September 20, 2022

Stephen J. Squeri
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Michael Miebach
President and CEO
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Alfred F. Kelly Jr.
Chairman and CEO
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Dear Messrs. Squeri, Miebach, and Kelly, Jr.,

We, the undersigned Attorneys General, write to express our concerns about the legality of recent actions you have taken or are considering taking at the behest of the International Organization for Standardization (ISO). As our respective States' chief legal officers, we are tasked with protecting the constitutional rights of our citizens, defending our consumers from privacy intrusions and other abuses, and enforcing antitrust laws. Accordingly, we share our concerns and ask that you take immediate action to comport with our consumer protection laws and respect the constitutional rights of all Americans.

Recently, the ISO voted to create a Merchant Category Code for gun stores to use when processing credit and debit card transactions. The move was prompted by years of pressure from ideologues and accomplished via an application by the union-owned Amalgamated Bank. Troublingly, some of you have already begun implementing this new policy.

The new code will not protect public safety. Categorizing the constitutionally protected right to purchase firearms unfairly singles out law-abiding merchants and consumers alike. First, efforts to track and monitor sales at gun stores would only result in vague and misleading information. This categorization would not recognize the difference, for example, between the purchase of a gun safe and a firearm. Nor would it capture firearm purchases made at department stores, resulting in arbitrarily disparate treatment of "gun store" merchants and consumers.

More importantly, purposefully tracking this information can only result in its misuse, either unintentional or deliberate. Creating and tracking this data only matters if your institutions are considering using that information to take further, harmful action—like infringing upon consumer privacy, inhibiting constitutionally protected purchases by selectively restricting the use of your payment systems, or otherwise withholding your financial services from targeted "disfavored" merchants.

And generating a "list of gun buyers" creates the obvious risk that law-abiding consumers' information will be leaked, discovered, hacked, or otherwise obtained and misused by those who oppose Americans exercising their Second Amendment rights.

Some supporters of this move have analogized it to the Suspicious Activity Reports required of financial institutions. That analogy fails; SARs are specifically required by law and came about through a considered balancing of public safety and personal privacy. The new code for gun stores is the result of transnational collusion between large corporations leveraging their market power to further their owners' desired social outcomes. Activists pressured the ISO to adopt this policy as a means of circumventing and undermining the American legislative process. The new Merchant Category Code will chill the exercise of a constitutional right without any concomitant benefit.

As Attorneys General, we have the privilege of protecting our citizens from corporate coordination that hurts consumers. We are also charged with ensuring that consumer data is not unlawfully gathered or used. That is why we have serious concerns about the implementation of this Merchant Category Code.

We are further concerned that financial institutions that place their desired public policy outcomes ahead of the well-being of their investors do so in derogation of their fiduciary obligations.

Press releases from public officials make clear that the new merchant code was created and adopted in concert with various state actors, which may additionally create the potential for both civil and criminal liability for conspiracy to deprive Americans of their civil rights.

Social policy should be debated and determined within our political institutions. Americans are tired of seeing corporate leverage used to advance political goals that cannot muster basic democratic support. The Second Amendment is a fundamental right, but it's also a fundamental American value. Our financial institutions should stop lending their market power to those who wish to attack that value.

Be advised that we will marshal the full scope of our lawful authority to protect our citizens and consumers from unlawful attempts to undermine their constitutional rights. Please keep that in mind as you consider whether to proceed with adopting and implementing this Merchant Category Code.

Sincerely,

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