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April 7, 2014

The Honorable Stuart F. Delery, Esq.
Assistant Attorney General, Civil Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Mr. Delery:

I am writing to express ICBA's concerns regarding Operation Choke Point, a Department of Justice (DoJ) initiative that targets third-party payment processors and their financial institutions, including community banks, that process payments for businesses engaged in higher-risk, but legal, activities.

Operation Choke Point has an overly broad scope that morphs banks' traditional fraud and risk-mitigation roles into consumer-protection and law-enforcement roles. ICBA strongly believes that the present regulatory environment, which includes the prudential banking agencies, the Federal Trade Commission as well as the Consumer Financial Protection Bureau, is sufficient to ensure that banks implement sound risk management and mitigation, responsive fraud prevention and detection, and adequate consumer protections.

Community banks are in the business of serving their customers and communities by providing financial services, and they share a common concern with law enforcement regarding fraudulent business practices that harm consumers. Community banks dedicate human and technological resources to monitor, identify, and report financial crimes, as required by the Bank Secrecy Act. They also file suspicious activity reports to assist law enforcement in the fight against all types of financial crimes.

ICBA is extremely concerned that Operation Choke Point gives community banks the untenable choices of either severing valuable and legal customer relationships or risking DoJ enforcement actions. ICBA firmly believes that community banks should have the ability to provide indirect payment-processing services to companies engaged in higher-risk, legal activities provided that they demonstrate risk-mitigation actions consistent with risk-based banking, such as initial and ongoing risk assessments, due diligence, and monitoring for changes in customer-transaction patterns.

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Regulators and law enforcement should not prohibit or discourage community banks from serving these customers provided adequate and balanced controls are in place. The indiscriminate targeting of community banks offering these services also places community banks at a competitive disadvantage with large banks.

While preventing fraud is a top concern for community banks, it needs to be balanced with ensuring that businesses and consumers that operate in accordance with applicable laws can still access payment systems.

Many payments industry groups are already working to strengthen practices and technologies aimed at protecting consumers from unscrupulous business practices. ICBA supports industry efforts to strengthen internal controls or processes for institutions that provide payment-processing services for customers engaged in higher-risk activities. Law enforcement, regulators and industry groups should work from a common framework with common goals and work together to reduce fraud and its impact on consumers.

ICBA requests that the DOJ suspend Operation Choke Point immediately and focus its resources directly on businesses that may be violating the law, rather than targeting banks providing payment services. DOJ should also allow the marketplace to further implement a coordinated, targeted approach to controlling fraud and bad actors.

We would appreciate the opportunity to meet with you to further express our concerns and to discuss the various ways community banks manage risk, control fraud, and identify and deal with suspicious customer behavior.

Thank you in advance for your consideration of these important matters. I look forward to meeting with you in the future.

Sincerely,

/s/

Camden R. Fine
President and CEO

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