

May 14, 2018

Monica Jackson
Office of the Executive Secretary
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

Re: RFI Regarding Bureau Enforcement Processes [Docket No. Bureau- 2018-0003]

Dear Ms. Jackson:

The American Financial Services Association (“AFSA”)¹ appreciates the Bureau of Consumer Financial Protection’s request for comments and information on whether and how to amend the Bureau’s enforcement processes. Our members have a keen interest in the outcome of these deliberations and in the operation of the Bureau’s Office of Enforcement.

I. Introduction

After operating under the enforcement regime for several years, it is appropriate to review the Bureau’s enforcement processes. We are grateful for this opportunity to discuss how the Bureau’s processes could be updated, streamlined, or revised to minimize burdens, impacts, and costs on financial institutions subject to these proceedings. We agree that the Bureau’s rules and processes should align more closely with those of other agencies, particularly the U.S. Securities and Exchange Commission (“SEC”).

Before explaining our recommendations and suggestions, we emphasize that only systemic, structural change can genuinely accomplish lasting reform. The Acting Director can change procedures, policy, and perhaps agency culture. With the Bureau’s current structure, however, all this can be reversed with a change in the Administration. AFSA urges the Bureau to endorse legislation to replace the current single regulator structure with a bipartisan five-member commission similar to that in place in other independent regulatory agencies. Only a commission structure will provide the necessary safeguards to stop the Bureau from exceeding its statutory authority and give a meaningful administrative appellate process.

AFSA’s letter asks that the Bureau clearly recognize the proper role of enforcement as it relates to the Bureau’s overall supervisory function. We outline several overarching recommendations for the Bureau’s Office of Enforcement and we offer suggestions for both the formal and informal stages of the enforcement process.

¹ Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

II. The Proper Role of Enforcement Vis-à-vis the Supervisory Purpose and Function of the Bureau

The Bureau should conduct itself as a supervisory agency with enforcement capabilities, as opposed to a prosecutorial law enforcement agency. Enforcement should not usurp the supervisory or rulemaking functions because covered entities need to operate in a predictable environment. We believe that the recently articulated approach by the current Acting Director Mick Mulvaney to end rulemaking through enforcement actions is appropriate and encourage that practice.

While a robust enforcement program benefits everyone and is encouraged, the enforcement program must be fair. There should not be a “gotcha” mentality among Bureau staff, nor should financial institutions be subject to unpredictable legal standards or suffer under liability imposed for retroactive regulatory requirements. The formal rulemaking process exists for numerous reasons, including to provide notice to those subject to the proposed rules, to allow comments to inform the regulator of potential negative and unintended consequences of proposed rules, and provide a predictable legal environment. Not only does rulemaking through enforcement produce unwise rules, it is unfair and in no one’s benefit to require entities to hunt for the rules with which they must comply. In addition, settled cases should have no precedential value, as they are negotiated agreements on a case-by-case basis.

Licensed and regulated financial institutions want to comply with the law. The earlier the Bureau notifies financial institutions of the problems, the earlier those problems can be addressed, which reduces potential harm to consumers. This can be done more efficiently through a cooperative approach during supervision than through enforcement. Enforcement should be reserved for matters of significant harm that cannot be resolved in the supervisory process. This is particularly true where the Bureau has other means of enjoining and correcting bad action, *e.g.*, when the Bureau has supervisory authority over an institution and can issue a Matter Requiring Attention (“MRA”) or other directive. Enforcement proceedings are most appropriate when an institution is not being cooperative and cannot be compelled in other ways.

Along these same lines, enforcement should not be used as a threat or a bargaining tool during examinations. Instead, the Bureau should develop and publish clear guidelines on when it is appropriate for an issue raised during a supervisory exam to move over to the Office of Enforcement. If an issue is raised in a supervisory exam, it should continue to be dealt with as part of the exam, unless it meets very clear guidelines of what should move to the Office of Enforcement. The threat of an enforcement action should certainly not be used to stop a financial institution from questioning the Bureau’s interpretation of a statute or rule. This type of governmental conduct thwarts the fair and efficient functioning of the regulatory regime.

Neither should investigations be cloaked as examinations. The Office of Supervision should not request any information that is on behalf of, or otherwise in support of, an investigation or enforcement action. The Bureau should be a partner (working to ensure consumers are adequately protected) and not an adversary (whose goal is to punish financial institutions trying to comply with the law).

Using enforcement to supplant the supervisory process can lead to unfair and inaccurate results. There are several examples of this happening. In one case, the Bureau used terminated employees’ testimony for companywide practice when those few employees were terminated for cause due to their wrongdoing. In another example, the Bureau penalized a financial institution for giving extensions to victims of hurricanes. In a third case, the Bureau concocted a damages/remediation amount based on the extrapolation of information that was never proven with

actual evidence. And in a final example, Bureau enforcement attorneys insisted that a company had control over unrelated entities because they did not understand the industry.

III. Enforcement – Overarching Recommendations

Before we offer specific suggestions as to how the Bureau could re-evaluate the enforcement process, we offer a few overarching recommendations. First, it would behoove the Bureau to engage in a more cooperative approach. Second, the Bureau should distinguish between licensed and unlicensed financial services institutions. Third, the Bureau should coordinate with other regulators and with state attorneys general (“AGs”). And lastly, the Bureau’s enforcement process should more closely align with the SEC’s enforcement program.

a. Cooperation

Enforcement staff should have a more cooperative approach with the subject of an investigation. A cooperative approach could help save both the Bureau’s and subject’s time and resources.

Bureau enforcement staff should work with financial institutions to minimize the amount and cost of document production, which increases the duration of an investigation. Staff should also allow financial institutions adequate time to produce documents and view requests for time extensions more favorably.

Bureau staff should have more training to understand the costs and burdens of enforcement proceedings—costs which are ultimately borne by consumers. For example, the time employees spend during enforcement processes is time that cannot be spent conducting business, which results in less efficiency and financial costs to the entity. Legal, consultant, technological, and other fees and expenses of enforcement proceedings also result in increased costs for consumers. It is in no one’s interest to make enforcement processes unnecessarily time consuming and costly; rather, it is in everyone’s benefit to limit the time and expense of enforcement processes and fix problems as quickly and efficiently as possible.

b. Difference Between Licensed and Unlicensed Entities

A cooperative approach is particularly appropriate when the subject of an investigation is a federally- or state-chartered or state-licensed financial institution. These financial institutions should be treated differently than unsupervised entities. Unless the subject of the investigation is actually a fraudulent company, it should not be treated as such. Federally- or state-chartered or state-licensed institutions should not automatically be treated as targets who are acting in bad faith and trying to defraud consumers. These financial institutions are also subject to regular routine oversight and examination by their licensing regulators. State-licensed financial institutions in particular are subject to numerous exams each year, often at the same time. As such, these institutions must be in compliance with those regulators requirements or risk being fined.

Licensed or chartered financial institutions try to perform well and be in compliance. They want to remain in good-standing with both their customers and their regulators. This may not always be the case with unregulated or unlicensed entities, who may destroy evidence or quickly close up shop and disappear.

c. Coordination with Other Regulators and Attorneys General

AFSA emphasizes that the Bureau should coordinate closely with other regulators—both state and federal. Many AFSA members are subject to 50 state regulators and the costs (both monetarily and in staff time) to companies undergoing multiple exams and/or investigations at the same time are enormous. Moreover, AFSA discourages the idea of “piling on” by multiple regulators. The Bureau should use its limited resources on cases that are not being enforced by other regulators and not just “pile on” an enforcement case to extract additional penalties. If an exam is being conducted by another regulator, or an attorney general is investigating a financial institution, perhaps the Bureau could coordinate with them or suspend the investigation until the exam or investigation is complete.

In addition to coordination with other regulators, AFSA supports regular coordination between the Bureau and state AGs. In general, such coordination should lead to a single agency conducting the investigation and resolving a given matter, preserving resources for the Bureau and AGs.

We suggest that the Bureau meet regularly with AGs and other regulators in a roundtable forum to discuss ongoing enforcement investigations and underlying legal theories. Doing so will help educate the Bureau on unscrupulous practices by entities visible only on a state or local level, and will help ensure that enforcement is consistent across the financial industry.

d. Align the Bureau Enforcement Process with the Securities and Exchange Commission (“SEC”) Enforcement Program

The Bureau should broaden the enforcement processes to increase the number of tools at its disposal to enforce the laws and regulations under its jurisdiction.

To do so, we suggest that the Bureau look to the SEC in revising the Bureau’s enforcement process. The variety of entities over which the Bureau has jurisdiction is similar to the breadth of entities the SEC oversees. Both agencies have enforcement authority over entities they supervise and entities not subject to their supervision. The SEC has long established enforcement policies and processes that work well.

IV. The Enforcement Process

The goal of the Bureau’s Office of Enforcement should be to seek fairness, justice, and appropriate action. The goal should not be to search for potential violations and punish legitimate actors in the same manner as fraudulent ones. If enforcement attorneys report to Bureau headquarters that no violation was found, they should commend that company for its practices, not be told to keep digging until something is found.

In order to meet this goal, AFSA suggests that the Bureau adjust its enforcement processes. The Bureau should recognize boundaries in enforcement, bring better organization to the process, and make changes to the way investigations are conducted. There is no one-size-fits-all approach to enforcement, and the Bureau should have the ability to use a variety of tools and approaches depending on the specific circumstances of a matter requiring regulatory inquiry. The staff must be trained to understand the different approaches, including the costs and burdens, and the pros and cons, of each approach. Bureau staff must also be trained to be able to comfortably work with the industries they regulate in a flexible manner and adapt to the specific facts and circumstances of each matter.

a. Enforcement Limits

AFSA strongly recommends that the Bureau use a targeted enforcement approach that acknowledges some limitations.

A targeted enforcement approach, in which the Bureau focuses on matters in its core mission, will help ensure that it meets its core mission by preserving the Bureau's resources for its core mission matters, and help ensure that the Bureau staff is not spread so thin that the Bureau misses fraudulent activity. To ensure that the Office of Enforcement is focused on the Bureau's core mission, the Bureau Director or his designee should, on a quarterly basis, identify matters having potential programmatic significance, similar to the SEC's practice, which identifies "National Priority Matters." Considerations when ranking an investigation should include whether the matter:

- Presents an opportunity to send a particularly strong and effective message of deterrence;
- Involves particularly egregious or extensive misconduct;
- Involves potentially widespread and extensive harm to consumers;
- Or the potential misconduct occurred in connection with products, markets, transactions or practices that pose particularly significant risks for consumers or systemically important sector of the market;
- Involves a substantial number of potential victims and/or particularly vulnerable victims;
- Involves products, markets, transactions or practices that the Bureau has identified as priority areas; and
- Provides an opportunity to pursue priority interests shared by other law enforcement agencies on a coordinated basis.

Furthermore, when allocating resources among competing investigations, enforcement leadership should take into account not only the significance of the investigation, but the phase of the investigation, considering, among other things:

- Whether there is an urgent need to file an enforcement action, such as an investigation into ongoing fraud or conduct that poses a threat of imminent harm to consumers;
- The volume of evidence that the staff must collect and review;
- The level of analysis required for complex data and evidence, such as auditor work papers or financial data;
- The number and locations of witnesses and the scheduling of testimony;
- Travel requirements; and
- Coordination with and timing considerations of other state and federal authorities.

In addition to being targeted, enforcement investigations should be limited to areas within the applicable statute of limitations. As part of this, AFSA supports a presumption of an unfair, deceptive, or abusive acts or practices ("UDAAP") safe harbor if the companies have been complying with state law. The Bureau should not find practices that are in accordance with state law to be unfair, deceptive or abusive.

AFSA also recommends that the Bureau accept limits when it comes to dealing with privileged information. The Bureau should not insist on requesting waivers of privilege. Doing so is not appropriate and diverts resources at the front of an investigation. Other agencies have rules about not insisting on waivers of privilege and the Bureau should follow suit.

b. Process

A successful enforcement program will be targeted, recognize limitations, and be well-organized from start to finish. AFSA suggests that the Bureau improve the enforcement process by using the “tollgate approach.” According to the Project Management Institute (PMI), “Every day more industries and governments are taking the tollgate approach to perform projects with excellence, and one of the reasons is that it was developed specifically to help organizations to choose the right projects, and to perform them right.”²

PMI goes on to explain, “The gates methodology is a process of progressive definition of the project. This process is based on a planned and standardized series of reviews (gates) at the end of each phase. This breakdown in phases or stages, and the normalized control points at each end, is an improvement of the classic approach, where the organizations may have points of control but they are not as standardized as the ones that this technique offers.”³ Using this method leads to improved efficiency in both cost and time.

As part of the tollgate process, the Bureau should implement milestones to prevent cases from lingering on. For example, there should be periodic, scheduled reviews (*e.g.* every 4 months). At that time, the Bureau should send a memo to the subject of the investigation with the status of the case, even if no action is taken. If no action has been taken for a certain amount of time, such as a year, the case should be considered closed. This is needed because some investigations have lingered on and on without updates being provided. One lasted for four years. Others never received closing letters. Using a tollgate process would help prevent that problem.

c. Informal Investigation

AFSA recommends that the Bureau engage in an informal process before launching a formal investigation. Informal conversations between the Bureau staff and the company are crucial to assist in educating investigators on the business and industry, and address misperceptions. Engaging in an informal investigation first could help answer Bureau questions without the need for a formal investigation. Regulators should not play a game of “hide the ball” from those whom they regulate. Often times, conversations are the most effective and efficient ways to resolve simple misunderstandings, miscommunications, or holes in knowledge. Staff should explain the bases of concerns, allow for phased/staged production, and permit respondents to assist with explaining/finding information.

A civil investigative demand (“CID”) should not be an entity’s first contact with the Bureau. The Bureau should institute an informal investigation process, similar to the SEC practice. This would include using a “Matter Under Inquiry and Investigation” (“MUI”) process, asking for voluntary document requests, and generally providing the subjects of investigations more information and time to comply. CIDs should be used as a preliminary tool only in limited circumstances, mainly when the Bureau suspects that the entity being investigated is a fraudulent company.

i. Deficiency Letter

For small infractions, the Bureau should issue something more akin to the SEC’s “Deficiency Letter,” and give the financial institution an opportunity to remedy. A deficiency letter is a letter issued by the SEC indicating a

² Muiño, A. & Akselrad, F. (2009). Gates to success, ensuring the quality of the planning. Paper presented at PMI® Global Congress 2009—EMEA, Amsterdam, North Holland, The Netherlands. Newtown Square, PA: Project Management Institute.

³ *Ibid.*

significant deficiency or omission in a registered statement or prospectus. A deficiency letter highlights those areas where the regulated entity needs to improve its compliance program. Deficiency letters do not mean that the entity is a “bad guy,” only that there are some potential operational flaws that need to be fixed or that there are areas for improvement. Generally, the deficiency is of a relatively minor nature. Deficiencies could include failing to send an annual privacy notice or failing to maintain a record of advertising. Regulated entities should be afforded time to remedy the issue and then respond in writing as to the corrective action taken.

ii. Matter Under Investigation

When opening an informal investigation, the Bureau should institute a process similar to the SEC’s MUI process to gather information and investigate to determine whether a formal investigation is warranted.

In addition, the Bureau should request documents via voluntary requests rather than CIDs.⁴ There are collateral consequences to the current CIDs (and formal investigations) that would not occur with voluntary requests (and informal investigations). As explained in AFSA’s comment letter in response to the Bureau’s RFI on its CID processes, CIDs may trigger default, disclosure, and other contract clauses that entities have with third parties.

We further recommend that, within 60 days of opening a MUI the matter should either terminate or go on to a formal investigation. If there is sufficient evidence to continue, then the Bureau, through the Director or Deputy Director, could open a formal investigation.

d. *Formal Investigations*

Investigations should be opened in two ways: (1) the investigation is opened when a MUI is converted to an investigation, or (2) an investigation is opened independent of a MUI. In both cases, the opening of an investigation should require an evaluation of the facts to determine the investigation’s potential to address conduct that violates the federal consumer protection laws. The analysis for whether to convert a MUI to an investigation, or open an investigation, differs from the analysis for whether to open a MUI. While a MUI can be opened on the basis of very limited information, an investigation generally should be opened only after the assigned staff has done additional information gathering and analysis.

The evaluation for whether to convert a MUI to an investigation (or open an investigation) turns on whether, and to what extent, the investigation has the potential to address violative conduct. Threshold issues to consider when evaluating the facts include whether the facts suggest a possible violation of the federal consumer protection laws involving fraud or other serious misconduct.

If the facts do suggest a possible violation of federal consumer protection laws, enforcement staff should determine whether an investment of resources by the staff is merited by the magnitude or nature of the violation, the size of the victim group, and the amount of potential or actual losses to consumers. Enforcement staff should also determine if the conduct is ongoing or within the statute of limitations period.

In addition to the threshold issues identified above, one way to determine whether the conduct is serious is to consider the following supplemental factors:

⁴ For a more detailed explanation, please see AFSA’s comment letter in response to the Bureau’s Request for Information Regarding Bureau Civil Investigative Demands and Associated Processes, submitted on April 26, 2018.

- Is there a need for immediate action to protect consumers;
- Does the conduct affect the fairness of a consumer industry;
- Does the case involve a recidivist;
- Has the Bureau designated the subject matter to be a priority;
- Does the case fulfill a programmatic goal of the Bureau; and
- Does the case involve a possibly widespread industry practice that should be addressed?

To open an investigation, there should be information akin to the SEC's Formal Order. The Formal Order describes the nature of the investigation that has been authorized, and designates specific staff members to act as officers for the purposes of the investigation and empowers them to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of documents and other materials. Formal investigative proceedings should be nonpublic unless otherwise ordered by the Director. (Although a non-company-identifying report could be published.)

i. CIDs

AFSA's comment letter in response to the Bureau's RFI on CIDs contains a detailed description of our recommendations relating to the CPFB's CID procedures. Rather than repeat everything, we refer you to that letter.

In brief, we emphasize that the purpose of a CID should be limited and narrowly tailored. CIDs should not be fishing expeditions. CIDs should not ask for information that pre-dates the statute of limitations period.

The purpose and the scope must be clearly stated in the CID. CIDs should include the nature of the conduct constituting the alleged violation—and it should be specific, not vague. CIDs should not just state that there may be a UDAAP violation or that the investigation is to determine whether the company has engaged in acts or practices in violation of enumerated statutes.

ii. White Paper Process

After a formal investigation has been launched and before the Notice and Opportunity to Respond and Advise ("NORA") process, AFSA recommends that the Bureau institute the SEC's "White Paper" process so that respondents can submit a voluntary advocacy document to the Bureau. During an investigation, respondents may produce to the staff, on a voluntary basis, substantive materials other than in response to Wells notices. Materials include, for example: white papers, PowerPoint decks, legal memos, or letter briefs (collectively "White Papers"). White Paper submissions can serve to narrow the anticipated legal theories of liability and test the likely defenses to the enforcement staff's theories. At the SEC, a White Paper may head off a Wells notice if defense counsel presents strong legal arguments, new facts or compelling analysis demonstrating defects in the SEC staff's preliminary theories.

iii. NORA

The NORA process is meant to mirror the SEC's Wells process. Similar to the Wells process, the Bureau's NORA process should indicate the reasons why the Bureau staff is recommending an enforcement action. The NORA submission and in-person presentation responding to the NORA should be mandatorily accepted by the Bureau

staff in all cases. Informal calls and conferences between Bureau staff and respondents should be encouraged as issues can often be easily resolved.

AFSA recommends that the Bureau make some changes to the NORA process. For example, the Bureau should provide that NORA discovery will be routine. NORA discovery should generally involve making available for both inspection and copying the full investigative file, less privileged portions (consistent with the standard for document turnover in administrative proceedings, see e.g., Rule 230 of the SEC's Rules of Practice). The Bureau should train staff that the NORA process brings substantial negative consequences for the subjects of investigation and shareholders. The Bureau should provide that all subjects can submit a NORA response and present it in person to the Bureau staff.

e. Closing

The Bureau should be required to prove evidence of a violation prior to requesting any settlement, which should include a supportable rationale for the penalty requested.

When an investigation is complete, a closing letter should be sent. If an investigation is idle for a year, it should be administratively closed or put in inactive status. If there has been no contact for 12-24 months after that, it should be assumed that the investigation is closed.

Generally, factors that should be considered in deciding whether to close an investigation include:

- The seriousness of the conduct and potential violations,
- The staff resources available to pursue the investigation,
- The sufficiency and strength of the evidence,
- The extent of potential consumer harm, and
- The age of the conduct underlying the potential violations.

There should be consistency, fairness, and transparency in settlements/consent orders, penalties, and damages. Agreements should be consistent between companies. If Company A gets X, Company Y should not get X+1. In one instance, the amount originally demanded by the Bureau in the settlement discussion was three times as high as the amount that the Bureau finally approved.

Along the same lines, there should be transparency to the relationship between the dollar amount of the fine and the underlying issue. Fines should not correspond to the size of the company, but to the magnitude of the harm caused by the violation. Bureau staff should be trained so that they understand that fines have an impact on a company, its workers, the community, consumers, shareholders, and the economy.

Checks and balances on the Bureau are necessary to maintain a fair and efficient agency. Part of those checks and balances is the ability to challenge action taken by the Bureau without fear of retribution, as happened to PHH Corp. PHH Corp. was facing a \$6 million fine for allegedly illegally referring consumers to mortgage insurers in exchange for kickbacks. It challenged the fine and was then faced with an additional levy of \$103 million. Financial institutions should be able to challenge enforcement actions without facing additional fines.

In addition to a fine, the Bureau generally requires a compliance plan to be included as part of the consent order. The plan must be reviewed by the Bureau and subject to "non-objection." However, the Bureau does not agree

that if the supervised entity follows the plan that it will not be held responsible for a violation of the consent order requirements. The company should have more predictability and certainty that taking particular action which the agency approves will not result in additional fines or penalties.

Lastly, AFSA asks that the Bureau disclose where the money from settlements is sent. If it is sent to an organization, the organization should have gone through a vetting process.

f. Ensure Fair and Accurate Press Releases

At the end of an enforcement action, the Bureau usually issues a press release announcing the action and penalty imposed. AFSA emphasizes that press releases should accurately report the settlement/consent order. For example, if a consent order does not prove a pattern or practice of discrimination, the press release announcing the order should not state “consumers harmed by discriminatory auto loan pricing.”

The Bureau should develop a comprehensive policy governing the stages of contested matters at which litigation-related press releases will be issued, and establish applicable standards governing their content. AFSA recommends that the Bureau develop a standard protocol for the contents of various types of litigation-related press releases. These would include, among other things:

- Caption and venue of the proceeding;
- Defendants’-respondents’ names, brief factual descriptions of their relevant occupations, brief descriptions of their roles in the alleged misconduct, and the location(s) where their alleged misconduct occurred;
- Type of violation(s) alleged (*e.g.*, consumer finance fraud);
- Statutory provisions alleged to have been violated (together with a factual description of the types of behavior those provisions cover);
- Specific factual allegations—taken virtually verbatim from the complaint or order for proceedings—deemed by the Bureau to be of importance to the public;
- Where appropriate, a brief statement respecting the defendant/respondent’s position regarding the matter being announced (*e.g.*, stating that the defendant has indicated it intends to contest the Bureau’s allegations at trial);
- Highlighting, in a factual manner, the significance of the matter, as perceived by the Bureau and/or the Office of Enforcement;
- Excluding adjective-laden descriptions of any aspect of the matter being announced; and
- Avoiding any embellished descriptions of the Bureau’s allegations.

Furthermore, the Bureau should provide training for the Office of Enforcement staff regarding the proper construction of such releases. Litigation-related press releases should be reviewed by personnel outside the Office of Enforcement, such as the personnel in the Office of the General Counsel. In settled cases—and solely as an exercise of the staff’s discretion—authorizing the Office of Enforcement to afford counsel for settling parties a brief opportunity to review the proposed press release solely as to accuracy and fairness.

g. Recordkeeping Statistics & Guidance

For Bureau’s Enforcement to continue to improve, it must be more transparent. AFSA recommends that the Bureau track and report the following statistics annually: the number of informal investigations, the number of

MUIs, the number of formal investigations, the sources prompting the investigatory activity, the length of time for each type of inquiry to result in elevation to a higher level of inquiry, and the length of time before the termination of the inquiry. No company-identifiable information should be released.

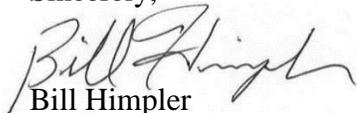
In addition, it would be helpful if the Bureau would work with financial institutions to identify issues that need more guidance for compliance. The Bureau could build on its resources such as the small entity compliance guides.

V. Conclusion

AFSA appreciates the opportunity to comment on the Bureau's enforcement process. We expect that more clearly recognizing the proper role of enforcement in the Bureau's overall structure will lead to the Bureau acting like a supervisory agency with enforcement capabilities, as opposed to a prosecutorial law enforcement agency. We ask that the Bureau have a more cooperative manner with subjects of an investigation, distinguish between licensed and unlicensed entities, coordinate more with other regulators and AGs, and align its enforcement processes more with the SEC's. We hope that our suggestions for both the information and formal stages in the enforcement process are helpful.

Please contact me by phone, 202-466-8616, or email, bhimpler@afsamail.org, with any questions.

Sincerely,



Bill Himpler

Executive Vice President

American Financial Services Association