

FiSCA AND AMERICAN BANKERS ASSOCIATION PROPOSE JOINT STRATEGY ON BANK DISCONTINUANCE BY SCOTT MCCLAIN, ESQ.



FiSCA's approach to the American Bankers Association (ABA) Continues to pay dividends. In a groundbreaking new development, the ABA hosted a half-day forum in Washington, D.C. to explore a joint industry strategy on the bank discontinuance problem. The focus of the meeting was to propose a unified response to federal regulatory pressures that are forcing banks to terminate their MSBs, and to explore combining industry resources.

The forum was attended by FiSCA General Counsel, Gerald Goldman, William Sellery and Scott McClain. Other MSB industry groups attending were the National Money Transmitters Association, and representatives of Western Union and Travelers Express. Banking groups included the ABA, the America's Community Bankers Association, and the Consumer Bankers Association.

The banking groups were all in agreement that the industry values its MSB customers, but is overburdened by a regulatory regime that is making it difficult and expensive for banks to serve MSBs. Historically, there was no problem between banks and MSBs. That situation changed in the late '90's following the OCC's labeling of the industry as "high risk." Intense regulatory pressures resulting from the USA Patriot Act have only compounded the problem. Regrettably, the attitudes and vicissitudes of federal bank examiners are leaving some banks with little choice but to terminate MSBs and invest their resources in more profitable business lines.

The banking and MSB groups agreed that a joint response to these pressures is now needed to reverse the current trend.

Following the joint industry meeting, MSB and banking industry representatives met with representatives from FinCEN, IRS, OCC, FDIC and the other federal regulatory agencies. Gerald Goldman stated that the MSB banking guidance issued by FinCEN

in April 2005 has not improved the situation, and that no major U.S. banks have resumed banking check cashers. The situation with licensed money transmitters is perhaps even worse. He added that, notwithstanding the industry's good record on compliance, the number continues to accelerate.

Representatives from both FinCEN and IRS acknowledged (what we already know to be true) that there appears to be no significant money laundering problem with MSBs, and that there have been very few BSA violations assessed against MSBs.

FinCEN acknowledged that it appeared that the April 2005 guidance was not accomplishing its intended function, and that bank discontinuance continues to be problem. Although all regulators did agree that a bank discontinuance problem does exist, even now there appears to be no consensus among them as to the cause – or a solution. A unified industry strategy is clearly needed.

Both the ABA and FiSCA agree that the federal government needs to give meaning to their prior statements that banks are not to serve as the "functional regulator" of their MSB customers. Both FiSCA and the banking industry would like to see a paring down of the regulatory burdens on the banks that serve us; clearer and simpler guidance is needed from FinCEN. Additionally, to place us back on par with

all other commercial customers, banks need reassurance that they will not be held responsible for the compliance failures of their MSB customers.

One solution proposed by ABA would be an industry-wide "self-certification" process whereby the MSB would provide primary compliance information (e.g., State license, MSB registration) to their bank, and the MSB would then "certify" to the bank that they are in compliance and maintain appropriate BSA/AML controls. This self-certification would be recognized as the industry standard, and would relieve the bank of any "heightened" due diligence responsibility, unless warranted by the particular circumstances of the individual customer.

The ABA proposal was well received by the MSB industry in general. FiSCA supports a self-certification process. We agree that the MSB customer must take responsibility for its compliance obligations, and we agree that the burden should be taken off of the banks. As a result, FiSCA is working on the joint "self-certification" proposal to submit as part of its response to FinCEN's recent request for comments on the bank terminations issue.

In sum, we are very encouraged by our progress and work with the ABA. We extend our gratitude to Richard Riese and the ABA for their initiatives and assistance in this regard. ■