



U. S. Department of Justice

Civil Division

Assistant Attorney General

Washington, D.C. 20530

January 22, 2014

Mr. Jeff L. Plagge
Chairman
American Bankers Association
1120 Connecticut Avenue, NW
Washington, D.C. 20036

Mr. Jason Oxman
Chief Executive Officer
Electronic Transaction Association
1101 16th Street, NW, #402
Washington, D.C. 20036

Dear Messrs. Plagge and Oxman:

I am writing concerning an issue that may be of interest to your members, and specifically to clarify the Department of Justice's policy and approach regarding certain investigations into banks, payment processors, and other institutions that process payments for merchants engaged in fraudulent activities.

The Department of Justice is committed to protecting the American people from fraudulent practices in all industries—without exception. To the extent we have evidence that an entity is violating federal law by engaging in or facilitating fraudulent conduct, we will take appropriate measures to combat that conduct.

As you may be aware, the Department has engaged in various efforts to eliminate fraud in the payment system by holding financial services entities accountable where such entities (contrary to their responsibilities under federal law) engage in fraud or aid others who are engaging in fraud. The Department wishes to make clear that the aim of these efforts is to combat fraud. The Department has no interest in pursuing or discouraging lawful conduct. Our policy is to take the steps necessary to prevent financial institutions from knowingly assisting fraudulent merchants that harm consumers or processing transactions while deliberately ignoring evidence that they are fraudulent. It may be relevant to our inquiry that a financial institution is intentionally disregarding other obligations under federal law.

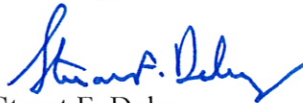
As the FDIC has recently clarified, "Facilitating payment processing for merchant customers engaged in higher risk activities can pose risks to financial institutions and requires due diligence and monitoring, as detailed in prior FDIC and interagency guidance and other information. Financial institutions that properly manage these relationships and risks are neither prohibited nor discouraged from providing payment processing services to customers operating

in compliance with applicable federal and state law.” FIL – 43-2013. Moreover, as the FDIC stated, “Those that are operating with the appropriate systems and controls will not be criticized for providing payment processing services to businesses operating in compliance with applicable law.” *Id.*

We share these views. The aim of our investigations is to identify and hold accountable financial institutions that are engaged in or facilitate fraud. Our policy is not to prohibit or discourage financial institutions from providing payment processing services to customers operating in compliance with applicable federal and state law, and we are committed to tailoring our investigative efforts accordingly. Finally, we will continue to review our efforts to minimize any impact and collateral consequences on institutions we are not investigating.

We look forward to further engagement with you and your colleagues concerning consumer protection issues of mutual concern.

Sincerely,



Stuart F. Delery
Assistant Attorney General