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MTRA:
Fosters cooperation
among states and
federal agencies for the
effective and efficient regula-
tion of money transmitters
and check sellers.

MONEY TRANSMITTER REGULATORS ASSOCIATION

July 7, 2006

Via Email to: regcomments@fincen.treas.gov
Hard copy will also be mailed to the address below

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

Re: RIN 1506-AA85

**Advanced Notice of Proposed Rulemaking
Banking Provisions of Banking Services to Money Services Businesses**

Dear Director Werner:

The Money Transmitter Regulators Association (MTRA) appreciates the opportunity to comment on the above referenced Advanced Notice of Proposed Rulemaking (ANPR). MTRA is a national non-profit organization composed of state regulators who license and regulate entities generally known as money transmitters, a primary subset of financial institutions which have been designated as money service businesses (MSBs). MTRA is comprised of 39 states that have enacted licensing and enforcement statutes regulating the money transmission industry. MTRA is involved with all facets of examiner training and education on issues relevant to the money transmission industry and its effective and efficient regulation.

In the last few years, MTRA has been at the forefront of efforts to educate money transmitters and those who regulate the industry on anti-money laundering (AML) obligations under the Bank Secrecy Act (BSA). For example, MTRA has encouraged all eligible states to sign the negotiated agreements with both the Financial Crimes Enforcement Network (FinCEN) and the Internal Revenue Services (IRS). The coordination and drafting of these agreements was the result of a tremendous effort among the various state and federal agencies and several trade associations. The purpose of the joint cooperative effort is to secure the efficient regulatory enforcement for the detection of money laundering, terrorist financing and other unscrupulous activity while maintaining a viable money transmission industry.

Admittedly, education, training and coordination of regulatory resources with respect to BSA have been a challenge, but certainly there has been much progress made to date. Undoubtedly, the level of compliance with the BSA in the MSB industry is at an all time high. Furthermore, the knowledge of BSA on the part of those who regulate money transmitters, as well as cooperation among state and federal regulators with respect to BSA compliance, is also at its high point. It is indeed unfortunate, therefore, that at a time when so much progress has been made that the money transmission industry is suffering from the unintended consequences of well-intentioned guidance from federal regulators.

The guidance issued to banks in April 2005 by FinCEN and federal banking regulators appears to have created an environment where banks are encouraged to believe it is necessary to stop servicing MSBs, including summarily closing down all MSB accounts without any apparent justification. We believe this is counter productive and against sound public policy. We believe that FinCEN shares the view held by state regulators that the money transmission industry must have access to banking and financial services at reasonable market prices. If the country does not foster such an environment, we run the risk of pushing large parts of the MSB industry underground, resulting in higher risk to consumers as well as hindering law enforcement efforts at monitoring and detecting money-laundering, terrorist financing and other illicit financial transactions. The April 2005 guidance has had the unintended effect of creating a situation where the very industry FinCEN is trying to monitor is being driven out of mainstream banking, thus making it more difficult to monitor the industry. Incidentally, by summarily closing down MSB accounts, banks are essentially insulating themselves from perceived risk posed by MSBs, which have been labeled as "high risk." A primary goal of federal banking regulators is to reduce the risk exposure of banks which, in this instance, seems at odds with the goals of FinCEN, which are transparency and record keeping for financial transactions. It is interesting to note that there may be tension between the goals of banking agencies and FinCEN, even though they are in partnership on the frontlines of BSA enforcement.

As state regulators, we are extremely concerned with the situation and collectively affirm that something must be done to remedy it. The seriousness of this situation is noted by the fact that the State of New York has recently proposed legislation making it illegal for banks not to maintain service accounts for MSBs. While the MTRA has no position on the merits of such legislation, it points this fact out only to demonstrate the concern that is growing in many states.

Throughout the country, states have undertaken the task of enacting licensing and compliance statutes to regulate the money transmission industry. These endeavors have not been taken lightly. States pursued these enactments with the same conscientiousness and analysis they do when considering proposed statutes for the regulation of banking and other financial institutions. Indeed, MTRA has had a prominent role, along with federal regulators and industry experts, in the drafting of the National Conference of Commissioners on Uniform State Laws model money transmission legislation. MTRA member states meet annually to discuss problems experienced with their respective states and collectively offer proposed amendments and thoughts to improve and safeguard honest and effective regulation of the industry. Most licensing statutes have character and fitness requirements, financial responsibility requirements, competent management requirements, bonding requirements, letters of reference requirements and criminal background checks. Most states that regulate MSBs under these statutes have an examination force that has been trained by their respective states. Money transmitters that operate in multiple states are also subject to supervision by multiple states. Additionally, the MTRA sponsors an annual examiners school for effective training and education in the area of MSB examination. The Conference of State Bank Supervisors has recently devised schooling for examiners in this very same area. Many states specifically examine money transmitter licensees for BSA compliance.

Unfortunately, the 2005 guidance appears to have permanently labeled all MSBs as "high risk." Furthermore, the guidance has had the often stated effect of placing the burden of regulating the money transmission industry on banks, something that FinCEN has on numerous occasions indicated it does not want to do. As you might imagine, state regulators are surprised to learn that after subjecting a company to the rigors of the aforementioned requirements and examination process, that the same company is not worthy of having accounts at certain banking institutions. Unfortunately, by grouping all MSBs together, labeling them "high risk", and requiring banks to review and assess the adequacy of an MSB's BSA compliance program, the federal guidance seems to discount and diminish the value and worth of the state licensing process. The guidance also seems to ignore the fact that the IRS regulates and examines MSBs for BSA compliance. State regulators regulate many types of business entities and in no other industry does such an implication exist. At the same time, many banking institutions have inadvertently and unknowingly been victims of money laundering schemes, but it would be patently unfair to label all banks as high risk for money laundering.

The money transmission industry is legitimate and important. We do not see the empirical evidence that justifies either the "high risk" label or the onerous burden of the regulatory guidance apparently placed on banks to act as defacto regulators of MSBs. While both state regulators and the IRS need more resources to further enhance their ability to regulate MSBs for BSA compliance, we do not consider it sound public policy to adopt any regulations or publish any guidance that has the effect of shifting this regulatory burden to banks.

The expectations of banks should not be that they police and regulate the industry. This should be made clear. As it currently stands, banks believe that they are not only responsible to know their customers, but their customers' customers. As a result, many banking institutions believe that this perceived expectation creates a risk that they do not care to incur in view of the fact that the bank may be subject to large monetary fines and criminal prosecution for BSA violations – strong disincentives to providing banking services to MSBs. It seems that the regulations and guidance should, therefore, be aimed at providing the right incentives for banks. In that regard, MTRA suggests that FinCEN consider issuing guidance that more clearly defines and limits the due diligence a bank must perform to open or maintain an MSB account. Furthermore, once a bank has fulfilled these specific and limited due diligence obligations, it should be afforded a safe harbor from BSA civil and criminal liability for BSA violations by the MSB or the MSB's customers. Both banks and money transmitters are "financial institutions" under BSA, yet current due diligence guidance seems to make banks responsible for monitoring and assessing the BSA compliance program of the other financial institution, the MSB. This seems particularly unfair since money transmitters are themselves independently subject to both state and

federal (IRS) regulation. Rather than imposing more MSB due diligence requirements on banks, it would seem proper to allow banks the opportunity to rely on the fact that a company is properly licensed and regulated by a state and the IRS. Thus for example, if a money transmitter demonstrates that it is properly licensed and in good standing with state regulators, provides copies of its AML program, its annual independent audit, proof of registration with FinCEN, and the name and credentials of its compliance officer, then the bank's due diligence obligations should be complete. Furthermore, the bank cannot be expected to monitor the customers of the MSB. These components of a comprehensive guidance should be stated in the affirmative.

Absent specific guidance that limits and more specifically defines the due diligence requirements of banks with respect to MSBs, or provides a safe harbor from liability, few other measures can be taken. Since federal law and guidance has apparently contributed to the current crisis in the money transmission industry, we believe one option for consideration could be that MSBs be able to open and maintain accounts at any of the various Federal Reserve Banks. This change might require legislative and regulatory enactment. However, allowing non members to establish account services is not without precedent as credit unions and savings associations have had access to such account services for years. This potential solution to the problem needs to be thoroughly researched as we are sure there are issues involved that are not readily apparent to MTRA. However, we would appreciate being considered in any further discussions concerning this possibility.

Another option to consider is providing banks the opportunity to get Community Reinvestment Act (CRA) credit for maintaining MSB accounts. The general consensus is that the current crisis has disproportionately affected MSBs in low to moderate income areas that serve minority and ethnic communities. Extending CRA credit to banks might serve as an incentive to maintain accounts for MSBs in these locations, and outweigh the costs and risks banks perceive under the current climate. CRA credit is the kind of incentive that might stem the tide of bank account closures.

In addition, MTRA believes that the April 2005 guidance should be modified with respect to labeling MSBs and money transmission as a "high risk industry". First, FinCEN regulation and guidance should make an effort to distinguish between the different types of MSBs. A gift store that cashes checks is much different from a fully licensed money transmitter such as Western Union or Moneygram. An authorized agent of a licensed money transmitter is different from a currency dealer. And of course, unlicensed MSBs present a whole set of risks that differ from licensed MSBs. There needs to be an acknowledgement that not all types of MSBs in all states are high risk. For example, if a licensed MSB has an acceptable AML program in place and is located in a state that has strict licensing requirements and competent examiners, an MSB should not permanently be considered as "high risk". Furthermore, if an industry in a state (such as the money transmission industry) is currently regulated by state regulators and subject to the Bank Secrecy Act and IRS jurisdiction, then the risk associated with that industry could be considered "moderate". Finally, simply because a money transmitter sends money to foreign countries should not, in and of itself, be a basis for requiring enhanced due diligence by the bank.


The MTRA believes that banking institutions understand the concept of reasonable risk and that many banks are closing MSB accounts because of the inconsistent or unreasonable guidance they are receiving from federal banking examiners. We continue to hear anecdotal information regarding examiners who advise banks to simply stop serving MSB accounts because the industry is too high risk, or of examiners who simply do not take the time to understand the MSB industry. It has been reported that examiners have allegedly told banks (directly or indirectly) that the bank is responsible for monitoring the activities of the customers of MSBs. Alleged comments such as these create a situation that deters banks from holding the accounts of MSBs. If federal regulators expect banks to understand MSBs and make judgments about the adequacy of an MSB's AML program, then federal bank examiners should be trained so that they understand the industry and can make those same assessments. We propose an agreement between FinCEN and the federal banking regulator that demonstrates a cooperative effort to train and educate federal bank examiners on the MSB industry, how it is regulated and how it operates.

The regulation of financial institutions has always included considerations steeped in public policy concerns. The MTRA feels that action must be taken to foster an environment in which MSBs have access to banking and financial services, a clear and important national public policy consideration. Legitimate money transmitters exist throughout the United States, and they serve a very important role in our economy and the economies of many developing countries. There are many countries where people depend on the ability of their hard working friends and family in the United States to transmit funds to them. These funds are literally lifesavers for many of these families. Representatives of the United Nations have spoken to MTRA about the importance of using restraint and compassion in the regulation of money transmitters who provide services for people located in these third world countries. Money remittances are frequently the first or second largest component of a developing country's GDP. The consequences of creating an environment in which international money transmission is viewed as high risk, and therefore difficult to service from the perspective of a bank, has ramifications that extend beyond our borders. Because money will get to these countries inevitably, either through traditional banking channels or otherwise, it certainly is not in our best interests to push this industry underground and away from mainstream and transparent banking relationships.

The MTRA is certainly mindful of the good intentions of doing everything reasonable to stem money laundering and to curtail terrorist financing. However, we believe that issues have emerged and created an unintended and unreasonable state of affairs for MSBs. We have acknowledged some of the issues in this comment letter and reflected on what we believe to be some possible solutions. It is imperative that something be done immediately. The MTRA stands ready to meet with whoever is necessary to facilitate action. We have a wealth of knowledge from experts in 39 states that deal with the subject matter on a daily basis, and would like to share with federal agencies our thoughts on creating a healthier environment for licensed MSBs while at the same time maintaining a strict and effective regulatory atmosphere.

The MTRA appreciates the opportunity to reflect on these important subjects and comment on the ANPR relating to the issue of bank account closures in the money transmission industry.

Sincerely,


Joseph Rooney
President MTRA

cc: MTRA Member States