

LICENSED REMITTANCE
COMPANIES
AND ACCESS TO
BANKING SERVICES

“Entities that have traditionally been identified as high risk include:

Nonbank Financial Institutions (NFBI), including Money Service Businesses” OCC, December 2002

Indirect Regulation of MSB's and Remittance Companies through a “High Risk” label

(Applied to all MSB's and Licensed Remittance Companies (“LRC's”))

Political Background

- In the closing months of 2004, it began to be apparent that a crisis was brewing in the remittance sector. More and more banks were inappropriately terminating relationships with Licensed Remittance Companies and other MSBs, seemingly in response to federal banking regulatory pressure. This surprised a number of government officials on Capitol Hill and elsewhere, who, when they realized the extent of the problem, began to notify federal regulators, as well as banks themselves, to change their policies regarding licensed remittance companies. FinCEN also expressed grave concern regarding the potential implications of this trend

Exited or Selected Termination

- JP Morgan Chase Bank
- North Fork Bank
(and many others...)

3 Types of Actions

Exited relationships

Restricted entry

Relationships put on hold

REACTION

Regulatory Authorities Respond

- **Since February of 2005, the Treasury Department, with FinCEN taking a lead role, has worked hard to dispel notions amongst banks that they should not do business with Licensed Remittance Companies and other MSBs.**
- **These efforts culminated in an unprecedented joint policy statement issued on March 30, 2005 by six separate federal agencies effectively telling banks that it was not only OK to do business with MSBs, but that it was necessary for banks to do so if we are to avoid serious negative consequences for both the United States economy and our National Security.**
- **It is now the clearly stated policy of the US Treasury Department that banks should not avoid doing business with MSBs as declared in the April 26, 2005 joint FFIEC publication**

Political Support

- *“The result of the designation of the local remittance businesses as high risk has prompted mainstream banks to close their accounts with our local MSBs despite the fact that as MSBs they must register with FinCEN, fulfill recordkeeping and reporting requirements under the Bank Secrecy Act and meet their obligations under the state and federal anti-money laundering statutes... The threat of not allowing MSBs to have access to banking facilities puts at risk the existence of this importance service and employment source in our community.”*

New York City Council Member Miguel Martinez, February 22, 2005, Letter to Senator Richard Shelby, Chair of the Senate Banking, Housing and Urban Affairs committee

Political Support

- *“Money services businesses play a very important role in the U.S. economy and we certainly don't want to drive all that business underground.”*
Acting Chief Counsel Daniel Stipano, February 23, 2005, “Steps Against Terrorist Financing Risk Backfiring,” by Caroline Drees, Security Correspondent for Reuters News
- *“While the MSB is responsible for filing its own reports with the Government and monitoring its customers, the Bank is responsible for monitoring the MSB and it appears that the majority of Banks in New York have decided against continuing what is now being seen as a burdensome and risky relationship...I am therefore requesting that you review the applicable regulations and determine whether they need to be modified so as to ensure the continued competitiveness of my neighborhood MSBs.”*
U.S. Rep. Charles B. Rangel (D-NY), Feb. 8, 2005, Letter to Secretary of the Treasury John Snow

Political Support

- *“The Financial Crimes Enforcement Network has long recognized that the money services business industry provides valuable financial services. Moreover, we believe it is imperative that money services businesses remain within the formal financial sector, and not be driven underground. Accordingly, the FinCEN is committed to ensuring their continued access to banking services.”*

Statement from the Financial Crimes Enforcement Network, March 8, 2005, FinCEN.gov

- *“Some money-services businesses have been specifically licensed and subjected to regulatory scrutiny for anti-money laundering [and] may not present heightened risk or require enhanced due diligence.”*

Acting Chief Counsel Daniel Stinson, Feb. 10, 2005, Remarks

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- *"We believe that this clear statement of policy, as well as the forthcoming guidance, will help ensure that MSBs have access to banking services."*

Treasury Under Secretary Levey, FinCEN,
March 30, 2005, Remarks on Providing
Banking Services to Money Service
Businesses

RESULTS

FinCEN Meeting, 3/8/05

- **Joint Statement on Providing Banking Services to Money Services Businesses**
- Money services businesses are losing access to banking services as a result of concerns about regulatory scrutiny, the risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts. Concerns may stem, in part, from a misperception of the requirements of the Bank Secrecy Act, and the erroneous view that money services businesses present a uniform and unacceptably high risk of money laundering or other illicit activity.
- The Bank Secrecy Act does not require, and neither FinCEN nor the Federal Banking Agencies expect, banking institutions to serve as the *de facto* regulator of the money services business industry. Banking organizations that open or maintain accounts for money services businesses should apply the requirements of the Bank Secrecy Act on a risk-assessed basis, as they do for all customers, taking into account the products and services offered and the individual circumstances.

FFIEC 6/30 Manual Revision

“Policies and Procedures for Opening and Monitoring NFBFI and MSB Relationships”

- Identify all NFBFI/MSB accounts;
- Determine that the business has met state licensing requirements;
- Ascertain if the MSB has registered or re-registered with FinCEN and obtain a copy of the filing or verify the filing on FinCEN’s website;
- Determine if the MSB has procedures to comply with BSA regulations and OFAC monitoring;

FFIEC Manual Revision

- Note the targeted customer base and markets served;
- Determine if the business sends or receives international wires and nature of the activity;
- Determine if the MSB has procedures to monitor and report suspicious activity;
- Obtain a copy of the MSBs independent BSA review, if available

ANALYSIS OF PROBLEMS

Analysis of Problems

A Case of Mistaken Identity

"What we see here is yet another case of mistaken identity by the federal government."

Assemblyman Jose R. Peralta, March 16, 2005

- Federal banking regulators fail to distinguish Licensed (and AML Audited) Remittance Companies from the balance of MSB's

Analysis of Problems

- Lack of Safe Harbor in Legislative or Regulatory Guidelines for Banks Regarding Treatment and Due Diligence Requirements for LRC's
- Lack of Remittance Industry AML Standards
- Most national banks are not changing their restrictions against LRC and MSB Accounts

Analysis of Problems

- Lack of understanding on the part of the Federal bank field examiners and the Media as to the actual AML Compliance Practices of Licensed Remittance Companies and rigor of state licensing

The National
Remittance
Standards Board
(NRSB)

NRSB

- The NRSB is a Self-Regulatory Organization, independent from any industry organization, dedicated to ensuring that Licensed Remittance Companies establish and maintain the best Anti-Money Laundering practices

NRSB

- The NRSB, in conjunction with an advisory group (to consist of reps from banks, the ABA, independent AML examiners, former regulators, etc.), will define the AML Standards of operation for Licensed Remittance Companies, and will specify a detailed Certification Audit that can be conducted to verify compliance
- The NRSB will also specify how Licensed Remittance Companies may streamline the due diligence process that a Bank may employ in reviewing a relationship with a Licensed Remittance Company

Solutions for Banks

A bank can use the NRSB's platform to implement a due diligence program to better assess the risk represented by a Licensed Remittance Company without disengaging entirely from such an important industry.

Joint cooperation

- A Bank can work with the NRSB in
 - (i) streamlining the due diligence processes that will be employed by Banks when working with LRC's and
 - (ii) lowering the risk assessment or rating of LRC's whose AML programs are certified by the NRSB