How to Bank Money Services Businesses and Payments Companies

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The National Money Transmitters Association

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The overriding mission of the NMTA, from its inception, has been to promote the fair and orderly banking of money transmitters.

The mass exodus of most depository institutions from the MSB market means that even large, well-run MSBs are having trouble finding and keeping accounts these days. This has created a significant business opportunity for those banks that choose to remain. Yet, the compliance challenges are formidable.

While MSBs may be considered high-risk for money laundering for several reasons, the main reason we are considered high-risk, as compared with banks themselves, is because we are seen as *unevenly* regulated. The fact is, many transmitters are very well regulated, but the regulation of our industry that *does* exist, is little known, understood or appreciated.

Despite the protestations of the federal regulators that banks are not expected to be the de facto regulators of the MSB industries, the know-your-customer duties required of banks, because of our high-risk status, by necessity, are *precisely* analogous to regulatory functions.

Indeed, it could be argued that banks are even *more* essential to the operation of an MSB than their regulators because, if it were willing to break the law, an MSB could operate for a time without licenses, but not for a minute could one operate without a bank. Likewise, a banker's level of responsibility could be seen as even *greater* than a regulator's, since the transmission funds actually flow through the bank's facilities.

Considering our inherent risk profile, it is no wonder MSBs are considered difficult to bank. We deal with resident and nonresident aliens, some of whom do not possess taxpayer ID numbers. We sometimes deal with customers through agents, sometimes without face-to-face interaction, via internet, prepaid access cards and mobile devices. The Federal Financial Institutions Examination Council (FFIEC) define third-party payment processors and NBFIs (MSBs in particular) as being in risk categories of their own. We also fall into many other (product, customer, geographic and operational) risk categories:[1]

- Corporations and other business entities (implying UBO issues)
- Transmittal of funds (especially cross-border transmittal of funds)
- Correspondent accounts (implying that the customer's customer may also be a FI)
- Cash-intensive businesses
- Checks, wires and money orders (among other, more exotic and emerging instruments)
- Privately owned automated teller machines (if applicable)
- Concentration accounts (used to sweep transmittal funds)
- HIFCAs, HIDTAs (domestically); foreign jurisdictions of high money laundering concern and lax money laundering controls (i.e. geographic risk)

But there is reason to believe the pendulum is swinging the other way. MSB licensees perform an irreplaceable function in society, and regulators are beginning to understand the importance of keeping banking channels open for them. In addition, I believe the compliance costs of having MSB customers are recouped and compliance can even be a profit center.

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[1] These risk categories are taken from the Enhanced Due Diligence (EDD) section of the FFIEC BSA/AML Examination Manual.

List of Generic Recommendations to Safely Bank MSBs

Difficulties notwithstanding, if a bank is focused and diligent, it should not be deterred by the difficulties. If a bank is armed with the proper understanding and is willing to make the effort, this is a manageable risk and a very profitable market.

The standard is: *a financial institution may have as many high-risk customers as its systems are adequate to handle.*

Regulators cannot prohibit a bank from taking risks; that is a business decision that belongs to the bank alone. But regulators must be reasonably assured that those risks are being managed intelligently.

No fine has ever been handed down merely as a result of banking licensed money transmitters; fines have resulted when banks lack procedures to identify, risk rate and supervise high-risk MSB accounts.

Knowing what is considered adequate risk management – and how to get there – is the trick, so here are some thoughts on what it takes to safely bank MSBs:

Intake and Account Supervision

- Have an MSB detection procedure in place, to detect customers that may be acting as MSBs. When possible MSB activity is detected, have follow-up procedures in place.

- In addition to having a risk assessment on each high-risk customer, the bank should do an AML risk assessment on itself, in general, a risk assessment on each product it offers, and a separate ongoing risk assessment of its management of its MSB portfolio.

- Have centralized control of all MSB account supervision and an extremely diligent MSB intake procedure in place. Maintain high standards and follow the procedures you set up.

- Reasonably verify the customer is operating within the law. That means to know your state's license requirements and have procedures in place to assess whether the customer is in compliance with AML and state licensing requirements. If the customer is not licensed, look for sufficient legal protection and do extra diligence, or do not take the account.

- Make sure you understand the customer's business model and how the bank's facilities are to be used therein. Make sure anticipated volumes and types of activity are understood.

- Follow-up on documentary requests and refresh data at least annually. Consider re-examining the customer after 6 months and at 1 year intervals thereafter. Maintain a good tickler system and make sure there is timely follow-up on important audit recommendations.

- Have a risk scoring method/checklist, and make sure it is enforced. Vet the customer thoroughly and have a procedure for the Compliance Committee review the decision to open the account. Have a termination procedure in place and use it when necessary.

- Reasonably verify the customer understands its compliance obligations and has adequate controls in place. Leverage the MSB's existing audits and license applications. Know how to quickly evaluate the customer's audit findings and the quality of the audit itself.

- Note the customer's risk assessment of its own operation and do your own risk assessment of each customer. Look at the customer's ID thresholds and assess the overall adequacy of the customer's controls. Note any special risk factors, and plan to follow up with mitigating precautions. For example:

    - If the MSB customer works through agents, know the major risks of working through agents. Look for structuring at the agent level, especially if an agent represents multiple licensees. Make sure the agent is not using his own (unlicensed) channels, and using licensed activity as camouflage. Note the quality of agent supervision exercised by licensee.

    - If the customer works over the internet, via stored value cards or mobile money transfer, digital currencies or any of the new technologies, make sure you understand the special risks inherent in KYC for transactions not conducted in person.

    - If the customer sells money orders, cashes checks, or specializes in any method or type of money transfer, make sure you understand the special risks inherent in each business model and assess the adequacy of the customer's controls accordingly.

- Take all normal precautions that would apply to any business customer. Make sure you know the ultimate beneficial ownership of each MSB customer. Make sure you do a site visit. Review the customer's major agent, contractor and correspondent relationships.

- Monitor the customer's account activity to make sure activities and volume levels are unfolding as anticipated at account opening, and are commensurate with the customer's size. Make sure your monitoring procedures are commensurate with the complexity and volume of the customer's activity. Look at dollar levels once a month, or more often if necessary, with high-risk customers. Analyze inflows and outflows; where are the funds coming from and where are they going?

- With high-risk customers, periodically ask to review the customer's own transaction database and prove the customer's daily activity to deposits made that day. Do they tie out? High-risk customers may need daily review, or real-time monitoring by a third party.

Have a Credible AML Program, Good Governance and Good Controls

- Most bank fines can be traced to negligence or malfeasance in the bank's own AML program, therefore, first, make sure your own BSA house is in order, and see to any outstanding non-MSB-related defects that may exist in your compliance program.

- Deputize as points of control Relationship Managers and all others who have customer contact, in addition to the functioning of the Compliance Department.

- Make sure the relationship manager does not get final say if the client needs to be terminated for compliance reasons.

- Sensitize your front line personnel; make sure training is adequate and ongoing, even for members of the Board.

- Make sure there is continual Board involvement in the business and document Board policy statements in memos and the corporate minutes.

- Anticipate and play to your bank auditors in all your actions. That is to say, prepare to have your controls reviewed and audited. The FFIEC Manual is your playbook. Seek prior comment from your auditors; get them in on the takeoff, if possible.

- Use existing official checklists; steep yourself in compliance culture; follow the news and the literature; continually check yourself using 3rd party opinions and outside reviews. Document, implement, constantly review procedures and have them reviewed by knowledgeable, independent parties.

Addendum:

Purposes of State Licensure

To protect the consumer.
To assure the safety and soundness of the supervised firms.
To assure transparency and disclosure in price and service.
To instill public confidence.
To promote sustainable growth for the industry.
To promote competition and a level playing field.
To assure the prevention and detection of financial crime.

Items Required on a Typical State License Application

Corporate information and documents, EIN#, certified copy of certificate of incorporation, copy of by-laws, certificate of good standing, provide name and qualifications of compliance officer, state certificates of authority to conduct business, copy of MSB registration acknowledgment, audited financial statements for last 3 years, recent unaudited financial statement not less than 60 days old, pro-forma financial statement for 1st year of operation, corporate history from inception to present, business plan for jurisdiction applying to, list of all agent and branch locations in jurisdiction, list of all services to be provided, operations manual detailing all normal business procedures, agent procedures manual, BSA/AML risk assessment and compliance manual, OFAC compliance procedures, corporate surety bond, net worth requirement, permissible investment / liquidity requirements, copy of receipt to be issued, copy of authorized delegate agreement to be used, information regarding any formal or informal regulatory proceedings, past or present, disclose and describe businesses of all corporate parents, subsidiaries and affiliates, provide list of all jurisdictions where licenses already held and bonds provided therein, , personal biographical information forms required for all officers, directors and (usually 10%) shareholders, prior addresses, SSN, education and employment history, criminal history, bankruptcy history, immigration status, tax history, litigation history, and regulatory history, personal financial statements, full balance sheets and income statements, background investigation report, personal credit reports, fingerprinting, photographs, bank account information, name, address, account number and contact person at all banks where transmission funds will be deposited, foreign correspondents' proof of licensing (or no licensing required) in all foreign jurisdictions where located, copies of all agreements with foreign correspondents.