Fighting Bank Discontinuance

WE'VE ONLY JUST BEGUN | BY BILL SELLERY

Although many issues have captured FiSCA's attention in Washington, one issue of late has been particularly prominent – bank discontinuance. We look into this critical issue in more depth, as developments are unfolding rapidly.

FiSCA activity and visibility in Washington on bank discontinuance have risen dramatically – and with promising results – but much remains to be done. Numerous high-level government officials have spoken out publicly, supporting our industry as a vital part of the U.S. economy, and their statements are being translated into concrete, positive actions. The issue has gained the attention of the Administration, Congress, key federal regulatory agencies, and the press. However, there is still a long way to go to undo the damage done by previous bank discontinuance practices, and FiSCA is committed to doing everything possible to maintain, and re-establish, our vitally important banking relationships.

The most recent positive action was the joint release of new "guidance" from all federal regulators of banks and money services businesses (MSBs) clarifying issues surrounding anti-money laundering regulations and banking relationships. The new guidance was badly needed, but came only after a lengthy educational process culminating in two important hearings.

On March 8th several representatives of FiSCA and other MSBs testified in a fact-finding meeting before the Financial Crimes Enforcement Network (FinCEN) to provide our views on why banking relationships are being terminated. The meeting was well attended by other federal regulatory agencies and congressional staff. The group allowed press questions after the meeting. They got the message.

Although the witnesses were allowed only five minutes to speak, FiSCA General Counsel Gerald Goldman drew applause three times during his testimony when he called for a moratorium on blanket terminations and described the overwhelming sense of urgency that we are facing. Thanks go to other witnesses representing important segments of FiSCA, including Joe Coleman, Joe Doyle, Jerry Gagerman, Larry Slonina, and Jim Wells.

Understanding that sense of urgency, the FinCEN hearing generated several other subsequent meetings with key officials, most notably with the Office of the Comptroller of the Currency (OCC) and another with FinCEN. The meeting with the highest leadership of the OCC, including Acting Comptroller Julie Williams, was particularly important as it confirmed OCC statements that our industry is an important part of the economy, and it was "not the OCC's intent that national banks should be forced to sever their relationships with MSBs."

Then, on April 26th, FiSCA General Counsel Gerry Goldman testified before the U.S. Senate Banking Committee in a narrowly focused hearing structured with only two panels – the first being financial regulators, and the second being MSBs and a banking witness. Again Gerry underscored the devastating effects of bank discontinuance and the critical urgency we are still facing, and called on Congress to adopt FiSCA's five-point plan to end bank discontinuance. We were particularly pleased to hear the opening statement of Chairman Richard Shelby (R-AL) as he described MSBs as a "large and vital part of the global economy." In fact, many other Senators and all the government witnesses acknowledged the positive contributions of our industry, and the need to clarify a reasonable regulatory approach to address the need for banking services to our businesses.

Underscoring all this was a considerable effort to provide facts and better educate Congress and others on the issue of bank discontinuance. For example, our hats are off to Ricky Myers of Mississippi who helped structure an extensive congressional letter-writing campaign, coupled with local meetings, which assisted greatly in providing a better understanding of this problem to key Washington and local officials along with several banking institutions.

In fact, a joint Congressional letter was sent to the heads of all the regulatory agencies, signed by 46 Members of Congress, expressing concern about the application of the USA Patriot Act and the Bank Secrecy Act and their unintended consequences, including the closing of legitimate MSBs. The letter stated that "it is clearly not the purpose…to lead to the closing of legitimate businesses and accounts…"

All this effort resulted in the new "guidance" being released jointly at the Senate Banking hearing from all the banking regulators, to both banks and MSBs, clarifying their relationships in complying with anti-money laundering standards. The new joint guidance is expected to assist banks and MSBs to better comply with the Bank Secrecy Act and USA Patriot Act, while providing banks with clear supervisory expectations with respect to MSB accounts. This will help to strike an achievable and appropriate balance between the fight against money laundering and the need for banking services to an entire market segment. The guidance was a first step, and an important one, but even FinCEN recognizes that it will not solve all the issues or completely repair our banking relationships. More work certainly needs to be done.

However, there has been another, perhaps even more important consequence to the cumulative effect of all our actions on bank discontinuance and other issues over the years. That is, the public recognition and understanding by high-ranking government officials – and even banks – that our industry plays a critically important role in providing needed financial services to a broad segment of society. Take a look at two recent quotes:

"These businesses [Financial Service Centers] are key components of a healthy financial sector, and it is very important that they have access to banking services."

— U.S. Treasury Secretary John Snow,
February 10, 2005 issue of American Banker

"The money services business industry provides valuable financial services, especially to individuals who may not have ready access to the formal banking sector. It is long-standing Treasury policy that a transparent, well-regulated money services business sector is vital to the health of the world's economy."

— FinCEN Director William Fox,
April 26, 2005, U.S. Senate Banking Hearing

Washington will continue to be a challenge. But with the support of your Board of Directors, its leadership, and you collectively as engaged members, we remain confident that our efforts will be successful. ■

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