

LOSS OF ACCESS TO BANKING SERVICES, FACILITIES, AND RELATIONSHIPS  
BY MONEY TRANSFER OPERATORS (MTOs)

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*A Position Paper Prepared by an International Alliance of MTO Associations*

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*March 26, 2015*

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### Members of the International Alliance of MTO Associations

Country	Organisation	Representative	Representative Title
Australia	Australian Remittance and Currency Providers Association ( <a href="#">ARCPA</a> )	Dianne Nguyen Crispin Yuen	Director Director
Canada	Canadian Money Services Businesses Association ( <a href="#">CMSBA</a> )	Kenneth H. Saul	Associate Board Member
International	International Association of Money Transfer Networks ( <a href="#">IAMTN</a> )	Veronica Studsgaard	Chief Executive Officer
New Zealand	New Zealand MSB Association	Murray Broadmore	Chair
United States	The National Money Transmitters Association ( <a href="#">NMTA</a> )	David Landsman	Executive Director
United States	Third-Party Payment Processors Association ( <a href="#">TPPPA</a> )	Marsha Jones	President

## 1. INTRODUCTION

The International Alliance of Money Transfer Operator Associations (the Alliance), came together to jointly address pressing issues we have in common, centering on the loss of access to banking facilities. Together, the Alliance comprises six associations located in seven countries.

This Paper has been prepared in an effort to raise awareness among international regulators and other stakeholders of the very serious challenges facing our industry and to appeal to policy makers to put in place required changes to the regulatory framework so that our industry is able to continue to play its vital role in the global financial system.

## 2. EXECUTIVE SUMMARY

Money Transmitter Operators (MTOs) and Money Services Businesses (MSBs) in general are essential to the global flow of remittances, yet they are losing access to banking services. Without access to national and international banking systems, MSBs are destined to stagnate and eventually disappear. Urgent action is required to reverse this trend and preserve the sustainability of this important segment of the global financial system.

It is well acknowledged that the removal of MSBs will not advance the goal of detecting and deterring the movement of illicit money. To the contrary, reducing the availability of legitimate and regulated money transfer services will result in more money moving through unregulated and informal channels. The members of the International Alliance urge policy makers to work with our industry to put in place a regulatory framework which will help to ensure that our sector remains healthy.

### 3. THE SITUATION – THE ISSUE

MSBs, vital to the global flow of remittances, are losing access to banking services. There is concern that banks are indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs, thereby eliminating them as a category of customers. This runs counter to the risk-based approach. However, in taking this approach, it is well recognised that a number of issues arise. One of these is the reduction in the transparency of the financial sector, which is imperative in detecting and deterring illicit acts.

#### 3.1 FinCEN November, 2014 Statement<sup>1</sup>

“Money services businesses (“MSBs”), including money transmitters important to the global flow of remittances, are losing access to banking services, which may in part be a result of concerns about regulatory scrutiny, the perceived risks presented by money services business accounts, and the costs and burdens associated with maintaining such accounts...

Currently, there is concern that banks are indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs, thereby eliminating them as a category of customers. Such a wholesale approach runs counter to the expectation that financial institutions can and should assess the risks of customers on a case-by-case basis. Similarly, a blanket direction by U.S. banks to their foreign correspondents not to process fund transfers of any foreign MSBs, simply because they are MSBs, also runs counter to the risk-based approach.”

#### 3.2 Officials Extol Money-Service Businesses Amid ‘De-risking’ Drive<sup>2</sup>

“We are concerned about...the possibility that financial institutions are terminating or restricting an entire class of business relationships simply to avoid perceived regulatory risk, not in response to an assessment of the actual risk posed by individual MSBs,” said Mr. Cohen...”

“But the question of weighing “perceived regulatory risk” and “actual risk” is “just semantics,” according to Laura Billings, a member of law firm Miller Chevalier who has experience prosecuting banks for inadequate anti-money laundering controls concerning MSB clients...”

“MSB clients just aren’t lucrative enough for financial institutions to take the risk,” she said. “In the current regulatory environment, it’s not surprising that banks would use a more categorical approach to de-risking...”

“But the extent to which banking institutions must be shedding their MSB customers must be “cataclysmic” for U.S. officials to endorse them so highly, said Scott Moritz, a managing director at risk consultancy Protiviti.”

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<sup>1</sup> [United States Department of the Treasury Financial Crimes Enforcement Network, “FinCEN Statement on Providing Banking Services to Money Services Businesses”, 10 November 2014.](#)

<sup>2</sup> [Samuel Rubinfeld, “Officials Extol Money-Service Businesses Amid ‘De-risking’ Drive”, Wall Street Journal, 14 January 2015.](#)

#### 4. THE ROLE OF THE MTO SECTOR IN THE GLOBAL FINANCIAL SYSTEM

##### 4.1 FinCEN November, 2014 Statement<sup>3</sup>

“MSBs play an important role in a transparent financial system, particularly because they often provide financial services to people less likely to use traditional banking services and because of their prominent role in providing remittance services. FinCEN believes it is important to reiterate the fact that banking organizations can serve the MSB industry while meeting their Bank Secrecy Act obligations.”

##### 4.2 Interagency Interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States<sup>4</sup>

“The money services business industry is extremely diverse, ranging from Fortune 500 companies with numerous outlets worldwide to small, independent “mom and pop” convenience stores in communities with population concentrations that do not necessarily have access to traditional banking services or in areas where English is rarely spoken.”

##### 4.3 Remarks of FinCEN Director Jennifer Shasky Calvery<sup>5</sup>

“MSBs play a vital role in our economy and provide valuable financial services, especially to individuals who may not have easy access to the formal banking sector...”

“It is worth noting that with limited exceptions, MSBs are subject to the full range of BSA regulatory controls, including the anti-money laundering program rule, suspicious activity and currency transaction reporting rules, and various other identification and recordkeeping rules...”

“Additionally, existing FinCEN regulations require certain money services business principals to register with FinCEN. As a result, MSBs play an important role in implementing procedures to thwart serious illicit activity that, left unchecked, could jeopardize the U.S. financial system...”

“MSBs also play an important role in providing crucial reporting used to combat a wide range of criminal and security threats...”

“In fact, MSBs submit to FinCEN a significant number of Suspicious Activity Reports (SARs). In 2013 alone, MSBs filed more than 490,000 SARs, compared to 713,000 filed by depository institutions. And while I am not able to discuss specifics, I can say that the BSA reporting provided by MSBs contains some of the most valuable counterterrorism information we receive.”

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<sup>3</sup> [Ibid.](#)

<sup>4</sup> [Issued jointly by the Financial Crimes Enforcement Network, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, and the Office of Thrift Supervision, 26 April 2005.](#)

<sup>5</sup> [Remarks Of Jennifer Shasky Calvery Director Financial Crimes Enforcement Network, 2014 Mid-Atlantic AML Conference, Washington DC, 12 August 2014.](#)

#### 4.4 Testimony of Daniel P. Stipano, Deputy Chief Counsel, Office of the Comptroller of the Currency<sup>6</sup>

“Currently there is great concern that banks are terminating the accounts of entire categories of customers, without regard to the bank’s ability to manage the risks posed by those customers, and some have suggested that regulators are dictating those actions...”

“As a general matter, the OCC does not recommend or encourage banks to engage in the wholesale termination of categories of customer accounts. Rather, we expect banks to assess the risks posed by individual customers on a case-by-case basis and to implement appropriate controls to manage each relationship...”

#### 4.5 Testimony of Comptroller of the Currency Thomas J. Curry, Office of the Comptroller of the Currency<sup>7</sup>

“[Comptroller of the Currency Thomas J. Curry] reiterated this message last March in a speech to the Association of Certified Anti-Money Laundering Specialists when he stated, ‘no matter what type of business you are dealing with, you have to exercise some sound judgment, conduct your due diligence, and evaluate customers individually.’”

## 5. EVIDENCE OF SECTOR-WIDE WITHDRAWAL/REFUSAL OF BANKING SERVICES

### 5.1 United States

In early 2005, the Treasury Department and the federal banking regulators issued a Joint Statement that banks were not responsible for monitoring anti-money laundering compliance by their MSB customers, setting forth minimum steps that a bank should take in opening an account for an MSB, and offering a set of various risk factors with which to assess a potential MSB account relationship. In addition, the Treasury Department issued guidance through the Financial Crimes Enforcement Network (FinCEN) on the information and documentation that an MSB should be ready to provide when it is seeking banking services.

In June 2005, the banking regulators and the Treasury Department issued a handbook for banks to assist them in complying with their anti-money laundering compliance that contained a section focusing specifically on maintenance of banking relationships with non-bank financial institutions, such as securities brokers and dealers, and MSBs. Despite this, banking organizations remained concerned about having MSBs as customers and continued closing accounts or refusing to open the accounts. MSBs again sounded their concerns about being increasingly cut off from access to the US banking system

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[6 Testimony Of Daniel P. Stipano Deputy Chief Counsel Office Of The Comptroller Of The Currency Before The Subcommittee On Oversight And Investigations House Committee On Financial Services, United States House Of Representatives, 15 July 2014.](#)

[7 Remarks by Comptroller Curry before the Association of Certified Anti-Money Laundering Specialists, 17 March 2013.](#)

### 5.1.1 U.S. Banks' Response to Regulatory Crackdown May Be Hurting Banks Globally<sup>8</sup>

The head of the Financial Action Task Force, an international group that sets money-laundering standards, warns that many foreign institutions are now feeling the effects of the push inside American banks to cut off large swaths of customers.

When banks stop doing business with entire sectors, they "pick up a lot of innocuous people, as well as maybe the odd ones that have got a problem," said Roger Wilkins, president of the Financial Action Task Force.

Operation Choke Point is an ongoing initiative of the United States Department of Justice that was announced in 2013, which is investigating banks in the United States and the business they do with payment processors, payday lenders, and other companies believed to be at higher risk for fraud and money laundering.

It has been reported that Fifth Third Bank and Capital One have terminated their accounts with payday lenders amid alleged increased scrutiny by federal regulators. "In a recent submission to a congressional committee, the Financial Service Centers of America, a trade group that represents check cashers and payday lenders, listed several banks that it says have terminated their relationships with at least one of its member companies in recent months. Besides Capital One and Fifth Third, banks on the list include Bank of America, PNC Financial Services Group, Wells Fargo and U.S. Bancorp."<sup>9</sup>

The Financial Service Centers of America (a trade group that represents payday lenders and other consumer businesses) recently commissioned a survey of its members about bank discontinuance. The survey, conducted by Deloitte Financial Advisory Services, found that "14 of the 61 banking relationships reported by survey participants have been terminated since November 2013."<sup>10</sup>

### 5.1.2 De-risking: When did we lose our minds and our way?<sup>11</sup>

"Exiting banking relationships for risk-related reasons is as old as banking itself. We just never had a name for it before. Credit, operational, or AML risk all need a corresponding response from the institution. The issue for all of us is whether those responses are standard and fair. And we must also examine them carefully. Will they cause unintended, collateral damage?"

"In AML, the earliest "victims" of de-risking were (and remain) money service businesses. It should be noted that not all MSBs are victims. But well-run institutions with strong AML programs do get lumped in with MSBs that skirt the compliance world..."

"Frankly, many banks were warned about providing services to MSBs so the logical response was exiting such relationships or not providing services in the first place."

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<sup>8</sup> Kevin Wack, "U.S. Banks' Response to Regulatory Crackdown May Be Hurting Banks Globally", *American Banker*, 29 December 2014.

<sup>9</sup> Kevin Wack, "Fifth Third, Capital One Cut Off Payday Lenders", *American Banker*, 17 April 2014.

<sup>10</sup> *Ibid.*

<sup>11</sup> John Byrne, "De-risking: When did we lose our minds and our way?", *Banking Exchange*, 10 October 2014.

## 5.2 Canada

Anecdotally, only Bank of Montreal (“BMO”) and Royal Bank of Canada (“RBC”) appear to be open to providing new banking facilities for MSBs in Canada, although TD Canada Trust/TD Bank (“TD”) has apparently grand-fathered existing accounts for some of the larger MSBs and/or MSBs primarily engaged in wholesale corporate/commercial global FX payments services. In addition, Bank of Nova Scotia/Scotiabank (“BNS”) is apparently at least considering new banking facility applications from established MSBs.

Even BMO and RBC though, are known to be very careful and selective with the MSBs they are prepared to consider dealing with, especially any new applications. As a result, Canadian MSBs seeking banking services including funds transfer services, have recently had to seek out and rely on considerably smaller financial institutions, even having to look to the credit union sector for such services.

Ironically, the website of an AML consulting company, presents this note on their home page:



Welcome to the [redacted]  
[redacted] Canada.

We specialize in:

- Anti-money laundering / terrorist financing
- Compliance Officer services (for small MSB's)
- Fraud and scam prevention
- Counterfeit currency detection
- Policies and procedures / business forms
- Other related services

**Please note:**

*As of July 2, 2014, we will only provide AML services specifically to Realtors, Mortgage Brokers and small retail businesses in British Columbia. We will no longer be offering our services to MSB's.*

*We are sorry for the inconvenience.*

**“Please note**

*As of July 2, 2014, we will only provide AML services specifically to Realtors, Mortgage Brokers and small retail businesses in British Columbia. We will no longer be offering our services to MSBs. We are sorry for the inconvenience.”*

## 5.3 United Kingdom

Nearly all of the main high street banks in the UK have exited the MSB sector in wholesale fashion, seeing MSBs as unacceptably high risk.

### 5.3.1 AML risk aversion drives UK banks from MSB sector, officials say<sup>12</sup>

“An increasingly risk averse approach to anti-money laundering caused by greater regulatory scrutiny have prompted the UK's biggest banks to drop some money services businesses as clients, officials have said. In the past year HSBC, which was fined a record \$1.9 billion in the U.S. for AML failures in 2012, has exited the sector and told clients, which include companies offering currency and money exchange as well as money transfers and cheque-cashing services, to make new banking arrangements. More recently Barclays, which had around 75 percent of the market for payment services firms, has given companies 60 days to find new banking custodians. Many of these clients had moved to Barclays after HSBC gave them the push. One regulatory source, who did not wish to be named but has worked with some of the companies involved, said the decision has caused 'chaos'. He said the banks were paranoid about money laundering and were exiting risky relationships.”

### 5.3.2 Major Clearing Bank Closes MSBs Accounts<sup>13</sup>

“A Major Clearing bank has made the decision to close the accounts of over 300 Money Services Businesses (MSB). MSBs, most of which are members of the Money Transmission Association, help members of the public to send money to their families living overseas. This transmission is cost effective and also provides the support for families.”

### 5.3.3 Barclays Bank is closing about 100 UK accounts held by cash transfer businesses<sup>14</sup>

“The businesses are vital for Somali expatriates sending remittances back home, where banking facilities have collapsed. Aid workers say the service is a "lifeline" for 40% of the Somali population, who rely on the transfers. It is feared that the cash transfer business could now go underground.”

We understand that the UK government is aware of this problem and has set up a working group of key stakeholders. The working group is providing input into new AML/CTF guidance for the MSB sector which is being developed by the UK regulator.<sup>15</sup>

## 5.4 Australia

In Australia, MSBs are facing imminent closure of access to banking facilities with any of the major banks, and may soon have to look for other alternatives in order to remain in business.

*(See however the reference below under Section 8 – Understanding The Risk-Based Approach – Responses from Regulators the Statement issued by AUSTRAC on 25 November 2014, urging banks to take a proper risk-based approach which assesses risks of customers individually and not on a sector-wide basis, and*

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<sup>12</sup> Martin Coyle, “AML risk aversion drives UK banks from MSB sector, officials say”, [Compliance Complete](#), 24 June 2013.

\*Full article only available for subscribers

<sup>13</sup> Trade & Export Finance Limited, “Major Clearing Bank Closes MSBs Accounts”

<sup>14</sup> BBC News, “Barclays to close about 100 UK cash transfer business accounts”, 17 July 2013.

<sup>15</sup> EPIF Position Paper on Access to Bank Services for Payment Institutions, 21 May 2014.

*encouraging banks to engage with the alternative remittance sector on measures that the sector could take both immediately and in the longer term to meet banks' internal risk standards)*

*(See also the reference below under [Section 6 – Need For Access to Banking Services by the MTO Sector](#), to the FATF Guidance issued June 2011 and revised in June 2013 (issued by the FATF with the World Bank and the Asia Pacific Group on Money Laundering in support of financial inclusion and recognizing that financial inclusion and AML-CFT measures are complementary objectives.)*

#### **5.4.1 Westpac to Quit Remittance Business, Pakistan Warns It Will Aid Terrorists<sup>16</sup>**

“Westpac announced on Tuesday that it would quit its remittance business on March 31, 2015. Among the Big 4 banks in Australia, it would be the last to leave the \$24.5-billion remittance sector in the country...”

“Westpac would close the accounts of remittance agencies on Dec 24, but would keep open until March 31 accounts of 20 remitters who filed a class action suit to give them time to find other companies that offer remittance services. The extension is in compliance with a court order...”

“Among the reasons given by Australian banks in withdrawing from the \$425-billion global remittance industry is the rising cost of compliance with anti-money laundering regulations, particularly tracking the identities of the sender and recipient of the money...”

“The closure of Westpac's remittance business would affect even large remittance companies like Western Union since remittance agents use bank accounts to deposit the customer money and to settle with their network providers like Western Union.”

#### **5.4.2 Australian Remittance Working Group**

In December 2014 the Australian Government formed a Remittance Working Group for a 6 month Term with representatives from industry, the Attorney-General's Department, and law enforcement to consider practical measures remitters could undertake to make their businesses more likely to fit within the acceptable risk tolerance of banks.<sup>17</sup>

### **5.5 Dominican Republic**

“The regulated exchange sector in the Dominican Republic, as in other countries around the world, is suffering from the radical policies implemented by US banks regarding the non-opening of accounts to domestic and foreign MSB customers, even when those customers satisfy all regulatory requirements.

The situation is much more serious considering it is well understood that closing MSB accounts comes from a regulation or provision of US regulators; at least that is one of the justifications given to exchange

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[16 Vittorio Hernandez, “Westpac to Quit Remittance Business, Pakistan Warns it Will Aid Terrorists”, International Business Times, 23 December 2014.](#)

[17 ARCPA Remittance Working Group Terms of Reference.](#)

agents by commercial banks and local regulators when an explanation is demanded for the discrimination our sector is presently facing.

The foregoing has directly harmed Exchange Agents by the closing of the accounts of most Dominican companies, and indirectly because there is strong pressure from US based correspondent banks to limit access by our entities to national banks.

The aforementioned situations are causing a very negative effect on the economies of the countries involved in this issue because they are driving a formal and regulated industry into deregulation, consequently bringing informality into the supply of currencies from which the payment system is sustained. Not having an account where regulated entities can perform operations in a regulated and supervised manner by the corresponding authorities of each country is certainly encouraging and increasing unregulated informal operations.

The fact that we do not know if other sectors categorized by the FATF as high risk industries are facing the same barriers as the exchange agents are, such as Casinos, Jewellers, Real Estate and Car Dealers, Betting Parlors, among others, should be considered clear trade discrimination, or as part of a plan to leave the business in other hands. <sup>18</sup>

## 5.6 Somalia

Given the very significant problems in Somalia, which is considered in many respects to be a “failed State”, Somalia has a very different perspective on this issue. For Somalia, it is not a case of the domestic banks refusing to provide banking access to MSBs in Somalia because for all intents and purposes, there really is no regulated banking or financial system in Somalia. Nevertheless, Somali citizens are very much affected by this issue due to the difficulties that ex-pat Somalis experience in trying to send funds back home to support their families, who are extremely dependent on such money transfers.

Somalia faces enormous problems as one of the poorest countries in the world. It has been entangled in civil war for more than two decades. Its central government is extremely weak, and various regions have de facto autonomy.

Given the ongoing warfare and the lack of central authority, it is not surprising that Somalia's financial system operates mostly outside of the government's watch. According to the U.S. State Department, Somalia has no anti-money-laundering laws, nor does it have any requirements for reporting suspicious transactions.

At the same time, Somali citizens are heavily dependent on money transfers from relatives who live overseas. According to estimates by aid groups which also rely on the money transfer system in order to operate inside Somalia, globally, Somali migrants send about \$1.2 billion home each year.

The aid groups estimate that Somalis who receive cash from family members abroad are hugely dependent on that money as it comprises roughly 60% of the recipients' annual income. Much of that money comes from the United States. Around 130,000 people of Somali heritage live in the United States, according to the U.S. State Department.

But the problem now being faced is that only a few U.S. banks are still doing business with Somali money transmitters.

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[18 Speech Before the National Money Transmitters Association's Industry Symposium for Legislative Action, February 18, 2014, Carnegie Endowment for International Peace, Washington, DC](#)

### 5.6.1 For Somalis, the US Remittance Crackdown Cuts Deep<sup>19</sup>

“Slowly but steadily, the list keeps shrinking. First the bigger banks bowed out. As their regulators demanded more safeguards against money laundering and terrorist-financing schemes, these institutions could no longer stomach doing business with money transmitters that help Somali-Americans send funds to relatives back home...”

“Next to pull up stakes was a small bank in the Twin Cities, which is home to the nation's largest community of Somali immigrants. And now a small West Coast bank that specializes in serving money transmitters is having second thoughts. Merchants Bank of California has informed numerous clients that send remittances to Somalia that their accounts will be closed at the end of September, according to three sources with knowledge of the situation...”

“Today, only a few U.S. banks are still doing business with Somali money transmitters, said Degan Ali, executive director of Adeso, an aid organization that is working to preserve the remittance pipeline.” Our fear is that the few remaining banks will follow suit and shut down accounts in the near future...”

“Inside the banking industry, it's no secret that the government's focus on anti-money-laundering and anti-fraud rules has tightened. Banks have been hit by delays of merger applications, subpoenas tied to the Department of Justice's Operation Choke Point probe and regulatory orders that restrict their revenue opportunities. In some cases they have responded to the scrutiny by cutting ties with business customers who are more likely to cause regulatory headaches...”

“The increasingly dire predicament facing the Somali money transmitters is both a typical and extraordinary example of the regulatory push's consequences. While the government's efforts do offer protection from financial crime, they also carry significant costs for banks, their customers, members of the public and even the regulators themselves...”

“The stakes are far higher with respect to Somali money transmitters than they are for most other business lines affected by the ongoing crackdown. If the regulators push too hard, they may inadvertently precipitate a humanitarian crisis in Somalia. Fail to push hard enough and they could have a deadly terrorist attack on their hands...”

“Somalia faces enormous problems. It's one of the poorest countries in the world. It's been enmeshed in civil war for more than two decades. Its central government is extremely weak, and various regions have de facto autonomy...”

“Given the ongoing warfare and the lack of central authority, it's not surprising that Somalia's financial system operates mostly outside of the government's watch. According to the U.S. State Department, Somalia has no anti-money-laundering laws, nor does it have any requirements for reporting suspicious transactions...”

“At the same time, Somali citizens are heavily dependent on money transfers from relatives who live overseas. Globally, Somali migrants send about \$1.2 billion home each year, according to an estimate by Adeso and other aid groups, which also rely on the money transfer system in order to operate inside Somalia...”

“Somalis who receive cash from family members abroad are hugely dependent on that money. It comprises roughly 60% of the recipients' annual income, the aid groups estimate. And much of the money comes from the United States. Around 130,000 people of Somali heritage live in this country, according to the State Department...”

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<sup>19</sup> [Kevin Wack, “For Somalis, US Remittance Crackdown Cuts Deep”, American Banker, 29 August 2014.](#)

“There's also research suggesting that remittances offer a better way to help poor families in the developing world than foreign aid. A 10% increase in remittances led to a 7% increase in savings, according to one 2010 study that looked at countries in sub-Saharan Africa, while the same increase in foreign aid yielded only a 1.6% boost in savings...”

## 5.7 New Zealand

### 5.7.1 Banks Crack Down on Money Transfer Service<sup>20</sup>

"Money remitters play an important role in providing a specialised financial service that many people wouldn't otherwise access conveniently and affordably," it said. Remittances from New Zealand represent a significant part of many Pacific nations' incomes..."

“The bank said some money transfer services had recently experienced difficulty maintaining access to banking services or had completely lost access to banking services...”

"Some of them believe that banks are indiscriminately terminating their bank accounts or refusing to open accounts for any new customers in the money remittance business," it said..."

“In some cases, the explanation banks gave for terminating accounts referred to the Anti-Money Laundering and Countering Financing of Terrorism Act 2009, which can impose severe financial penalties against banks that fail to take reasonable steps to prevent money laundering or the funding of terrorist groups...”

## 6. THE ROLE OF FATF, THE BASEL COMMITTEE AND THE NATIONAL FIUS:

### 6.1 The FATF

The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

### 6.2 The Basel Committee

The Basel Committee is the primary global standard-setter for the prudential regulation of banks and provides a forum for cooperation on banking supervisory matters. Its mandate is to strengthen the regulation, supervision and practices of banks worldwide with the purpose of enhancing financial stability.

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<sup>20</sup> Rob Stock, “Banks crack down on money transfer service”, [Stuff](#), 28 January 2015.

### 6.3 National FIUs - The Egmont Group

Recognizing the importance of international cooperation in the fight against money laundering and financing of terrorism, a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels, Belgium, and decided to establish an informal network of FIUs for the stimulation of international co-operation. Now known as the Egmont Group of Financial Intelligence Units, Egmont Group FIUs meet regularly to find ways to promote the development of FIUs and to cooperate. The goal of the Egmont Group is to provide a forum for FIUs around the world to improve cooperation in the fight against money laundering and the financing of terrorism and to foster the implementation of domestic programs in this field. This support includes:

1. Expanding and systematizing international cooperation in the reciprocal exchange of information;
  2. Increasing the effectiveness of FIUs by offering training and promoting personnel exchanges to improve the expertise and capabilities of personnel employed by FIUs;
  3. Fostering better and secure communication among FIUs through the application of technology, such as the Egmont Secure Web (ESW);
  4. Fostering increased coordination and support among the operational divisions of member FIUs;
  5. Promoting the operational autonomy of FIUs; and
- Promoting the establishment of FIUs in conjunction with jurisdictions with an AML/CFT program in place, or in areas with a program in the early stages of development

## 7. NEED FOR ACCESS TO BANKING SERVICES BY THE MTO SECTOR

In early 2005, the Treasury Department and the federal banking regulators issued a Joint Statement that banks were not responsible for monitoring anti-money laundering compliance by their MSB customers, setting forth minimum steps that a bank should take in opening an account for an MSB, and offering a set of various risk factors with which to assess a potential MSB account relationship. In addition, the Treasury Department issued guidance through the Financial Crimes Enforcement Network (FinCEN) on the information and documentation that an MSB should be ready to provide when it is seeking banking services.

In June 2005, the banking regulators and the Treasury Department issued a handbook for banks to assist them in complying with their anti-money laundering compliance that contained a section focusing specifically on maintenance of banking relationships with non-bank financial institutions, such as securities brokers and dealers and MSBs. Nevertheless, banking organizations remained concerned about having MSBs as customers and continued closing accounts or refusing to open the accounts. MSBs again complained about being increasingly cut off from access to the US banking system.

Also, the Financial Action Task Force (FATF) with the World Bank and the Asia/Pacific Group on Money Laundering issued FATF Guidance in June 2011<sup>21</sup> (revised February 2013).<sup>22</sup> In it, FATF acknowledges the

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[21 The Financial Action Task Force, The World Bank and the Asia/Pacific Group of Money Laundering, FATF Guidance: Anti-money laundering and terrorist financing measures and Financial Inclusion, June 2011](#)

[22 The Financial Action Task Force, The World Bank and the Asia/Pacific Group on Money Laundering, FATF Guidance: Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion, February 2013.](#)

relevance of financial inclusion to its work, and recognises that financial inclusion and AML-CFT are complementary objectives.<sup>23</sup>

## 8. UNDERSTANDING THE RISK-BASED APPROACH – RESPONSES FROM REGULATORS

### 8.1 United States FinCEN April, 2005 Statement<sup>24</sup>

“In the United States, FinCEN and other regulatory partners first addressed this issue in 2005 when they learned that MSBs were having difficulty maintaining bank account relationships. In response, FinCEN and the Federal Banking Agencies issued joint guidance to assist banking organisations assess and minimise risks posed by providing banking services to MSBs.”<sup>25</sup>

### 8.2 United States FinCEN November, 2014 Statement<sup>26</sup>

“Currently, there is concern that banks are indiscriminately terminating the accounts of all MSBs, or refusing to open accounts for any MSBs, thereby eliminating them as a category of customers. Such a wholesale approach runs counter to the expectation that financial institutions can and should assess the risks of customers on a case-by-case basis. Similarly, a blanket direction by U.S. banks to their foreign correspondents not to process fund transfers of any foreign MSBs, simply because they are MSBs, also runs counter to the risk-Based approach.”

### 8.3 FATF clarifies risk-based approach: case-by-case, not wholesale de-risking<sup>27</sup>

“The FATF Plenary discussed the issue of de-risking on 22 October. Generally speaking, de-risking refers to the phenomenon of financial institutions terminating or restricting business relationships with clients or categories of clients to avoid, rather than manage, risk in line with the FATF’s risk-based approach...”

“De-risking should never be an excuse for a bank to avoid implementing a risk-based approach, in line with the FATF standards. The *FATF Recommendations* only require financial institutions to terminate customer relationships, on a case-by-case basis, where the money laundering and terrorist financing risks cannot be mitigated. This is fully in line with AML/CFT objectives. What is not in line with the FATF standards is the wholesale cutting loose of entire classes of customer, without taking into account, seriously and comprehensively, their level of risk or risk mitigation measures for individual customers within a particular sector...”

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<sup>23</sup> See also: [FinCEN’s November 2014 Statement](#); [FATF Plenary Statement, Paris, October 2014](#); [U.S. Treasury, Office of the Comptroller of the Currency \(OCC\)’s Statement on Risk Management Associated With Money Services Businesses, November 2014](#).

<sup>24</sup> Above n 4.

<sup>25</sup> [Australian Remittance and Currency Providers Association \(ARCPA\), “Securing the continued operation of registered remitters in Australia”, 17 November 2014](#)

<sup>26</sup> Above n 1.

<sup>27</sup> [The Financial Action Task Force, “FATF clarifies risk-based approach: case-by-case, not wholesale de-risking”, Paris, 23 October 2014](#).

“The risk-based approach should be the cornerstone of an effective AML/CFT system, and is essential to properly managing risks. The FATF expects financial institutions to identify, assess and understand their money laundering and terrorist financing risks and take commensurate measures in order to mitigate them. This does not imply a “zero failure” approach...”

“The FATF is committed to financial inclusion and effective implementation of AML/CFT measures through proper implementation of the risk-based approach...”

#### **8.4 Australia AUSTRAC November Statement<sup>28</sup>**

On November 25 2014, the Australian AML/CFT regulator, AUSTRAC, issued a statement:

“Banks are required to develop risk-based systems and controls tailored to the nature, size and complexity of their business and proportionate to the level of money laundering and terrorism financing risk. Individual banks must determine how to meet these obligations. This approach recognises that banks are best placed to assess and manage the risk posed by their own customers and the products and services they offer...”

“In AUSTRAC’s view, alternative remitters represent varying degrees of risk to banks. With appropriate AML/CTF systems and controls in place, banks should be able to manage high risk customers, including alternative remitters...”

“AUSTRAC encourages banks to continue to assess the particular risks relating to their customers in line with the risk-based approach. Further, AUSTRAC encourages banks to engage with alternative remitters on measures that the sector could take both immediately and in the longer term to meet banks’ internal risk standards.”

#### **8.5 New Zealand’s Reserve Bank statement about banks closing accounts of money remitters<sup>29</sup>**

“The recent New Zealand experience reflects an international banking trend known as “de-risking”. The Reserve Bank recognises that banks’ reasons for de-risking are varied, including concerns about profitability and reputational risk, and requirements imposed by international correspondent banks...”

“Money remitters present varying degrees of risk. The Reserve Bank considers that banks’ obligations under the AML/CFT Act require measured risk management and do not justify blanket de-risking. With appropriate systems and controls in place, banks should be able to manage and mitigate the money laundering and terrorism financing risks posed by many money remitters. If banks are de-risking to avoid rather than manage and mitigate those risks, then that would be inconsistent with the intended effect of the AML/CFT Act...”

“The Reserve Bank wishes to ensure that banks’ obligations under the AML/CFT Act don’t result in money remitters being deprived of access to financial services without good reason. In its capacity as AML/CFT supervisor of registered banks, the Reserve Bank encourages banks to continue to assess the money laundering and terrorism financing risks posed by their customers and implement procedures and policies to manage and mitigate those risks.”

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[28 Australian Transaction Reports and Analysis Centre, “AUSTRAC Statement”, 25 November 2014.](#)

[29 Reserve Bank of New Zealand, “Statement about banks closing accounts of money remitters”, 28 January 2015.](#)

## 9. MTO SECTOR CAN BE PART OF THE SOLUTION – EFFORTS TO COMBINE FORCES, ESTABLISH AND ENHANCE STANDARDS, AND SELF-REGULATION

The members of the Alliance seek to work together towards establishing and enforcing standards for membership and participation in their activities and in the provision of financial services. As an example, the Canadian Money Services Business Association is currently engaged in creating and providing to the Canadian MSB sector a compliance maturity model (CMM) to which it intends that all its members must adhere, and further seeks to establish itself and these standards as a high bar to which sector participants must measure up if they wish to be considered legitimate players in the sector.

In doing so, we seek to secure recognition of the CMSBA and other Alliance members by the other stakeholders in the global financial system as meaningful partners, and to secure their backing and support for such standards and for self-regulation.

We thus seek opportunities to engage with banks to jointly explore and determine the measures both short term and long term necessary for the sector to meet and satisfy the banks' internal risk standards.

## 10. THE COST OF FAILURE

### 10.1 Effect on Transparency of the Financial System and Criminal Activity

The aforementioned situations are causing a very negative effect on the economies of the countries involved in this issue because they are driving a formal and regulated industry into deregulation. This consequently brings informality into the supply of currencies from which the payment system is sustained. This will drive legitimate responsible players out of the business to be replaced by less legitimate, less responsible, even criminal players who will prevail and fill the vacuum, This will in turn leave much cash and funds in hands that no reasonable responsible person wishes to have control, or to play a key role in the global financial system, albeit underground and out of sight.

In other words, not having an account where regulated entities can perform operations in a regulated and supervised manner by the corresponding authorities of each country is certainly encouraging and increasing cash and unregulated informal operations. Further, if this occurs, regulators will inevitably be faced with increased cost and effort as they will not have reporting entities as a source of intelligence concerning illicit behaviour in the remittance sector.

A report commissioned by the U.K. government in 2013 concluded that forcing money transmitters underground can be "highly counterproductive," since it becomes "even harder to trace criminality and terrorism."<sup>30</sup>

### 10.2 Effect on Global Financial Inclusion

The remittance sector is also necessary as a channel for individuals who suffer restrictions in their access to low-cost financial services, especially in unbanked or under-banked communities.<sup>31</sup> The G20 endorsed

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[30 Beechwood International Ltd commissioned by Her Majesty's Government, Safer Corridors Rapid Assessment – Case Study: Somalia and UK Banking, September 2013.](#)

a Financial Inclusion Action Plan for the first time in 2010. In it, financial inclusion is described as “fundamental for improving the livelihoods of the poor as it enables them to run their businesses, build assets, smooth consumption, and manage risks.” Further, it states that “financial inclusion is not only an end in itself. It is also required for, and complementary to, financial stability and financial integrity.”<sup>32</sup>

The closure of remittance providers will cause the financial flow to these under-served communities to be disrupted, potentially causing detriment to many communities at risk. Remittance services provide a less expensive avenue for transferring money which means that a wider proportion of the population is able to afford to transfer money.

The G20’s 2014 Financial Inclusion Action Plan<sup>33</sup> included the commitment to reducing global average remittance costs. They were able to identify the remittance sector, therefore, as a key tool in bridging the gap that unbanked and underbanked communities face in their effort to remain included in the financial system. The issue of financial inclusion, therefore, is one that is considered a key objective of the G20 and should not be ignored, but carefully considered.

## **11. RECOMMENDATIONS BY THE INTERNATIONAL ALLIANCE OF MTO ASSOCIATIONS**

### **11.1 Express Guidance to all Relevant Stakeholders as to Requirements and Expectations Consistent with Enhancing Access by Legitimate Entities to the Global Financial System**

- This could be streamlined to FinCEN’s November 2014 statement, augmented by detailed guidance similar to that issued by HM Treasury as set out in its Guidance on Money Services Businesses as Customers of Banks of May 30, 2013;

### **11.2 Clarify Expectations and Responsibilities of US Banks in Relation to Sanctions and Extraterritoriality**

- US banks which provide US dollar clearing facilities to international banks are imposing strict requirements on those banks not to bank with MSBs, because of the US bank’s perceived risk of breaching US sanctions and AML/CFT laws.
- We seek from the US government clarification, in regards to the responsibilities and extent of liability of US banks, on the issue of extraterritoriality regarding sanctions and AML/CFT if they are operating in foreign countries and/or providing overseas correspondent banking facilities.
- Further, we seek from the US government consideration of legislative change so that the liability of extraterritorial sanction and AML/CFT breaches fall on the entity immediately responsible (MSBs) for that breach and not on US and international banks when dealing with MSBs as outlined in the example provided above.

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[31 World Bank, Report on the Remittance Agenda of the G20, Prepared by the World Bank for the G20 Australian Presidency, November 2014](#)

[32 Financial Inclusion Experts Group, G20 Financial Inclusion Action Plan, 2010](#)

[33 Global Partnership for Financial Inclusion, 2014 Financial Inclusion Action Plan, 2 September 2014.](#)

### 11.3 Legislative/Legal Authorization

- Legislative reforms to improve clarity of regulators' expectations of banks, so that they are able to bank with MSBs.
- A requirement of openness and access by all legitimate and compliant entities to the global financial system should be legislated;

### 11.4 Access to Banking Services

- As legitimate members of the financial system and partners in the global effort to combat illicit activities, organized criminal laundering of proceeds of crime and the financing of terrorist acts, access to banking services should not be questioned;

### 11.5 Active Support and Ongoing Involvement and Advice in Building the Necessary Compliance Regimes, as Opposed to Wholesale Negative Labelling of the Entire Sector

- This support is needed from all stakeholders in the global financial system, not only from the FATF, The Basel Committee, the Egmont Group of FIUs, and other international organisations, but also from the various national governments, national and state/provincial regulators, national financial intelligence units (FIUs), law enforcement agencies, and, perhaps most importantly, from the other financial services providers, most notably banks, involved in the global financial system;

### 11.6 A Real Sense of Participation, Partnership and Cooperation

- There should be a sense of participation, partnership and cooperation between all stakeholders, including legitimate MSBs who satisfy all legal and regulatory requirements, assisting all parties to comply, to enhance their systems and controls and resulting efforts to fully comply with and to participate in the global fight against illicit financial activities and the financing of terrorism; and

### 11.7 Request that all relevant stakeholders, including all national governments, regulatory agencies and financial intelligence units, adopt and implement the approach reflected in the U.S. Treasury's Notes Blog<sup>34</sup>

- In particular, we highlight the following excerpt  
"In August, the President signed the *Money Remittances Improvement Act 2014*.<sup>35</sup> This legislation should improve the oversight of money transmitters by explicitly allowing the Financial Crimes Enforcement Network (FinCEN), and the IRS, to rely on examinations by states of these institutions. This, in turn, should allow for better allocation of state and federal resources, better targeting of higher risk MSBs, and improved AML/CFT compliance across the industry.

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<sup>34</sup> Daniel L Glaser, US Department of the Treasury, "Treasury's Work to Support Money Transmitters", 8 October 2014.

<sup>35</sup> Money Remittances Improvement Act 2014 (H.R. 4386; Pub.L. 113-156)

Moving forward, we at Treasury see four essential components necessary to improve the banking access of money transmitters: improve the clarity of our expectations for banks, strengthen money transmitter AML/CFT controls and compliance, further enhance money transmitter AML/CFT oversight, and continue ongoing outreach to financial institutions and the customers they serve.”

## 12. STANDARD SETTING BODIES AND REGULATORY AGENCIES

<b>Financial Action Task Force</b>	<a href="mailto:Contact@fatf-gafi.org">Contact@fatf-gafi.org</a>
<b>United States Department of the Treasury</b>	<a href="mailto:FinancialAccess@treasury.gov">FinancialAccess@treasury.gov</a>
<b>Financial Crimes Enforcement Network</b>	<a href="mailto:FRC@fincen.gov">FRC@fincen.gov</a>
<b>FINTRAC</b>	<a href="mailto:Guidelines-lignesdirectrices@fintrac-canafe.gc.ca">Guidelines-lignesdirectrices@fintrac-canafe.gc.ca</a>
<b>AUSTRAC</b>	<a href="mailto:help_desk@austrac.gov.au">help_desk@austrac.gov.au</a>
<b>Basel Committee on Banking Supervision</b>	<a href="mailto:baselcommittee@bis.org">baselcommittee@bis.org</a>

## 13. CONCLUSION

The aforementioned steps, if taken by other regulators and FIU's where there is a reliance on the Examination by the respective regulators, could potentially ease the concerns of the banks. Clarity of expectation from the respective industries especially the banks would then help this sector to reconsider their approach towards MSBs.

The common response from regulators is that they have not specifically asked the banks to de-risk MSBs, while the common response from banks is that regulators are not comfortable due to the fact that they have on boarded MSBs as their customers. This lack of clarity of the expectations from the banks is also evidenced from their wholesale de-risking of MSBs.

We thank you for your attention to our Position Paper, to this critical issue, and for your assistance in resolving this issue so as to truly welcome and bring our important sector into the global financial system as real partners in the global efforts to detect, deter and to eliminate illicit activities, to the extent possible.