



Money Service Business Association  
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By Email

January 26, 2016

New York Department of Financial Services  
One State Street  
New York, NY 10004  
Attn: Shirin Emami, Acting Superintendent  
Mr. Gene Brooks

Re: I.D. No. DFS-50-1500004-P, Regulating Transaction Monitoring and Filtering Systems  
Maintained by Banks, Check Cashers and Money Transmitters

Dear Superintendent Emami and Mr. Brooks:

I am writing on behalf of the Money Services Business Association (the "MSBA"), a new trade association focused on the non-bank money services industry, including licensed money transmitters and their agents and/or authorized delegates, payment card issuers and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, eWallet providers and other similar money services providers that are engaged in payments. See [www.msbassociation.org](http://www.msbassociation.org).

We are writing to express our thoughts and concerns about the proposed new regulations issued by the New York State Department of Financial Services (the "Department") regarding the "transaction monitoring and filtering program requirements and certifications" under part 504 of the Department's Superintendent's Regulations.

The MSBA appreciates this opportunity to provide its comments. Overall, the MSBA commends the Department in its efforts to ensure vigorous transaction monitoring and reporting of suspicious transactions. We understand that these new proposed regulations impact all entities regulated by the department, including licensed money transmitters, and their agents.

We have three overall comments.

- I. Concerns about the breadth of requirements, especially without clear risk-based limitations.

The enhanced transaction monitoring requirements are overly broad, not well-defined and impact on virtually every regulated payments entity in New York State. Not only is the

scope exceptionally broad, but the requirements are also open to extensive discretionary interpretation and enforcement. This kind of broad, discretionary regulatory framework is of concern to the industry; it means it will be difficult to comply with and at the same time, it can be subject to abuse by persons without deep knowledge of the underlying facts and issues.

Increasing our concerns is the lack of clear risk-based limitations. We note that the enhanced transaction monitoring and filtering program requirements are supposed to be implemented on a risk-based basis. However, the list of attributes under Section 504.3 (a) are a list of "minimum" attributes, which would apparently indicate that every single one of those eight listed attributes must be implemented, whether or not the entity's risk assessment would indicate it was necessary.

For example, a licensed money transmitter that provides payment services solely to load a US university card plan held in a US bank account with a cap of \$200, might not require "end-to-end, pre-and post-implementation testing of the transaction monitoring program, including governance, data mapping, transaction coding, detection scenario logic, model validation, data input and program output, as well as periodic testing" as set forth in 504.3(a) (5). These kind of "minimum attributes" might make sense for certain higher risk activities, but are extraordinary and should not apply across the board to every licensed money transmitter, no matter what the underlying business model or product is. This same concern applies throughout the proposed regulation. For example, section 504.3 (c) has minimum requirements for transaction monitoring and filtering programs that do not include any risk-based qualifications. While these controls are important, it is also critical to understand that many of these requirements are unusually costly and will be difficult to implement. We therefore fear that, left unchanged, the regulations will drive many low risk, quality licensed entities out of the New York marketplace.

## II. Concerns about the Certification Requirement and the Associated Criminalization of Compliance Officer's roles.

In addition, we are concerned about the requirement about the annual certification requirement. We believe that these kind of obligations are addressed through existing audit procedures and should not require a special certification. That is especially true when the certification requirement can lead to criminal liability.

When considered in the context of recent developments increasing personal liability of chief compliance officers, we believe this new requirement will discourage strong, ethical, and experienced persons from taking on the critical role of chief compliance officer, due to personal liability risks. This is not the optimal way to ensure overall better



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transaction monitoring. In fact, we believe it will also lead to an unintended consequence of driving compliant and well-run businesses out of the state.

### III. Implementation Time and Costs

Finally, we note that the expansive requirements set forth in the proposed regulation will require significant time and resources to implement. The Regulatory Impact Statement to the proposed regulations suggests that there are few if any costs associated with the new requirements:

#### **4. Compliance Costs:**

All Covered Institutions are currently subject to existing federal Requirements. Depending on the size of the institution, regulatory compliance systems or processes may be manual or automated. The proposed regulation provides more granular guidance and requires the chief compliance officer or their functional equivalent at a Covered Institution to certify compliance with the proposal. It is the Department's intent that this certification requirement will cause compliance officers to proactively ensure compliance with existing federal requirements. The cost of compliance with the new rule generally should have been incurred previously to ensure compliance. Hence, it is arguable that only costs associated with the proposed regulation reflect costs that institutions should have incurred in the past. (Emphasis added.)

We emphatically disagree. These requirements do not necessarily cover existing processes available at all regulated entities. For example, the proposed rules require each program to include, *at a minimum*, "validation of the integrity, accuracy and quality of data to ensure that accurate and complete data flows through the Transaction Monitoring and Filtering Program" as well "funding to design, implement and maintain a Transaction Monitoring and Filtering Program that complies with the requirements of this Part" and "qualified personnel or outside consultant responsible for the design, planning, implementation, operation, testing, validation, and ongoing analysis, of the Transaction Monitoring and Filtering Program, including automated systems if applicable as well as case management."

For all but a few very large institutions, these minimum requirements will be incredibly difficult to establish formally and costly to implement. Our members will certainly require more time than 1 year (until April 2017) to be in compliance with all of these terms. If the Department



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determines to move forward with these extraordinary requirements, we would request a compliance date for a company's fiscal year beginning after July, 2018. If you wish, we would be happy to meet with you to share our members' estimates on both the costs and timing for compliance with these proposed regulations.

Thank you again for this opportunity to provide our thoughts on this important regulation. We hope our comments have been helpful. Should you have any questions, please do not hesitate to contact us. Thank you for your consideration.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Alberto Laureano", with a stylized flourish at the end.

Alberto Laureano  
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Kathy Tomasofsky

A handwritten signature in black ink, appearing to read "Kathy Tomasofsky", with a stylized flourish at the end.

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