



**EXTERNAL
COMPLIANCE
OFFICER INC.**

your passport to compliance . . .

December 13, 2007

Assistant Attorney General – In Charge
Anti-Trust Division
Department of Justice
Main Justice Building
Room 3109
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530

**Re: Request for a Business Review Letter
Pursuant to 28 CFR § 50.6**

Dear Sir/Madam:

I am President of External Compliance Officer, Inc. (“ECO”), a privately-held New Jersey corporation providing anti-money laundering consulting services to financial institutions, in general, and money services businesses (e.g., money transmitters, check cashers, etc.), in particular. The purpose of this letter is to obtain from the Department its enforcement intention with respect to a service ECO is contemplating providing to its money transmitter clients.

COMPANY BACKGROUND

ECO was formed in 2000 and since that time has provided consulting services to well over 100 companies.

The bulk of our clients are licensed remittance companies or money transmitters.¹ These clients provide money transfer services in virtually every state in the U.S. and to virtually every country in the world. Currently, there are approximately 600 separately licensed money transmitters in the U.S.²

ECO’s core services consist of: 1) aggregated transactions monitoring of our multiple money transmitter customers; and 2) providing comprehensive development of anti-

¹ We use the terms “remittance company” and “money transmitter” interchangeably.

² The most recognizable of these companies are Western Union Financial Services (“Western Union”) and Travelers Express Money Gram (“Money Gram”).

money laundering (AML) and anti-terrorist financing programs consistent with state and federal laws and regulations.

Lastly, ECO is a participant in the Financial Crimes Enforcement Network (FinCEN) 314(b) Information Sharing Program that permits the exchange of financial data amongst financial institutions or an association of financial institutions for the purpose of detecting suspicious or other reportable financial activity.

SYNOPSIS OF PROPOSED BUSINESS CONDUCT

The proposed service consists of an automated database containing the names of authorized agent businesses whose contractual relationships have been terminated by a licensed money transmitter. The aim of this information exchange service is to enhance our clients' due diligence of prospective agent businesses by providing them a mechanism to query the database to determine if an agent business has been previously terminated by another money transmitter and for what reason.

STATEMENT OF APPLICATION TO COMMERCE

We submit that the proposed business conduct contemplated in our new service offering involves domestic commerce.

THE MONEY TRANSMISSION BUSINESS

Over that past two decades money transmission has become a significant financial service, primarily used by immigrant families to send money to relatives back home. In 2006, it is estimated that the global remittance or money transfer industry reached over \$411 billion dollars.³

³ See research study of the Inter-American Development Bank (IADB), based in Washington, D.C., "Sending Money Home: Worldwide Remittance Flows in Developing Countries" [www.iadb.org \(http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1172190\)](http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1172190).

THE AGENT MODEL

Generally, money transmitters offer their money transfer service through authorized agent locations. These agents, also known as delegates, serve as the point of service for customers to walk-in and send money. As a reference, Western Union has approximately 80,000 agent locations in the United States alone.

An agent location can be any type of business, usually a retailer or service provider with a store front. Examples of the common types of businesses most often contracted as agents by money transmitters are check cashers, chain pharmacy stores, chain supermarkets, tax preparation centers, travel agencies, insurance brokers, grocery stores and other businesses known as multi-services (providing copy services, notarizations, translations, etc.).

Each agent location is authorized by one or more money transmitters, usually through a written contract. Once contracted, each agent location is equipped with a money transmitter's automated system, usually a computer program and a terminal. Agents may also receive other equipment such as fax machines, telephones and scanners. Many money transmitters also provide the agent with pre-printed transfer receipts to be used by customers. It is also customary for money transmitters to provide agent locations with signage which is to be displayed at the agent location to identify it as an authorized agent.

Prior to any business becoming authorized as an agent, systems and operations training is provided to those employees of the business who will be involved in the day-to-day processing of money transmission for customers. Money transmitters are also required to provide continuous anti-money laundering training to agents.

THE MONEY TRANSMISSION OPERATION

The service of money transmission is quite simple. In a nutshell, there are six (6) steps involved in the process and those are as follows:

STEP 1: Customer goes to an agent location and provides payment instructions, usually on a remittance slip, containing the sender's name, address and phone number, as well as the name, address and phone number of the recipient or beneficiary of the proceeds.

STEP 2: Customer provides the agent with the cash to be delivered to the designated recipient or beneficiary. The agent charges a fee that is set by the money transmitter.

STEP 3: The agent notifies the money transmitter of the transaction. This notification is usually instantaneous in that most money transmitters set up terminals at each agent location that are connected to the money transmitter's main server. Thus, every time an agent logs on to the terminal to process a remittance order, the money transmitter receives the instructions in real-time.

STEP 4: Once it receives a remittance order, the money transmitter immediately notifies its foreign paying correspondent in the country of destination. The foreign paying correspondent is typically a bank, currency exchanger or money transmitter. Once the remittance order is transmitted, the beneficiary of the proceeds is contacted and asked to retrieve the money sent by the sender.

STEP 5: The agent that receives the cash from the customer is then required to remit those proceeds to the money transmitter. This is done typically in one of three ways: 1) the agent deposits the proceeds into a pre-selected bank account of the money transmitter; or 2) the agent deposits the money into an escrow account and the money transmitter debits that account through an Automated Clearing House (ACH) arrangement; or 3) the money transmitter contracts the services of an armored car company to pick up monies at the agent location.

STEP 6: After receiving the proceeds from the agent, the money transmitter wires the amount due to the foreign paying correspondent who had previously paid the beneficiary on the instruction of the money transmitter. The money transmitter later settles with the agent by sending the agent the commission for each transfer.

Although simple, the above procedures takes place virtually every minute of every hour of every day in the United States. The average remittance transfer in the industry is only \$300 dollars.

LEGAL AND REGULATORY BACKGROUND

After the attacks of 9/11, Congress swiftly passed the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (U.S.A. PATRIOT Act or the "Act") of 2001 (Public Law 107-56). The Act substantially expanded the authority of U.S. law enforcement agencies for the stated purpose of fighting terrorism in the United States and abroad.

In addition, the Act placed additional requirements on financial institutions to combat terrorist financing. Part of these requirements are contained in Section 352 of the Act. Under Section 352, all financial institutions, including money transmitters, must have 1) a written anti-money laundering compliance program, 2) a designated compliance officer,

3) a continuous training program for employees and agents on Bank Secrecy Act (BSA) and AML matters, and 4) an independent evaluation or audit of its compliance program on a periodic basis.

Aside from the Act, money transmitters must continue to comply with dictates from FinCEN, as well as blocking any transaction involving any person or entity contained in the Specially Designated Nationals (SDN) List maintained by the Office of Foreign Assets Control (OFAC). Money transmitters are also subject to random examination by the Internal Revenue Service's BSA/AML Group (formerly known as the Office of the Title 31 Coordinator).

Lastly, at the state level, money transmitters are examined by the local regulators that issue the money transfer license, typically the banking department. These examinations focus on safety and soundness issues, as well as compliance with anti-money laundering and anti-terrorist financing laws.

KNOW YOUR AGENT REQUIREMENTS

In addition to the above, 31 CFR 103.125 further obligates all money transmitters to develop enhanced procedures "that [are] reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities."⁴ In developing effective compliance programs, money transmitters must have in place procedures for the proper selection of businesses that serve as agents. This necessarily means that money transmitters must submit any prospective agent to a proper due diligence review.

As a general matter, money transmitters are expected to develop risk-based policies, procedures, and controls designed to identify and minimize risks associated with agents. These controls must be aimed at preventing the products and services of the money transmitter from being used to facilitate any illegal activity, including money laundering or terrorist financing.

Relevant risk factors to consider when determining whether to select a business as an authorized agent may include, but are not limited to:

⁴ Code of Federal Regulations, Title 31 - Money and Finance: Treasury, Part 103, Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Anti-Money Laundering Programs for Money Services Businesses

- Whether the prospective agent business already has in place its own anti-money laundering compliance program.
- The background of the ownership of the agent. This includes whether the owners are known, upon reasonable inquiry, to be associated with criminal conduct.
- Whether the agent is currently serving as an agent for other money transmitters and/or provides other MSB services (i.e., check cashing, money orders, foreign exchange, etc.).
- Any information known or readily available to the money transmitter about the agent's anti-money laundering record, including public information in industry guides, periodicals, and major publications.
- The nature of the agent's business, the markets it serves, and the extent to which its business and the markets it serves present an increased risk for money laundering or terrorist financing.
- The types and purpose of services to be provided to, and anticipated activity with the agent.
- The nature and duration of the money transmitter's relationship with the agent.

FEDERAL AND STATE PENALTIES FOR FAILURE TO PROPERLY SUPERVISE AGENTS

Pursuant to the aforementioned laws, money transmitters in the United States who provide their remittance services through authorized agents must, at a minimum, 1) conduct due diligence on agents, 2) create risk-based monitoring procedures to account for transactions that occur at the agent location, and 3) take corrective action and even terminate an agent relationship when circumstances warrant such response.

Indeed, FinCEN has already interpreted 31 CFR 103.125 to mean that agent due diligence must be applied on an ongoing basis. Failure to abide by agent due diligence obligations can result in penalties to a money transmitter.⁵ Moreover, virtually every state that licenses money transmission imposes on its remittance company licensees strict

⁵ See Matter of Western Union, No. 2003–2 (Mar. 6, 2003) (www.fincen.gov).

requirements on the contracting, supervising and termination of agent relationships. Failure to adhere to these due diligence and oversight requirements can also result in penalties and license suspension and/or revocation.⁶

NEED IN THE INDUSTRY FOR THE PROPOSED BUSINESS CONDUCT

Many companies in the money transmitter industry are desirous of having a service that can assist them in determining whether a prospective agent has been terminated by another money transmitter. Information on termination can greatly assist a company in deciding whether to contract a prospective agent or not. Currently, there exist no meaningful way to determine if an agent has been terminated by another money transmitter, nor is any information available on the reasons for termination. Inquiring of the prospective agent on these matters has its obvious limitations.

Among the benefits money transmitters would obtain through the proposed business conduct is that they will be able to discern agents that:

- Were terminated for failure to deliver monies to a previous money transmitter
- Were terminated for violating a compliance procedures of a previous money transmitter
- Were terminated for breaching a clause contained in the agency agreement with a previous money transmitter
- Were terminated because of a business decision of a previous money transmitter

The proposed business conduct will enhance the industry's ability to comply with Know Your Agent requirements and reduce the contracting of agents that have displayed high risk characteristics. In effect, the proposed business conduct would be analogous to a credit reporting bureau, with the only difference being that here we would track an agent's past business practices, as opposed to past payment practices.

⁶ Texas Finance Code, § 151.401, Conduct of Business Through Authorized Delegate; Georgia Department of Banking and Finance Regulations, Chapter 80-3-1-07(2)(e) and (f), Administrative Fines & Penalties; Nebraska Sale of Checks and Funds Transmission Act, Chapter 8, Article 10-14 of the Nebraska Revised Statutes; Wisconsin Statutes 217.09(4), Revocation, Suspension, Reinstatement and Term of Licenses; Title 3 NYCRR Part 406 of the New York Superintendent of Banks Regulations; California Financial Code Sections 1803 and 1819, Transmission of Money Abroad.

THE PROPOSED BUSINESS CONDUCT

APPLICATION

As previously discussed in the Synopsis of the Proposed Business Conduct, we want to develop a database application that will contain the names of agent businesses that have been terminated by licensed money transmitters. The information on termination will be provided solely by our licensed money transmitter customers. Users of the service will be able to the query the database in Google- or Yahoo-type fashion.

We envision this application having two components. The first component will allow the user to insert information about a terminated agent. The information shall be specific and must be entered into predetermined fields. In providing information on the Reason for Termination, users of the application will be able to choose from one of the following categories:⁷

- Compliance
- Non-Payment
- Contractual
- Other

Users will also be able to enter information in a "Status Update" field, if subsequent action (reinstatement, judgment satisfied, etc.) is taken.

The second component of the application will allow a user to run the name of the agent and other information against the content of the database. Positive matches will be displayed for review by the user.

DATA FIELDS

We envision the database containing files on terminated agents. Each file will represent one (1) agent and will consist of information entered into the following fields:

- NAME OF AGENT BUSINESS (Corporate and D/B/A)

⁷ All information provided on an agent business by our money transmitter customers will be undisputed in that the agent will have been affirmatively terminated and the money transmitter customer is providing the reason for the termination.

- NAME OF PRINCIPALS ASSOCIATED WITH BUSINESS (Presidents, Owners, Managers, etc.)
- ADDRESS OF AGENT BUSINESS (Address, City, State and Zip Code)
- TELEPHONE NUMBER OF AGENT BUSINESS
- DATE OF TERMINATION
- REASON FOR TERMINATION (See Above)
- MONEY TRANSMITTER REPORTING TERMINATION
- STATUS UPDATE (See Above)

OTHER LAWS AND STATEMENT OF POSITION

We have looked at all other legal matters relating to the proposed business conduct and have concluded that such conduct would not violate any state or federal laws. Thus, we only await the Department's response to this letter. It is our position that given the scope and manner of our proposed business conduct, the Department should be satisfied that anti-trust issues will not be raised. We also rely, although not exclusively, on the Department's review and decision of the proposed business conduct of National Consumer Telecommunications Data Exchange, Inc. (See Department's letter dated September 3, 1997, signed by Assistant Attorney General Joel I. Klein).

FULL AND TRUE DISCLOSURE

The foregoing request is based on information known to us to be true and accurate.

ADDITIONAL INFORMATION

Should you have any questions regarding this submission, please do not hesitate to contact us. We will promptly provide the Department with any additional information or documentation as required.

Assistant Attorney General - In Charge
Anti-Trust Division
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We look forward to the Department's review of our Proposed Business Conduct and thank you in advance for your consideration.

Very truly yours,

A handwritten signature in cursive script that reads "Oscar A. Herasme". The signature is written in dark ink and is positioned above the typed name.

Oscar A. Herasme, Esq.
President
OAH/mm