatened closure, but was willing to work with Dahabshil and, only after a number of discussions, decided to keep the account open. This pattern suggests that banks are finding the



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existing requirements under the BSA burdensome.

This is not, however, simply an issue of cost, price and supply and demand. Although one could speculate that there must be a bank out there that will take on the risk and expense (real or imagined) of maintaining MSB accounts at some price, in Dahabshil's experience, this is simply not true. First of all, the argument ignores the fact that MSBs are, by and large, small companies operating on very low margins. It also ignores the fact that a single bank account or a single banking relationship is not sufficient for many MSBs, including Dahabshil. As a cash business that operates in nine states, Dahabshil must have local bank accounts to handle daily receipts, as well as international bank accounts to handle wire transfers. Thus, Dahabshil, and other MSBs, must be able to maintain accounts at all levels of the banking industry.

Finally, and most importantly, it is clear to Dahabshil that accepted principles of supply and demand are simply not operating here. For the most part, bank accounts are not available to MSBs at any price. Dahabshil submits that the regulatory agencies must step in to address the growing crisis, or risk sending billions of dollars in remittances underground as reputable, licensed, bonded, and compliant companies lose their bank accounts and are forced to shut their doors.

Respectfully submitted on behalf of Dahabshil, Inc.,

A handwritten signature in black ink, appearing to read 'A. Katherine Toomey', with a long, sweeping flourish extending to the right.

A. Katherine Toomey

cc: Isak Warsame, Dahabshil, Inc.