(3) *Burmese banking institution* means any foreign bank, as that term is defined in § 103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

[69 FR 19098, Apr. 12, 2004]

§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains

knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

[69 FR 19103, Apr. 12, 2004]

APPENDIX A TO SUBPART I OF PART 103—CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

APPENDIX A TO SUBPART I OF PART 103 – CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB Control Number 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

This Certification should be completed by any **foreign bank** that maintains a **correspondent account** with any U.S. bank or U.S. broker-dealer in securities (a **covered financial institution** as defined in 31 C.F.R. 103.175(f)). An entity that is not a foreign bank is not required to complete this Certification.

A **foreign bank** is a bank organized under foreign law and located outside of the United States (see definition at 31 C.F.R. 103.11(o)). A **bank** includes offices, branches, and agencies of commercial banks or trust companies, private banks, national banks, thrift institutions, credit unions, and other organizations chartered under banking laws and supervised by banking supervisors of any state (see definition at 31 C.F.R. 103.11(c)).*

A **Correspondent Account** for a foreign bank is any account to receive deposits from, make payments or other disbursements on behalf of a foreign bank, or handle other financial transactions related to the foreign bank.

Special instruction for foreign branches of U.S. banks: A branch or office of a U.S. bank outside the United States is a foreign bank. Such a branch or office is not required to complete this Certification with respect to Correspondent Accounts with U.S. branches and offices of the same U.S. bank.

Special instruction for covering multiple branches on a single Certification: A foreign bank may complete one Certification for its branches and offices outside the United States. The Certification must list all of the branches and offices that are covered and must include the information required in Part C for **each** branch or office that maintains a Correspondent Account with a Covered Financial Institution. Use attachment sheets as necessary.

A. The undersigned financial institution, _____ ("**Foreign Bank**") hereby certifies as follows:

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* A "foreign bank" does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.

B. Correspondent Accounts Covered by this Certification: Check **one** box.

☐ This Certification applies to **all** accounts established for Foreign Bank by Covered Financial Institutions.

☐ This Certification applies to Correspondent Accounts established by _____ (name of Covered Financial Institution(s)) for Foreign Bank.

C. Physical Presence/Regulated Affiliate Status: Check **one** box and complete the blanks.

☐ Foreign Bank maintains a **physical presence** in any country. That means:

- Foreign Bank has a place of business at the following street address: _____, where Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where Foreign Bank is authorized to conduct banking activities.
- Foreign Bank is subject to inspection by _____, (insert Banking Authority), the banking authority that licensed Foreign Bank to conduct banking activities.

☐ Foreign Bank does not have a physical presence in any country, but Foreign Bank is a **regulated affiliate**. That means:

- Foreign Bank is an affiliate of a depository institution, credit union, or a foreign bank that maintains a physical presence at the following street address: _____, where it employs one or more persons on a full-time basis and maintains operating records related to its banking activities.
- The above address is in _____ (insert country), where the depository institution, credit union, or foreign bank is authorized to conduct banking activities.
- Foreign Bank is subject to supervision by _____, (insert Banking Authority), the same banking authority that regulates the depository institution, credit union, or foreign bank.

☐ Foreign Bank does **not** have a physical presence in a country and is **not** a regulated affiliate.

D. Indirect Use of Correspondent Accounts: Check box to certify.

☐ No Correspondent Account maintained by a Covered Financial Institution may be used to indirectly provide banking services to certain foreign banks. Foreign Bank hereby certifies that it does **not** use any Correspondent Account with a Covered Financial Institution to indirectly provide banking services to

any foreign bank that does not maintain a physical presence in any country and that is not a regulated affiliate.

E. Ownership Information: Check box 1 or 2 below, **if applicable.**

☐ 1. **Form FR Y-7 is on file.** Foreign Bank has filed with the Federal Reserve Board a current Form FR Y-7 and has disclosed its ownership information on Item 4 of Form FR Y-7.

☐ 2. **Foreign Bank's shares are publicly traded**. Publicly traded means that the shares are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

If **neither** box 1 or 2 of Part E is checked, complete item 3 below, **if applicable**.

☐ 3. Foreign Bank has no **owner(s)** except as set forth below. For purposes of this Certification, **owner** means any person who, directly or indirectly, (a) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of Foreign Bank; or (b) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of Foreign Bank. For purposes of this Certification, (i) **person** means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) **voting securities or other voting interests** means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family* shall be considered one **person**.

Name	Address

F. Process Agent: complete the following.

The following individual or entity: _____
is a resident of the United States at the following street address:
_____, **and**
is authorized to accept service of legal process on behalf of Foreign Bank from the

* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

G. General

Foreign Bank hereby agrees to notify in writing each Covered Financial Institution at which it maintains any Correspondent Account of any change in facts or circumstances reported in this Certification. Notification shall be given within 30 calendar days of such change.

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

_____
[Name of Foreign Bank}

_____
[Signature]

_____
[Printed Name]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

[67 FR 60573, Sept. 26, 2002]

APPENDIX B TO SUBPART I OF PART 103 – RECERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[OMB CONTROL NUMBER 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned financial institution, _____ ("Foreign Bank"), hereby certifies as follows:

1. Foreign Bank has executed a Certification dated _____, 20__ (the "Certification") relating to one or more Correspondent Accounts maintained by one or more Covered Financial Institutions for Foreign Bank. Terms defined in the Certification have the same meaning in this Recertification.

2. The information contained in the Certification:

☐ remains true and correct.

☐ is revised by the information provided with this Recertification (attach a statement describing the information that is no longer correct and stating the correct information).

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Recertification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Recertification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____(name of signatory), certify that I have read and understand this Recertification, that the statements made in this Recertification are complete and correct, and that I am authorized to execute this Recertification on behalf of Foreign Bank.

_____
[Name of Foreign Bank]

_____
[Signature]

_____
[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____
Title: _____
For: _____
[Name of Covered Financial Institution]

Date: _____

[67 FR 60573, Sept. 26, 2002]

APPENDIX A TO PART 103—ADMINISTRATIVE RULINGS

88–1 (June 22, 1988)

Issue

What action should a financial institution take when it believes that it is being misused by persons who are intentionally structuring transactions to evade the reporting requirement or engaging in transactions that may involve illegal activity such as drug trafficking, tax evasion or money laundering?

Facts

A teller at X State Bank notices that the same person comes into the bank each day and purchases, with cash, between $9,000 and $9,900 in cashier's checks. Even when aggregated, these purchases never exceed $10,000 during any one business day. The teller also notices that this person tries to go to different tellers for each transaction and is very reluctant to provide information about his frequent transactions or other information such as name, address, etc. Likewise, the payees on these cashier's checks all have common names such as "John Smith" or "Mary Jones." The teller informs the bank's compliance officer that she believes that this person is structuring his transactions in order to evade the reporting requirements under the Bank Secrecy Act. X State Bank wants to know what actions it should take in this situation or in any other situation where a transaction or a person conducting a transaction appears suspicious.

Law and Analysis

As it appears that the person may be intentionally structuring the transactions to evade the Bank Secrecy Act reporting requirements, X State Bank should immediately telephone the local office of the Internal Revenue Service ("IRS") and speak to a Special Agent in the IRS Criminal Investigation Division, or should call 1–800–BSA-CTRS, where his call will be referred to a Special Agent.

Any information provided to the IRS should be given within the confines of §1103(c) of the Right to Financial Privacy Act. 12 U.S.C. 3401–3422. Section 1103(c) of that Act permits a financial instituiton to

notify a government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the names of any individuals or corporate entities involved in the suspicious transactions; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of the branch or office where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicion. S. Rep. 99–433, 99th Cong., 2d Sess., pp. 15–16.

Additionally, the bank may be required, by the Federal regulatory agency which supervises it, to submit a criminal referral form. Thus, the bank should check with its regulatory agency to determine whether a referral form should be submitted.

Lastly, under the facts as described above, X State Bank is not required to file a Currency Transaction Report (''CTR'') because the currency transaction (i.e. purchase of cashier's checks) did not exceed $10,000 during one business day. If the bank had found that on a particular day the person had in fact used a total of more than $10,000 in currency to purchase cashier's checks, but had each individual cashier's check made out in amounts of less than $10,000, the bank is obligated to file a CTR, and should follow the other steps described above.

Holding

If X State Bank notices that a person may be misusing it by intentionally structuring transactions to evade the BSA reporting requirements or engaging in transactions that may involve other illegal activity, the bank should telephone the local office of the Internal Revenue Service, Criminal Investigation Division, and report that information to a Special Agent, or should call 1–800–BSA-CTRS. In addition, the Federal regulatory agency which supervises X State Bank may require the bank to submit a criminal referral form. All disclosures to the Government should be made in accordance with the provisions of the Right to Financial Privacy Act.

88–2 (June 22, 1988)

Issue

When, if ever, should a bank file a CMIR on behalf of its customer, when the customer is importing or exporting more than $10,000 in currency or monetary instruments?

Facts

A customer walks into B National Bank (''B'') with $15,000 in cash for deposit into her account. As is required, the bank teller begins to fill out a Currency Transaction Report (''CTR'', IRS Form 4789) in order to report a transaction in currency of more than $10,000. While the teller is filling out the CTR, the customer mentions to the teller that she has just received the money in a letter from a relative in France. Should the teller also file a CMIR, either on the customer's behalf or on the bank's behalf?

Law and Analysis

B National Bank should not file a CMIR when a customer deposits currency in excess of $10,000 into her account, even if the bank has knowledge that the customer received the currency from a place outside the United States. 31 CFR 103.23 requires that a CMIR be filed by anyone who transports, mails, ships or receives, or attempts, causes or attempts to cause the transportation, mailing, shipping or receiving of currency or monetary instruments in excess of $10,000, from or to a place outside the United States. The term ''monetary instruments'' includes currency and instruments such as negotiable instruments endorsed without restriction. *See* 31 CFR 103.11(k).

The obligation to file the CMIR is solely on the person who transports, mails, ships or receives, or causes or attempts to transport, mail, ship or receive. No other person is under any obligation to file a CMIR. Thus, if a customer walks into the bank and declares that he or she has received or transported currency in an aggregate amount exceeding $10,000 from a place outside the United States and wishes to deposit the currency into his or her account, the bank is under no obligation to file a CMIR on the customer's behalf. Likewise, because the bank itself did not receive the money from a customer outside the United States, it has no obligation to file a CMIR on its own behalf. The same holds true if a customer declares his intent to transport currency or monetary instruments in excess of $10,000 to a place outside the United States.

However, the bank is strongly encouraged to inform the customer of the CMIR reporting requirement. If the bank has knowledge that the customer is aware of the CMIR reporting requirement, but is nevertheless disregarding the requirement or if information about the transaction is otherwise suspicious, the bank should contact the local office of the U.S. Customs Service or 1–800–BE ALERT. The United States Customs Service has been delegated authority by the Assistant Secretary (Enforcement) to investigate criminal violations of 31 CFR 103.23. *See* 31 CFR 103.36(c)(1).

Any information provided to Customs should be given within the confines of section 1103(c) of the Right to Financial Privacy Act, 12 U.S.C. 3401–3422. Section 1103(c) permits a financial institution to notify a Government authority of information relevant to a possible violation of any statute or regulation. Such information may consist of the

name (including those of corporate entities) of any individual involved in the suspicious transaction; account numbers; home and business addresses; social security numbers; type of account; interest paid on account; location of branch where the suspicious transaction occurred; a specification of the offense that the financial institution believes has been committed; and a description of the activities giving rise to the bank's suspicions. *See* S. Rep. 99–433, 99th Cong., 2nd Sess., pp. 15–16. Therefore, under the facts above, the teller need only file a CTR for the deposit of the customer's $15,000 in currency.

A previous interpretation of §103.23(b) by Treasury held that if a bank received currency or monetary instruments over the counter from a person who may have transported them into the United States, and knows that such items have been transported into the country, it must file a report on Form 4790 if a complete and truthful report has not been filed by the customer. *See* 31 CFR 103 appendix, §103.23, interpretation 2, at 364 (1987). This ruling hereby supersedes that interpretation.

Holding

A bank should not file a CMIR when a customer deposits currency or monetary instruments in excess of $10,000 into her account even if the bank has knowledge that the currency or monetary instruments were received or transported from a place outside the United States. 31 CFR 103.23. The same is true if the bank has knowledge that the customer intends to transport the currency or monetary instruments to a place outside the United States. However, the bank is required to file a CTR if it receives in excess of $10,000 in cash from its customer, and is strongly encouraged to inform the customer of the CMIR requirements. In addition, if the bank has knowledge that the customer is aware of the CMIR reporting requirement and is nevertheless planning to disregard it or if the transaction is otherwise suspicious, the bank should notify the local office of the United States Customs Service (or 1–800–*Be Alert*) of the suspicious transaction. Such notice should be made within the confines of the Right to Financial Privacy Act, 12 U.S.C. 3403(c).

88–3 (June 22, 1988)

Issue

Whether a bank may exempt ''cash-back'' transactions of a customer whose primary business is of a type that may be exempted either unilaterally by the bank or pursuant to additional authority granted by the IRS.

Facts

The ABC Grocery (''ABC''), a retail grocery store, has an account at the X State Bank for its daily deposits of currency. Because ABC regularly and frequently deposits amounts ranging from $20,000 to $30,000, the bank has properly granted ABC an exemption for daily deposits up to a limit of $30,000.

Recently, ABC began providing its customers with a check-cashing service as an adjunct to its primary business of selling groceries. ABC's primary business still consists of the sale of groceries. However, the unexpectedly heavy demand for ABC's check-cashing service has required ABC to maintain a substantially greater quantity of cash in the store than was necessary for the grocery business in the past. To facilitate the operations of its check-cashing service, ABC is presenting the bank with large numbers of checks in ''cash-back'' transactions, rather than depositing the checks into its account and withdrawing cash from that account. X State Bank has just been presented with a ''cash-back'' transaction wherein an employee of ABC is exchanging $15,000 worth of checks for cash. How should the bank treat this transaction?

Law and Analysis

A *cash back* transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. ''Cash back'' transactions can never be exempted from the Bank Secrecy Act reporting requirements. Thus, the bank must file a Currency Transaction Report on IRS Form 4789 reporting this $15,000 ''cash back'' transaction, even though the customer's account has been granted an exemption for daily deposits of up to $30,000. This is because §103.22(b)(i) permits a bank to exempt only ''*(d)eposits or withdrawals of currency* from an existing account by an established depositor who is a United States resident and operates a retail type of business in the United States'' (emphasis added). As ''cash-back'' transactions do not constitute either a ''deposit or withdrawal of currency'' within the meaning of the regulations, the bank must report on a CTR any ''cash-back'' transaction that results in the transfer of more than $10,000 in currency to a customer during a single banking day, regardless of whether the customer has properly been granted an exemption for its deposits or withdrawals.

Moreover, because ''cash back'' transactions are never exemptible, the bank may not unilaterally exempt ''cash-back'' transactions by ABC, or seek additional authority from the IRS to grant a special exemption for ABC's ''cash-back'' transactions. Instead, the bank must report ABC's ''cash back'' transaction on a CTR, listing it as a $15,000 ''check cashed'' transaction.

Holding

A bank may never grant a unilateral exemption, or obtain additional authority from the IRS to grant a special exemption to the ''cash-back'' transactions of a customer. A ''cash back'' transaction is one where one or more checks or other monetary instruments are presented in exchange for cash or a portion of the checks or monetary instruments are deposited while the remainder is exchanged for cash. If a bank handles a ''cash-back'' transaction that results in the transfer of more than $10,000 to a customer during a single banking day, it must report that transaction on IRS Form 4789, the Currency Transaction Report, as a ''check cashed'' transaction, regardless of whether the customer has been properly granted an exemption for daily deposits or withdrawals.

88–4 (August 2, 1988)

Issue

If a bank has exempted a single account of a customer into which multiple establishments of that customer make deposits, must the bank list all of the establishments on its exemption list or may the bank list only the §103.22(f) information of the customer's headquarters or its principal business establishment on its exemption list?

Facts

A fast food company operates a chain of fast-food restaurants in several states. In New York, the company has established a single deposit account at Bank A, into which all of the company's establishments in that area make deposits. In Connecticut, the company has established ten bank accounts at Bank B; each of the company's ten establishments in Connecticut have been assigned a separate account into which it makes deposits. Banks A and B have properly exempted the company's accounts, but now seek guidance on the manner in which they should add these accounts to their exemption lists. All of the company's establishments use the same taxpayer identification number (''TIN'').

Law and Analysis

Under the regulations, the bank must keep ''in a centralized list,'' §103.22(f) information for ''each depositor that has engaged in currency transactions which have not been reported because of (an) exemption * * *'' However, where all of the company's establishments deposit into one exempt account as at Bank A, above, the bank need only maintain §103.22(f) information on its list for the customer's corporate headquarters or the principal establishment that obtained the exemption. The bank may, but is not required to, list identifying information for all of the customers' establishments depositing into the one account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that on the exemption list and should ensure that the individual addresses for each establishment are readily available upon request. Where each of the company's establishments deposit into separate exempt accounts as at Bank B, the bank must maintain separate §103.22(f) information on the exemption list for each establishment.

Under §103.22(b)(2) (i), (ii), and (iv) and §103.22(e) of the regulation, a bank can only grant an exemption for ''an existing account (of) an established depositor who is a United States resident.'' Under these provisions, therefore, the bank can only grant an exemption for an existing individual account, not for an individual customer or group of accounts. Thus, if a customer has a separate account for each of its business establishments, the bank must consider each account for a separate exemption. If the bank grants exemptions for more than one account, it should prepare a separate exemption statement and establish a separate dollar limit for each account.

Once an exemption has been granted for an account, §103.22(f) requires the bank to maintain a centralized exemption list that includes the name, address, business, types of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number of the customers whose accounts have been exempted.

Holding

Under 31 CFR 103.22, when a bank has exempted a single account of a customer into which more than one of the customer's establishments make deposits, the bank may include the name, address, business, type of transactions exempted, the dollar limit of the exemption, taxpayer identification number, and account number (''§103.22(f) information'') of either the customer's headquarters or the principal business establishment, or it may separately list §103.22(f) information for each of the establishments using that account. If the bank chooses to list only the information for the customer's headquarters or principal establishment, it should briefly note that fact on the exemption list, and it should ensure that the individual addresses of those establishments not on the list are readily available upon request. If a bank has granted separate exemptions to several accounts, each of which is used by a single establishment of the same customer, the bank must include on its exemption list §103.22(f) information for each of those establishments. Previous Treasury correspondence or interpretations contrary to this policy are hereby rescinded.

88–5 (August 2, 1988)

Issue

Does a financial institution have a duty to file a CTR on currency transactions where the financial institution never physically receives the cash because it uses an armored car service to collect, transport and process its customer's cash receipts?

Facts

X State Bank (the ''Bank'') and Acme Armored Car Service (''Acme'') have entered into a contract which provides for Acme to collect, transport and process revenues received from Bank customers:

Each day, Acme picks up cash, checks, and deposit tickets from Little Z, a non-exempt customer of the Bank. Recently, receipts of cash from Little Z have exceeded $10,000. Acme delivers the checks and deposit tickets to the Bank where they are processed and Little Z's account is credited. All cash collected, however, is taken by Acme to its central office where it is counted and processed. The cash is then delivered by Acme to the Federal Reserve Bank for deposit into the Bank's account. Must the Bank file a CTR to report a receipt of cash in excess of $10,000 by Acme from Little Z?

Law and Anaylsis

Yes. Since Acme is receiving cash in excess of $10,000 on behalf of the Bank, the Bank must file a CTR in order to report these transactions.

Section 103.22(a)(1) requires ''(e)ach financial institution * * * [to] file a report of each deposit, withdrawal, exchange of currency or other payment or transfer, by, through or to such financial institution which involves a transaction in currency of more than $10,000.'' Section 103.11 (a) and (g) defines ''Bank'' and ''Financial Institution'' to include agents of those banks and financial institutions.

Under the facts presented, Acme is acting as an agent of the Bank. This is because Acme and the Bank have a contractual relationship whereby the Bank has authorized Acme to pick up, transport and process Little Z's receipts on behalf of the Bank. The Federal Reserve Bank's acceptance of deposits from Acme into the Bank's account at the Fed, is additional evidence of the agency relationship between the Bank and Acme.

Therefore, when Acme receives currency in excess of $10,000 from Little Z, the Bank must report that transaction on Form 4789. Likewise, if Acme receives currency from Little Z in multiple transactions, §103.22(a)(1) requires the Bank to aggregate these transactions and file a single CTR for the total amount of currency received by Acme, if the Bank has knowledge of these multiple transactions. Knowledge by the Bank's agent, i.e., Acme, that the currency was received in multiple transactions, is attributable to the Bank. The Bank must assure that Acme, as its agent, obtains all the information and identification necessary to complete the CTR.

Holding

Financial institutions must file a CTR for the currency received by an armored car service from the financial institution's customer when the armored car service physically receives the cash from the customer, transports it and processes the receipts, even though the currency may never physically be received by the financial institution. This is because the armored car service is acting as an agent of the financial institution.

89–1 (January 12, 1989)

Issue

Under §103.22 of the BSA regulations, may a bank unilaterally grant one exemption or establish a single dollar exemption limit for a group of existing accounts of the same customer? If not, may a bank obtain additional authority from the IRS to grant a single exemption for a group of exemptible accounts belonging to the same customer?

Facts

ABC Inc. (''ABC''), with TIN 12–3456789, owns five fast food restaurants. Each restaurant has its own account at the X State Bank and each restaurant routinely deposits less than $10,000 into its individual account. However, when the deposits into these five accounts are aggregated they regularly and frequently exceed $10,000. Accordingly, the bank prepares and files one CTR for ABC Inc., on each business day that ABC's aggregated currency transactions exceed $10,000. X State Bank wants to know whether it can unilaterally exempt these five accounts having the same TIN, and, if not, whether it can obtain additional authority from the IRS to grant a single exemption to the group of five accounts belonging to ABC.

Law and Analysis

Under §103.22(b)(2) (i) and (ii) of the Bank Secrecy Act (''BSA'') regulations, 31 CFR part 103, only an individual account of a customer may be unilaterally exempted from the currency transaction reporting provisions. The bank may not unilaterally grant one exemption or establish a single dollar exemption limit for multiple accounts of the same customer. This is because §§103.22(b)(2)(i) and 103.22(b)(2)(ii) of the BSA regulations only permit a bank to unilaterally exempt ''[d]eposits or withdrawals of currency from an existing account by an established depositor who is a United States

resident and operates a retail type of business in the United States.'' 31 CFR 103.22(b)(2) (i) and (ii).

Section 103.22(e) of the BSA regulations provides, however, that ''[a] bank may apply to the * * * [IRS] for additional authority to grant exemptions to the reporting requirements not otherwise permitted under paragraph (b) of this section * * *'' 31 CFR 103.22(e). Therefore, under this authority, and at the request of a bank, the IRS may, in its discretion, grant the requesting bank additional authority to exempt a group of accounts when the following conditions are met:

(1) Each of the accounts in the group is owned by the same person and has the same taxpayer identification number.

(2) The deposits or withdrawals into each account are made by a customer that operates a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for the dollar amount).

(3) Currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis.

(4) Aggregated currency transactions for all accounts included in the group regularly and frequently exceed $10,000.

If a bank determines that an exemption would be appropriate in a situation involving a group of accounts belonging to a single customer, it must apply to the IRS for authority to grant one special exemption covering the accounts in question. As with all requests for special exemptions, any request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by §103.22(d). 31 CFR 103.22(d).

Additional authority to grant a special exemption for a group of accounts must be obtained from the IRS regardless of whether the businesses may be unilaterally exempted under §103.22(b)(2), because the exemption, if granted, would apply to a group of existing accounts as opposed to an individual existing account. 31 CFR 103.22(b)(2).

Also, if any one of a given customer's accounts has regular and frequent currency transactions which exceed $10,000, that account may not be included in the group exemption. This is because the bank may, as provided by §103.22(b)(2), either unilaterally exempt that account or obtain authority from the IRS to grant a special exemption for that account if it meets the other criteria for exemption. Thus, only accounts of exemptible businesses which do not have regular and frequent (*e.g.*, daily, weekly or twice a month) currency transactions in excess of $10,000 may be eligible for a group exemption.

The intention of this special exemption is to permit banks to exempt the accounts of established customers, such as the ABC Inc. restaurants described above, which are owned by the same person and have the same TIN but which individually do not have sufficient currency deposit or withdrawal activity that regularly and frequently exceed $10,000.

Holding

If X State Bank determines that an exemption would be appropriate for ABC Inc., it must apply to the IRS for authority to grant one special exemption covering ABC's five separate accounts. As with all requests for special exemptions, ABC's request for additional authority to grant a special exemption must be made in writing and accompanied by a statement of the circumstances that warrant special exemption treatment and a copy of the statement signed by the customer as required by §103.22(d). 31 CFR 103.22(d). The IRS may, in its discretion, grant additional authority to exempt the ABC accounts if: (1) They have the same taxpayer identification number; (2) they each are for customers that operate a business that may be either unilaterally or specially exemptible and each account meets the other exemption criteria (except for dollar amount); (3) the currency transactions for each account individually do not exceed $10,000 on a regular and frequent basis; but (4) when aggregated the currency transactions for all the accounts regularly and frequently do exceed $10,000.

89–2 (June 21, 1989)

Issue

When a customer has established bank accounts for each of several establishments that it owns, and the bank has exempted one or more of those accounts, how does the bank aggregate the customer's currency transactions?

Facts

X Company (''X'') operates two fast-food restaurants and a wholesale food business. X has opened separate bank accounts at the A National Bank (the ''Bank'') for each of its two restaurants, account numbers 1 and 2 respectively. Each of these two accounts has been properly exempted by the bank. Account number 1 has an exemption limit of $25,000 for deposits, and account number 2 has an exemption limit of $40,000 for deposits. X also has a third account, account number 3, at the bank for use in the operation of its wholesale food business. On occasion, cash deposits of more than $10,000 are made into this third account. Because these cash

deposits are infrequent, the bank cannot obtain additional authority to grant this account a special exemption.

During the same business day, two $15,000 cash deposits totalling $30,000 are made into account number 1, a separate cash deposit of $35,000 is made into account number 2 and a deposit of $9,000 in currency is made into account number 3 (X's account for its wholesale food business).

The bank must now determine how to aggregate and report all of these transactions on a Form 4789, Currency Transaction Report, (''CTR''). Must they aggregate all of the deposits made into account numbers 1, 2 and 3 and report them on a single CTR?

Law and Analysis

Section 103.22 of the Bank Secrecy Act (''BSA''), 31 CFR part 103, requires a financial institution to treat multiple currency transactions ''as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash-in or cash-out totalling more than $10,000 during any one business day.'' This means that a financial institution must file a CTR if it knows that multiple currency transactions involving two or more accounts have been conducted by or on behalf of the same person and, those transactions, when aggregated, exceed $10,000. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of the institution or on the part of any existing computer or manual system at the institution that permits it to aggregate transactions.

Thus, if the bank has knowledge of multiple transactions, the bank should aggregate the transactions in the following manner.

First, the bank should separately review and total all cash-in and cash-out transactions within each account. Cash-in transactions should be aggregated with other cash-in transactions and cash-out transactions should be aggregated with cash-out transactions. Cash-in and cash-out transactions should not be aggregated together or offset against each other.

Second, the bank should determine whether the account has an exemption limit. If the account has an exemption limit, the bank should determine whether it has been exceeded. If the exemption limit has not been exceeded, the transactions for the exempted account should not be aggregated with other transactions.

If the total transactions during the same business day for a particular account exceed the exemption limit, the total of all of the transactions for that account should be aggregated with the total amount of the transactions for other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with transactions conducted by or on behalf of the same person that do not involve accounts (e.g., purchases of bank checks with cash) of which the bank has knowledge.

In the example discussed above, all of the transactions have been conducted ''on behalf of'' X, as X owns the restaurants and the wholesale food business. The total $30,000 deposit for account 1 exceeds the $25,000 exemption limit for that account. The $35,000 deposit into account number 2 is less than the $40,000 exemption limit for that account. Finally, the $9,000 deposit into account number 3, does not by itself constitute a reportable transaction.

Therefore, under the facts above, the bank should aggregate the entire $30,000 deposit into account number 1 (not just the amount that exceeds the exemption limit), with the $9,000 deposit into account number 3, for a total of $39,000. The bank should not include the $35,000 deposit into account number 2, as that deposit does not exceed the exemption limit for that account. Accordingly, the bank should complete and file a single CTR for $39,000.

If the bank does not have knowledge that multiple currency transactions have been conducted in these accounts on the same business day (e.g., because it does not have a system that aggregates among accounts and the deposits were made by three different individuals at different times) the bank should file one CTR for $30,000 for account number 1, as the activity into that account exceeds its exemption limit.

Holding

When a customer has more than one account and a bank employee has knowledge that multiple currency transaction have been conducted in the accounts or the bank has an existing computer or manual system that permits it to aggregate transactions for multiple accounts, the bank should aggregate the transactions in the following manner.

First, the bank should aggregate for each account all cash-in or cash-out transactions conducted during one business day. If the account has an exemption limit, the bank should determine whether the exemption limit of that account has been exceeded. If the exemption limit has not been exceeded, the total of the transactions for that particular account does not have to be aggregated with other transactions. If the total transactions during the same business day for a particular account exceed the exemption limit, however, the total of all of the transactions for that account should be aggregated with any total from other accounts that exceed their respective exemption limits, with any accounts without exemption limits, and with any reportable transactions conducted by or on behalf of the customer not involving accounts (e.g., purchases of

bank checks or ''cash back'' transactions) of which the bank has knowledge. The bank should then file a CTR for the aggregated amount.

89–5 (December 21, 1989)

Issue

How does a financial institution fulfill the requirement that it furnish information about the person on whose behalf a reportable currency transaction is being conducted?

Facts

No. 1. Linda Scott has had an account relationship with the Bank for 15 years. Ms. Scott enters the bank and deposits $15,000 in cash into her personal checking account. The bank knows that Ms. Scott is an artist who on occasions exhibits and sells her art work and that her art work currently is on exhibit at the local gallery. The bank further knows that cash deposits in the amount of $15,000 are commensurate with Ms. Scott's art sales.

No. 2. Dick Wallace has recently opened a personal account at the Bank. Although the bank verified his identity when the account was opened, the bank has no additional information about Mr. Wallace. Mr. Wallace enters the bank with $18,000 in currency and asks that it be wire transferred to a bank in a foreign country.

No. 3. Dorothy Green, a partner at a law firm, makes a $50,000 cash deposit into the firm's trust account.[1] The bank knows that this is a trust account. The $50,000 represents cash received from three clients.

No. 4. Carlos Gomez enters a Currency Dealer and asks to buy $12,000 in traveler's checks with cash.

No. 5. Gail Julian, a trusted employee of Q-mart, a large retail chain, enters the bank three times during one business day and makes three large cash deposits totalling $48,000 into Q-mart's account. The Bank knows that Ms. Julian is responsible for making the deposits on behalf of Q-mart. Q-mart has an exemption limit of $45,000.

Law and Analysis

Under §103.28 of the Bank Secrecy Act (''BSA'') regulations, 31 CFR part 103, a financial institution must report on a Currency Transaction Report (''CTR'') the name and address of the individual conducting the transaction, and the identity, account number, and the social security or taxpayer identification number of any person on whose behalf the transaction was conducted. See 31 U.S.C. 5313. ''A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.'' Identifying information about the person on whose behalf the transaction is conducted must always be furnished if the transaction is reportable under the BSA, regardless of whether the transaction involves an account.

Because the BSA requires financial institutions to file complete and accurate CTR's, it is the financial institution's responsibility to ascertain the real party in interest. 31 U.S.C. 5313. One way that a financial institution can obtain information about the identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong ''know your customer'' or other internal control policies, the financial institution is satisfied that its records contain information concerning the true identity of the person on whose behalf the transaction is conducted, may the financial institution rely on those records to complete the CTR.

No. 1. Linda Scott, an artist, is a known customer of the bank. The bank is aware that she is exhibiting her work at a local gallery and that cash deposits in the amount of $15,000 would not be unusual or inconsistent with Ms. Scott's business practices. Therefore, if the bank through its stringent ''know your customer'' policies is satisfied that the money being deposited by Ms. Scott into her personal account is for her benefit, the bank need not ask Ms. Scott whether she is acting on behalf of someone else.

No. 2. Because Dick Wallace is a new customer of the bank and because the bank has no additional information about him or his business activity, the bank should ask Mr. Wallace whether he is acting on his own behalf or on behalf of someone else. This is particularly true given the nature of the transaction—a wire transfer with cash for an individual to a foreign country.

No. 3. Dorothy Green's cash deposit of $50,000 into the law firm's trust account clearly is being done on behalf of someone else. The bank should ask Ms. Green to identify the clients on whose behalf the transaction is being conducted. Because Ms. Green is acting both on behalf of her employer and the clients, the names of the three clients and the law firm should be included on the CTR filed by the bank.

No. 4. The currency dealer, having no account relationship with Carlos Gomez, should ask Mr. Gomez if he is acting on behalf of someone else.

No. 5. Gail Julian is known to the bank as a trusted employee of Q-mart, who often deposits cash into Q-mart's account. If the

[1] This type of account is sometimes called a trust account, attorney account or special account. It is an account established by an attorney into which commingled funds of clients may be deposited. It is not necessarily a ''trust'' in the legal sense of the term.

bank, through its strong ''know your customer'' policies is satisfied that Ms. Julian makes these deposits on behalf of Q-mart, the bank need not ask her if she is acting on behalf of someone other than Q-mart.

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs. This includes providing identifying information about the person on whose behalf the transaction is conducted in Part II of the CTR. One way that a financial institution can obtain information about the true identity of the person on whose behalf the transaction is being conducted is to ask the person conducting the transaction whether he is acting for himself or on behalf of another person. Only if as a result of strong ''know your customer'' or other internal control policies, the financial institution is satisfied that its record contain the necessary information concerning the true identity of the person on whose behalf the transaction is being conducted, may the financial institutions rely on those records in completing the CTR.

92–1 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions
31 U.S.C. 5325—Identification Required to Purchase Certain Monetary Instruments
31 CFR 103.28—Identification Required
31 CFR 103.29—Purchases of Bank Checks and Drafts, Cashier's Checks, Money Orders and Traveler's Checks

Identification of elderly or disabled patrons conducting large currency transactions. Financial institutions must file a form 4789, Currency Transaction Report (CTR) on transactions in currency in excess of $10,000, and must verify and record information about the identity of the person(s) who conduct(s) the transaction in Part I of the CTR. Financial institutions also must record on a chronological log sales of, and verify the identity of individuals who purchase, certain monetary instruments with currency in amounts between $3,000 and $10,000, inclusive. Many financial institutions have asked Treasury how they can meet the requirement to examine an identifying document that contains the person's name and address when s/he does not possess such a document (*e.g.,* a driver's license). Financial institutions have indicated that this question arises almost exclusively with their elderly and/or disabled patrons. This Administrative Ruling answers those inquiries.

Issue

How does a financial institution fulfill the requirement to verify and record the name and address of an elderly or disabled individual who conducts a currency transaction in excess of $10,000 or who purchases certain monetary instruments with currency valued between $3,000 and $10,000 when he/she does not possess a passport, alien identification card or other official document, or other document that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors?

Holding

It is the responsibility of a financial institution to file complete and accurate CTRs and to maintain complete and accurate monetary instrument logs pursuant to 31 CFR §§103.27(d) and 103.29 of the BSA regulations. It is also the responsibility of a financial institution to verify and to record the identity of individuals conducting reportable currency transactions and/or cash purchases of certain monetary instruments as required by BSA regulations §§103.28 and 103.29. Only if the financial institution is confident that an elderly or disabled patron is who s/he says s/he is may it complete these transactions. A financial institution shall use whatever information it has available, in accordance with its established policies and procedures, to determine its patron's identity. This includes review of its internal records for any information on file, and asking for other forms of identification, including a social security or medicare/medicaid card along with another document which contains both the patron's name and address such as an organizational membership card, voter registration card, utility bill or real estate tax bill. These forms of identification shall also be identified as acceptable in the bank's formal written policy and operating procedures as identification for transactions involving the elderly or the disabled. Once implemented, the financial institution should permit no exception to its policy and procedures. In these cases, the financial institution should record the word ''Elderly'' or ''Disabled'' on the CTR and/or chronological log and the method used to identify the elderly, or disabled patron such as ''Social Security and (organization) Membership Card only ID.''

Law and Analysis

Before concluding a transaction for which a Currency Transaction Report is required pursuant to 31 CFR 103.22, a financial institution must verify and record the name and address of the individual conducting the transaction. 31 CFR 103.28. Verification of the individual's identity must be made by examination of a document, other than a bank signature card, that is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors (*e.g.,* a driver's license). A bank signature card may be relied upon only if it was issued after documents establishing the

identity of the individual were examined and a notation of the method and specific information regarding identification (*e.g.*, state of issuance and driver's license number) was made on the signature card. In each instance, the specific identifying information noted above and used to verify the identity of the individual must be recorded on the CTR. The notation of ''known customer'' or ''bank signature card on file'' on the CTR is prohibited. 31 CFR 103.28.

Before issuing or selling bank checks or drafts, cashier's checks, traveler's checks or money orders to an individual(s), for currency between $3,000 and $10,000, a financial institution must verify whether the individual has a deposit account or verify the individual's identity. 31 CFR 103.29. Verification may be made by examination of a signature card or other account record at the financial institution if the deposit accountholder's name and address were verified at the time the account was opened, or at any subsequent time, and that information was recorded on the signature card or record being examined.

Verification may also be made by examination of a document that contains the name and address of the purchaser and which is normally acceptable within the banking community as a means of identification when cashing checks for nondepositors. In the case of a deposit accountholder whose identity has not been previously verified, the financial institution shall record the specific identifying information on its chronological log (*e.g.* state of issuance and driver's license number). In all situations, the financial institution must record all the appropriate information required by §103.29(a)(1)(i) for deposit account holders or 103.29(a)(2)(i) for nondeposit account holders.

Certain elderly or disabled patrons do not possess identification documents that would normally be considered acceptable within the banking community (*e.g.*, driver's licenses, passports, or state-issued identification cards). Accordingly, the procedure set forth below should be followed to fulfill the identification verification requirements of §§103.28 and 103.29.

Financial institutions may accept as appropriate identification a social security, medicare, medicaid or other insurance card presented along with another document that contains both the name and address of the patron (*e.g.* an organization membership or voter registration card, utility or real estate tax bill). Such forms of identification shall be specified in the bank's formal written policy and operating procedures as acceptable identification for transactions involving elderly or disabled patrons who do not possess identification documents normally considered acceptable within the banking community for cashing checks for nondepositors.

This procedure may only be applied if the following circumstances exist. First, the financial institution must establish that the identification the elderly or disabled patron has is limited to a social security or medicare/medicaid card plus another document which contains the patron's name and address. Second, the financial institution must use whatever information it has available, or policies and procedures it has in place, to determine the patron's identity. If the patron is a deposit accountholder, the financial institution should review its internal records to determine if there is information on file to verify his/her identity. Only if the financial institution is confident that the elderly or disabled patron is who s/he says s/he is, may the transaction be concluded. Failure to identify an elderly or a disabled customer's identity as required by 31 CFR §103.28 and as described herein may result in the imposition of civil and or criminal penalties. Finally, the financial institution shall establish a formal written policy and implement operating procedures for processing reportable currency transactions or recording cash sales of certain monetary instruments to elderly or disabled patrons who do not have forms of identification ordinarily considered ''acceptable.'' Once implemented, the financial institution shall permit no exceptions to its policy and procedures. In addition, financial institutions are encouraged to record the elderly or disabled patron's identity and address as well as the method of identification on a signature card or other record when it is obtained and verified.

In completing a CTR, if all of the above conditions are satisfied, the financial institution should enter the words ''Elderly'' or ''Disabled'' and the method used to verify the patron's identity, such as ''Social Security and (organization) Membership Cards Only ID,'' in Item 15a.

Similarly, when logging the cash purchase of a monetary instrument(s), the financial institution shall enter on its chronological log the words, ''Elderly'' or ''Disabled,'' and the method used to verify such patron's identity.

Example

Jesse Fleming, a 75 year old retiree, has been saving $10 bills for twenty years in order to help pay for his granddaughter's college education. He enters the Trustworthy National Bank where he has no account but his granddaughter has a savings account, and presents $13,000 in $10 bills to the teller. He instructs the teller to deposit $9,000 into his granddaughter's savings account, and requests a cashier's check for $4,000 made payable to State University.

Because of poor eyesight, Mr. Fleming no longer drives and does not possess a valid

driver's license. When asked for identification by the teller he presents a social security card and his retirement organization membership card that contains his name and address.

Application of Law to Example

In this example, the Trustworthy National Bank must check to determine if Mr. Fleming's social security and organizational membership cards are acceptable forms of identification as defined in the bank's policy and procedures. If so, and the bank is confident that Mr. Fleming is who he says he is, it may complete the transaction. Because Mr. Fleming conducted a transaction in currency which exceeded $10,000 (deposit of $9,000 and purchase of $4,000 monetary instrument), First National Bank must complete a CTR. It should record information about Mr. Fleming in Part I of the CTR and in Item 15a record the words ''Elderly—Social Security and (organization) Membership Cards Only ID.'' The balance of the CTR must be appropriately completed as required by §§ 103.22 and 103.27(d). First National Bank must also record the transaction in its monetary instrument sales log because it issued to Mr. Fleming a cashier's check for $4,000 in currency. Mr. Fleming must be listed as the purchaser and the bank should record on the log the words ''Elderly—Social Security and (organization) Membership Cards Only ID'' as the method used to verify his identity. In addition, because Mr. Fleming is not a deposit accountholder at First National Bank, the bank is required to record on the log all the information required under § 103.29(a)(2)(i) for cash purchases of monetary instruments by nondeposit accountholders.

92–2 (November 16, 1992)

31 U.S.C. 5313—Reports on Domestic Coins and Currency Transactions
31 CFR 103.22—Reporting of Currency Transactions
31 CFR 103.28—Identification Required

Proper completion of the Currency Transaction Report (CTR), IRS Form 4789, when reporting multiple transactions. Financial institutions must report transactions in currency that exceed $10,000 or an exempted account's established exemption limit and provide certain information including verified identifying information about the individual conducting the transaction. Multiple currency transactions must be treated as a single transaction, aggregated, and reported on a single Form 4789, if the financial institution has knowledge that the transactions are by or on behalf of any person and result in either cash in or cash out totalling more than $10,000, or the exemption limit, during any one business day. All CTRs must be fully and accurately completed. Some or all of the individual transactions which comprise an aggregated CTR are frequently below the $10,000 reporting or applicable exemption threshold and, as such, are not reportable and financial institutions do not gather the information required to complete a CTR.

Issue

How should a financial institution complete a CTR when multiple transactions are aggregated and reported on a single form and all or part of the information called for in the form may not be known?

Holding

Multiple transactions that total in excess of $10,000, or an established exemption limit, when aggregated must be reported on a CTR if the financial institution has knowledge that the transactions have occurred. In many cases, the individual transactions being reported are each under $10,000, or the exemption limit, and the institution was not aware at the time of any one of the transactions that a CTR would be required. Therefore, the identifying information on the person conducting the transaction was not required to be obtained at the time the transaction was conducted.

If after a reasonable effort to obtain the information required to complete items 4 through 15 of the CTR, all or part of such information is not available, the institution must check item 3d to indicate that the information is not being provided because the report involves multiple transactions for which complete information is not available. The institution must, however, provide as much of the information as is reasonably available.

All subsections of item 48 on the CTR must be completed to report the number of transactions involved and the number of locations of the financial institution and zip codes of those locations where the transactions were conducted.

Law and Analysis

Sections 103.22(a)(1) and (c) of the Bank Secrecy Act (BSA) regulations, 31 CFR part 103, require a financial institution to file a CTR for each deposit, withdrawal, exchange of currency, or other payment or transfer, by, through, or to the financial institution, which involves a transaction in currency of more than $10,000 or the established exemption limit for an exempt account. Multiple transactions must be treated as a single transaction if the financial institution has knowledge that they are by, or on behalf of, any person and result in either cash in or cash out of the financial institution totalling more than $10,000 or the exemption limit during any one business day. Knowledge, in this context, means knowledge on the part of a partner, director, officer or employee of

the financial institution or on the part of any existing automated or manual system at the financial institution that permits it to aggregate transactions.

The purpose of item 3 on the CTR is to indicate why all or part of the information required in items 4 through 15 is not being provided on the form. If the reason information is missing is solely because the transaction(s) occurred through an armored car service, a mail deposit or shipment, or a night deposit or Automated Teller Machine (ATM), the financial institution must check either box a, b, or c, as appropriate, in item 3. CTR instructions state that item 3d is to be checked for multiple transactions where none of the individual transactions exceeds $10,000 or the exemption limit and all of the required information might not be available.

As described in Example No. 5 below, there may be situations where one transaction among several exceeds the applicable threshold. Item 3d should be checked whenever multiple transactions are being reported and all or part of the information necessary to complete items 4 through 15 is not available because at the time of any one of the individual transactions, a CTR was not required and the financial institution did not obtain the appropriate information.

When reporting multiple transactions, the financial institution must complete as many of items 4 through 15 as possible. In the event the institution learns that more than one person conducted the multiple transactions being reported, it must check item 2 on the CTR and is encouraged to make reasonable efforts to obtain and report any appropriate information on each of the persons in items 4 through 15 on the front and back of the CTR form, and if necessary, on additional sheets of paper attached to the report.

The purpose of item 48 is to indicate that multiple transactions are involved in the CTR being filed. Items 48 a, b, and c require information about the number of transactions being reported and the number of bank branches and the zip code of each branch where the transactions took place. If multiple transactions exceeding $10,000 or an account exemption limit occur at the same time, the financial institution should treat the transactions in a manner consistent with its internal transaction posting procedures. For example, if a customer presents four separate deposits, at the same time, totalling over $10,000, the institution may report the transactions in item 48a to be one or four separate transactions. If the transactions are posted as four separate transactions the financial institution should enter the number 4 in item 48a and the number 1 in item 48b. If the transactions are posted as one transaction the institution should enter the 1 in both 48a and 48b. Reporting the transactions in this manner will guarantee the integrity of the paper trail being created, that is, the number of transactions reported on the CTR will be the same as the number of transactions showing in the institution's records.

These situations should be differentiated from those cases where separate transactions occur at different times during the same business day, and which, when aggregated, exceed $10,000 or the exemption limit. For instance, if the same or another individual conducts two of the same type of transactions at different times during the same business day at two different branches of the financial institution on behalf of the same person, and the institution has knowledge that the transactions occurred and exceed $10,000 or the exemption limit, then the financial institution must enter the number 2 in items 48a and 48b.

Examples and Application of Law to Examples

Example No. 1

Dorothy Fishback presents a teller with three cash deposits to the same account, at the same time, in amounts of $5,000, $6,000, and $8,500 requesting that the deposits be posted to the account separately. It is the bank's procedure to post the transactions separately. A CTR is completed while the customer is at the teller window.

Application of Law to Example No. 1

A CTR is completed based upon the information obtained at the time Dorothy Fishback presents the multiple transactions. Item 3d would not be checked on the CTR because all of the information in items 4 through 15 is being provided contemporaneously with the transaction. As it is the bank's procedure to post the transactions separately, the number of transactions reported in item 48a would be 3 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions were conducted would be entered in item 48c.

Example No. 2

Andrew Weiner makes a $7,000 cash deposit to his account at ABC Federal Savings Bank. Later the same day, Mr. Weiner returns to the same teller and deposits $5,000 in cash to a different account. At the time Mr. Weiner makes the second deposit, the teller realizes that the two deposits exceed $10,000 and prepares a CTR obtaining all of the necessary identifying information directly from Mr. Weiner.

Application of Law to Example No. 2

Even though the two transactions were conducted at different times during the same business day, Mr. Weiner conducted both

transactions at the same place and the appropriate identifying information was obtained by the teller at the time of the second transaction. Item 3d would not be checked on the CTR. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the location where the transactions took place would be entered in item 48c.

Example No. 3

Internal auditor Mike Pelzer is reviewing the daily cash transactions report for People's Bank and notices that five cash deposits were made the previous day to account #12345. The total of the deposits is $25,000 and they were made at three different offices of the bank. Mike researches the account data base and finds that the account belongs to a department store and that the account is exempted for deposits up to $17,000 per day. Each of the five transactions was under $17,000.

Application of Law to Example No. 3

Having reviewed the report of aggregated transactions, Mike Pelzer has knowledge that transactions exceeding the account exemption limit have occurred during a single business day. A CTR must be filed. People's Bank is encouraged to make a reasonable effort to provide the information for items 4 through 15 on the CTR. Such efforts could include a search of the institution's records or a phone call to the department store to identify the persons that conducted the transactions. If all of the information is not contained in the institution's records or otherwise obtained, item 3d must be checked. The number of transactions reported in item 48a must be 5 and the number of branches reported in 48b would be 3. The zip codes for the three locations where the transactions occurred must be entered in item 48c.

Example No. 4

Mrs. Saunders makes a cash withdrawal, for $4,000, from a joint savings account she owns with her husband. That day her husband, Mr. Saunders, withdraws $7,000 cash using the same teller. Realizing that the withdrawals exceed $10,000, the teller obtains identifying information on Mr. Saunders required to complete a CTR.

Application of Law to Example No. 4

In this case, item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 5

On another day, Mrs. Saunders makes a deposit of $3,000 cash and no information required for Part I of the CTR is requested of her. She is followed later the same day by her husband, Mr. Saunders, who deposits $12,000 in currency and who provides all data required to complete Part I for himself.

Application of Law to Example No. 5

Item 2 on the CTR must be checked because the teller knows that more than one person conducted the transactions. Information on Mr. Saunders would appear in Part I and the bank is encouraged to ask him for, or to check its records for the required identifying information on Mrs. Saunders. If after taking reasonable efforts to locate the desired information, all of the required information is not found on file in the institution's records or is not otherwise obtained, box 3d must be checked to indicate that all information is not being provided because multiple transactions are being reported. Whatever information on Mrs. Saunders is contained in the records of the institution must be reported in the continuation of Part I on the back of Form 4789. The number of transactions reported in item 48a must be 2 and the number of branches reported in item 48b would be 1. The zip code for the branch where the transactions took place would be entered in item 48c.

Example No. 6

A review of First Federal Bank's daily cash transactions report for a given day indicates several cash deposits to a single account totaling more than $10,000. Two separate deposits were made in the night depository at the institution's main office, and two deposits were conducted at the teller windows of two other branch locations. Each deposit was under $10,000.

Application of Law to Example No. 6

Item 3c should be checked to indicate that identifying information is not provided because transactions were received through the night deposit box. If the tellers involved with the two face to face deposits remember who

conducted the transactions, institution records can be checked for identifying information. If the records contain some of the information required by items 4 through 15, that information must be provided, and item 3d must be checked to indicate that some information is missing because multiple transactions are being reported and the information was not obtained at the time the transactions were conducted. Item 48a must indicate 4 transactions and item 48b must indicate 3 locations. The zip code of those locations would be provided in item 48c.

[53 FR 40064, Oct. 13, 1988, as amended at 54 FR 21214, May 17, 1989; 54 FR 30543, July 21, 1989; 55 FR 1022, Jan. 11, 1990; 58 FR 7048, Feb. 4, 1993. Redesignated and amended at 67 FR 9877, Mar. 4, 2002]

APPENDIX B TO PART 103—CERTIFICATION FOR PURPOSES OF SECTION 314(B) OF THE USA PATRIOT ACT AND 31 CFR 103.110

Certification for Purposes of Section 314(b) of the USA PATRIOT Act and 31 CFR 103.110

I hereby certify, on behalf of (insert name, address, and federal employer identification number (EIN) of financial institution or association of financial institutions)_____
_____
_____
_____ that:

(1) (i) The financial institution specified above is a "financial institution" as such term is defined in 31 CFR 103.110(a)(2), or (ii) The association specified above is an "association of financial institutions" as such term is defined in 31 CFR 103.110(a)(3) .

(2) The financial institution or association specified above intends, for a period of one (1) year beginning on the date of this certification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries, as permitted by section 314(b) of the USA PATRIOT Act of 2001 (Public Law 107-56) and the implementing regulations of the Department of the Treasury, Financial Crimes Enforcement Network (31 CFR 103.110).

(3) The financial institution or association of financial institutions specified above has established and will maintain adequate procedures to safeguard the security and confidentiality of such information.

(4) Information received by the above named financial institution or association pursuant to section 314(b) and 31 CFR 103.110 will not be used for any purpose other than as permitted by 31 CFR 103.110(c)(2).

(5) In the case of a financial institution, the primary federal regulator, if applicable, of the above named financial institution is _____.

(6) The following person may be contacted in connection with inquiries related to the information sharing under section 314(b) of the USA PATRIOT Act and 31 CFR 103.110:

NAME: _____
TITLE: _____
MAILING ADDRESS: _____
_____
_____
E-MAIL ADDRESS: _____
TELEPHONE NUMBER: _____
FACSIMILE NUMBER: _____

BY: _____
Name
_____
Title

Executed on this _____ day of _____, 200____.

[67 FR 9877, Mar. 4, 2002]

APPENDIX C TO PART 103—INTERPRETIVE RULES

RELEASE NO. 2004–01

This Interpretive Guidance sets forth our interpretation of the regulation requiring Money Services Businesses that are required to register with FinCEN to establish and maintain anti-money laundering programs. See 31 CFR 103.125. Specifically, this Interpretive Guidance clarifies that the anti-money laundering program regulation requires Money Services Businesses to establish adequate and appropriate policies, procedures, and controls commensurate with the risks of money laundering and the financing of terrorism posed by their relationship with foreign agents or foreign counterparties of the Money Services Business.[1]

Under existing Bank Secrecy Act regulations, we have defined Money Services Businesses to include five distinct types of financial services providers and the U.S. Postal Service: (1) Currency dealers or exchangers; (2) check cashers; (3) issuers of traveler's checks, money orders, or stored value; (4) sellers or redeemers of traveler's checks, money orders, or stored value; and (5) money transmitters. See 31 CFR 103.11(uu). With limited exception, Money Services Businesses are subject to the full range of Bank Secrecy Act regulatory controls, including the anti-money laundering program rule, suspicious activity and currency transaction reporting rules, and various other identification and recordkeeping rules.[2]

Many Money Services Businesses, including the vast majority of money transmitters in the United States, operate through a system of agents both domestically and internationally. We estimate that a substantial majority of all cross-border remittances by money transmitters are conducted using this model. Other Money Services Businesses may operate through more informal relationships, such as the trust-based hawala system.[3] Regardless of the form of the relationship between a Money Services Business and its foreign agents or counterparties, Money Services Business transactions generally are initiated by customers seeking to send or receive funds, cash checks, buy or sell money orders or traveler's checks, or buy or sell currency. The customer directs the Money Services Business to execute the transactions; the Money Services Business does not unilaterally determine the recipient of its products or services. Although the customer can use the Money Services Business' services, the customer does not typically establish an account relationship with the Money Services Business. The focus of this Interpretive Guidance is the establishment of, and ongoing relationship between, a Money Services Business and its foreign agent or foreign counterparty that facilitates the flow of funds cross-border into and out of the United States on behalf of customers.

THE CROSS-BORDER FLOW OF FUNDS THROUGH MONEY SERVICES BUSINESSES AND ASSOCIATED RISKS

Ensuring that financial institutions based in the United States establish and apply adequate and appropriate policies, procedures, and controls in their anti-money laundering compliance programs to protect the international gateways to the U.S. financial system is an essential element of the Bank Secrecy Act regulatory regime. This Interpretive Guidance forms a part of our comprehensive approach to accomplishing this

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[1] This Interpretive Guidance focuses on the need to control risks arising out of the relationship between a Money Service Business and its foreign counterparty or agent. Under existing FinCEN regulations, only Money Service Business principals are required to register with FinCEN, and only Money Service Business principals establish the counterparty or agency relationships. 31 CFR 103.41. Accordingly, this Interpretive Guidance only applies to those Money Service Businesses required to register with FinCEN, that is, only those Money Service Businesses that may have a relationship with a foreign agent or counterparty.

[2] *See* 31 CFR 103.125 (requirement for Money Service Businesses to establish and maintain an anti-money laundering compliance program); 31 CFR 103.22 (requirement for Money Service Businesses to file currency transaction reports); 31 CFR 103.20 (requirement for Money Service Businesses, other than check cashers and issuers, sellers, or redeemers of stored value, to file suspicious activity reports); 31 CFR 103.29 (requirement for Money Service Businesses that sell money orders, traveler's checks, or other instruments for cash to verify the identity of the customer and create and maintain a record of each cash purchase between $3,000 and $10,000, inclusive); 31 CFR 103.33(f) (requirement for Money Service Businesses that send or accept instructions to transmit funds of $3,000 or more to verify the identity of the sender or receiver and create and maintain a record of the transmittal regardless of the method of payment); and 31 CFR 103.37 (requirement for currency exchangers to create and maintain a record of each exchange of currency in excess of $1,000).

[3] For an analysis of informal value transfer systems, see FinCEN's Report to Congress Pursuant to Section 359 of the Patriot Act, available on *www.fincen.gov*.

goal. To the extent Money Services Businesses utilize relationships with foreign agents or counterparties to facilitate the movement of funds into or out of the United States, they must take reasonable steps to guard against the flow of illicit funds, or the flow of funds from legitimate sources to persons seeking to use those funds for illicit purposes, through such relationships.

The money laundering or terrorism financing risks associated with foreign agents or counterparties are similar to the risks presented by domestic agents of Money Services Businesses. For example, the foreign agent of the domestic Money Services Business may have lax anti-money laundering policies, procedures, and internal controls, or actually may be complicit with those seeking to move illicit funds. In some instances, the risk with foreign agents can be greater than with domestic agents because foreign agents are not subject to the Bank Secrecy Act regulatory regime; the extent to which they are subject to anti-money laundering regulation, and the quality of that regulation, will vary with the jurisdictions in which they are located.

There are a variety of ways in which a Money Services Business may be susceptible to the unwitting facilitation of money laundering through foreign agents or counterparties. For example, our review of Bank Secrecy Act data revealed several instances of suspected criminal activity—detected by existing anti-money laundering and suspicious activity reporting programs of Money Services Businesses and banks—where foreign agents of Money Services Business have engaged in bulk sales of sequentially numbered, U.S. denominated traveler's checks or blocks of money orders, to one or two individuals. The individuals involved frequently purchased the instruments on multiple dates and in different locations, structuring the purchases to avoid reporting thresholds and issuer limits on daily instrument sales. The instruments usually had illegible signatures or failed to designate a beneficiary or payor. The instruments were then negotiated with one or more dealers in goods, such as diamonds, gems, or precious metals, deposited in foreign banks, and cleared through U.S. banks. In such cases, the clearing banks were so far removed from the transactions that they could not trace back or screen either the intervening transactions or the individuals involved in the transactions.

A case involving suspicious activity in a Money Services Business' domestic agent provides a further example of the type of high-risk activity that also may be engaged in by foreign agents or counterparties. In this instance, the domestic Money Service Business had policies, procedures, and controls that facilitated the detection of illicit activity at the agent. A group of six customers entered a money transmitter agent at approximately five-minute intervals to send the same structured amounts ($2,500) to the same receiver in a foreign country. Several weeks later, another group of six customers entered the same agent location and conducted an identical pattern of successive $2,500 transfers (a few minutes apart) to the same recipient in the same foreign country as the first set of transactions. Some of the individuals in the second group had the same last names as customers in the first group. Additional suspicious activity reports filed by the primary Money Services Business identified several other groups of customers initiating money transfers at this same agent business location, in the same manner, and in the same overall time frame. This activity by an agent drew the scrutiny of the Money Services Business, and in addition to the filing of suspicious activity reports, led to the termination of the relationship of the Money Services Business with the agent.

These examples of illicit activity occurring at the agents of Money Services Businesses underscore the need for Money Services Businesses to include, as a part of their anti-money laundering programs, procedures, policies, and controls to govern relationships with foreign agents and counterparties to enable the Money Services Business to perform the appropriate level of suspicious activity and risk monitoring. We believe that this obligation is an essential part of each Money Services Business' existing obligation under 31 CFR 103.125 to develop and implement an effective anti-money laundering program.[4] This Interpretive Guidance will aid Money Services Businesses in adopting appropriate risk-based policies, procedures, and controls on cross-border relationships with foreign agents and counterparties.

ANTI-MONEY LAUNDERING PROGRAM ELEMENTS RELATING TO FOREIGN AGENTS AND COUNTERPARTIES

Under 31 CFR 103.125(a), Money Services Businesses are required to develop, implement, and maintain an effective anti-money laundering program reasonably designed to prevent the Money Services Business from being used to facilitate money laundering and the financing of terrorist activities. The program must be commensurate with the risks posed by the location, size, nature, and volume of the financial services provided by the Money Services Business. Additionally, the program must incorporate policies, procedures, and controls reasonably designed to

[4] FinCEN previously interpreted 31 CFR 103.125 to impose a similar obligation on a money transmitter with respect to its domestic agents. See Matter of Western Union, No. 2003–2 (Mar. 6, 2003) *(www.fincen.gov).*

assure compliance with the Bank Secrecy Act and implementing regulations.

With respect to Money Services Businesses that utilize foreign agents or counterparties, a Money Services Business' anti-money laundering program must include risk-based policies, procedures, and controls designed to identify and minimize money laundering and terrorist financing risks associated with foreign agents and counterparties that facilitate the flow of funds into and out of the United States. The program must be aimed at preventing the products and services of the Money Services Business from being used to facilitate money laundering or terrorist financing through these relationships and detecting the use of these products and services for money laundering or terrorist financing by the Money Services Business or agent. Relevant risk factors may include, but are not limited to:

- The foreign agent or counterparty's location and jurisdiction of organization, chartering, or licensing. This would include considering the extent to which the relevant jurisdiction is internationally recognized as presenting a greater risk for money laundering or is considered to have more robust anti-money laundering standards.
- The ownership of the foreign agent or counterparty. This includes whether the owners are known, upon reasonable inquiry, to be associated with criminal conduct or terrorism. For example, have the individuals been designated by Treasury's Office of Foreign Assets Control as Specially Designated Nationals or Blocked Persons (*i.e.,* involvement in terrorism, drug trafficking, or the proliferation of weapons of mass destruction)?
- The extent to which the foreign agent or counterparty is subject to anti-money laundering requirements in its jurisdiction and whether it has established such controls.
- Any information known or readily available to the Money Services Business about the foreign agent or counterparty's anti-money laundering record, including public information in industry guides, periodicals, and major publications.
- The nature of the foreign agent or counterparty's business, the markets it serves, and the extent to which its business and the markets it serves present an increased risk for money laundering or terrorist financing.
- The types and purpose of services to be provided to, and anticipated activity with, the foreign agent or counterparty.
- The nature and duration of the Money Services Business' relationship with the foreign agent or counterparty.

Specifically, a Money Services Business' anti-money laundering program should include procedures for the following:

1. Conduct of Due Diligence on Foreign Agents and Counterparties

Money Services Businesses should establish procedures for conducting reasonable, risk-based due diligence on potential and existing foreign agents and counterparties to help ensure that such foreign agents and counterparties are not themselves complicit in illegal activity involving the Money Services Business' products and services, and that they have in place appropriate anti-money laundering controls to guard against the abuse of the Money Services Business' products and services. Such due diligence must, at a minimum, include reasonable procedures to identify the owners of the Money Services Business' foreign agents and counterparties, as well as to evaluate, on an ongoing basis, the operations of those foreign agents and counterparties and their implementation of policies, procedures, and controls reasonably designed to help assure that the Money Services Business' products and services are not subject to abuse by the foreign agent's or counterparty's customers, employees, or contractors.[5] The extent of the due diligence required will depend on a variety of factors specific to each agent or counterparty. We expect Money Services Businesses to assess such risks and perform due diligence in a manner consistent with that risk, in light of the availability of information.

2. Risk-based Monitoring of Foreign Agents or Counterparties

In addition to the due diligence described above, in order to detect and report suspected money laundering or terrorist financing, Money Services Businesses should establish procedures for risk-based monitoring and review of transactions from, to, or through the United States that are conducted through foreign agents and counterparties.[6] Such procedures should also

[5] Our anti-money laundering program rule, 31 CFR 103.125(d)(iii), permits Money Service Businesses to satisfy this last requirement with regard to their domestic agents (which are also Money Service Businesses under the BSA regulations), by allocating responsibility for the program to their agents. Such an allocation, however, does not relieve a Money Service Business from ultimate responsibility for establishing and maintaining an effective anti-money laundering program. *Id.*

[6] Nothing in this Interpretive Guidance is intended to require Money Service Businesses to monitor or review, for purposes of the Bank Secrecy Act, transactions or activities of foreign agents or counterparties that occur entirely outside of the United

Continued

focus on identifying material changes in the agent's risk profile, such as a change in ownership, business, or the regulatory scrutiny to which it is subject.

The review of transactions should enable the Money Services Business to identify and, where appropriate, report as suspicious such occurrences as: instances of unusual wire activity, bulk sales or purchases of sequentially numbered instruments, multiple purchases or sales that appear to be structured, and illegible or missing customer information. Additionally, Money Services Businesses should establish procedures to assure that their foreign agents or counterparties are effectively implementing an anti-money laundering program and to discern obvious breakdowns in the implementation of the program by the foreign agent or counterparty.

Similarly, money transmitters should have procedures in place to enable them to review foreign agent or counterparty activity for signs of structuring or unnecessarily complex transmissions through multiple jurisdictions that may be indicative of layering. Such procedures should also enable them to discern attempts to evade identification or other requirements, whether imposed by applicable law or by the Money Services Business' own internal policies. Activity by agents or counterparties that appears aimed at evading the Money Services Business' own controls can be indicative of complicity in illicit conduct; this activity must be scrutinized, reported as appropriate, and corrective action taken as warranted.

3. Corrective Action and Termination

Money Services Businesses should have procedures for responding to foreign agents or counterparties that present unreasonable risks of money laundering or the financing of terrorism. Such procedures should provide for the implementation of corrective action on the part of the foreign agent or counterparty or for the termination of the relationship with any foreign agent or counterparty that the Money Services Business determines poses an unacceptable risk of money laundering or terrorist financing, or that has demonstrated systemic, willful, or repeated lapses in compliance with the Money Services Business' own anti-money laundering procedures or requirements.

While Money Services Businesses may already have implemented some or all of the procedures described in this Interpretive Guidance as a part of their anti-money laundering programs, we wish to provide a reasonable period of time for all affected Money Services Businesses to assess their operations, review their existing policies and programs for compliance with this Advisory, and implement any additional necessary changes. We will expect full compliance with this Interpretive Release within 180 days.

Finally, we are mindful of the potential impact that this Interpretive Release may have on continuing efforts to bring informal value transfer systems into compliance with the existing regulatory framework of the Bank Secrecy Act. Experience has demonstrated the challenges in securing compliance by, for instance, hawalas and other informal value transfer systems. Further specification of Bank Secrecy Act compliance obligations carries with it the risk of driving these businesses underground, thereby undermining our ultimate regulatory goals. On balance, however, we believe that outlining the requirements for dealing with foreign agents and counterparties, including informal networks, is appropriate in light of the risks of money laundering and the financing of terrorism.

RELEASE NO. 2004–02

This FinCEN interpretive guidance clarifies that reports filed with the Department of the Treasury's Office of Foreign Assets Control (''OFAC'') of blocked transactions with Specially Designated Global Terrorists, Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Narcotics Trafficker Kingpins, and Specially Designated Narcotics Traffickers will be deemed by FinCEN to fulfill the requirement to file suspicious activity reports on such transactions for purposes of FinCEN's suspicious activity reporting rules. However, the filing of a blocking report with OFAC will not be deemed to satisfy a financial institution's obligation to file a suspicious activity report if the transactions would be reportable under FinCEN's suspicious activity reporting rules even if there were no OFAC match. Moreover, to the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information.

Background

The Bank Secrecy Act authorizes the Secretary of the Treasury to require financial institutions to report ''any suspicious transaction relevant to a possible violation of law or regulation.''[1] Under this authority, FinCEN has issued regulations requiring banks, securities broker-dealers, introducing

States and do not flow from, to, or through the United States.

[1] *See* 31 U.S.C. 5318(g)(1).

brokers, casinos, futures commission merchants, and money services businesses, to report suspicious activity that meets a particular dollar threshold.[2] Each rule includes filing procedures requiring that a suspicious transaction shall be reported by completing a suspicious activity report and filing it with FinCEN in a central location to be determined by FinCEN. Generally, the rules provide a financial institution with thirty days from the date of the initial detection of suspicious activity to file a report, with an additional thirty days if the financial institution is unable to identify a suspect. Reports are filed on forms developed for each industry subject to the reporting requirement.[3]

OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC's Reporting, Procedures and Penalties Regulations at 31 CFR part 501 require U.S. financial institutions to block and file reports on accounts, payments, or transfers in which an OFAC-designated country, entity, or individual has any interest.[4] These reports must be filed with OFAC within ten business days of the blocking of the property.[5]

Prior Guidance

Transactions involving an individual or entity designated on OFAC's list of Specially Designated Nationals and Blocked Persons as a global terrorist, terrorist, terrorist organization, narcotics trafficker, or narcotics kingpin[6] may be in furtherance of a criminal act, and therefore relevant to a possible violation of law. Thus, blocking reports related to such persons also describe potentially suspicious activity. In the November 2003 edition of its ''SAR Activity Review,''[7] FinCEN instructed financial institutions to file suspicious activity reports on verified matches of persons designated by OFAC. While this guidance ensured that the relevant information would be available to law enforcement, it also resulted in financial institutions being required to make two separate filings with the Department of the Treasury—one with OFAC pursuant to its Reporting, Procedures and Penalties Regulations, and one with FinCEN pursuant to its suspicious activity reporting rules.

Revised Guidance

FinCEN is hereby revising its prior guidance to eliminate the need for duplicative reporting in cases where a financial institution identifies a verified match with individuals or entities designated by OFAC. As of the date of publication of this interpretation, FinCEN will deem its rules requiring the filing of suspicious activity reports to be satisfied by the filing of a blocking report with OFAC in accordance with OFAC's Reporting, Penalties and Procedures Regulations. OFAC will then provide the information to FinCEN for inclusion in the suspicious activity reporting database where it will be made available to law enforcement. This construction of the suspicious activity reporting rules will serve the public interest by enabling FinCEN to obtain and provide potentially important information about terrorists and major drug traffickers to law enforcement on an expedited basis without imposing duplicative reporting burdens on the regulated industry.

Accordingly, a financial institution that files a blocking report with OFAC due to the involvement in a transaction or account of a person designated as a Specially Designated Global Terrorist, a Specially Designated Terrorist, a Foreign Terrorist Organization, a Specially Designated Narcotics Trafficker Kingpin, or a Specially Designated Narcotics Trafficker, shall be deemed to have simultaneously filed a suspicious activity report on the fact of the match with FinCEN, in satisfaction of the requirements of the applicable suspicious activity reporting rule. This interpretation does not affect a financial institution's obligation to identify and report suspicious activity beyond the fact of the OFAC match. To the extent that the financial institution is in possession of information not included on the blocking report filed with OFAC, a separate suspicious activity report should be filed with FinCEN including that information. This interpretation also does not affect a financial institution's obligation to file a suspicious activity report even if it has filed a blocking report with OFAC, to the extent that the facts and circumstances surrounding the OFAC match

[2] See 31 CFR 103.17–21. The threshold for most financial institutions is $5,000; transactions conducted at points of sale for money services businesses have a reporting threshold of $2,000. See 31 CFR 103.20.

[3] See TD F 90–22.47 (depository institutions); TD F 22.56 (money services businesses); FinCEN Form 101 (securities and futures industries); FinCEN Form 102 (casinos and card clubs).

[4] 31 CFR 501.603.

[5] 31 CFR 501.603(b)(1)(i).

[6] The specific designations are as follows: Specially designated terrorist; foreign terrorist organization; specially designated global terrorist; specially designated narcotics trafficker; specially designated narcotics trafficker kingpin. *See* 31 CFR parts 595, 597, 598 and the Foreign Narcotics Kingpin Act, 21 U.S.C. 1901–08, 8 U.S.C. 1182. These categories of designations are subject solely to blocking requirements.

[7] Issue 6 (Nov. 2003).

are independently suspicious—and are otherwise required to be reported under existing FinCEN regulations. In those cases, the OFAC blocking report would not satisfy a financial institution's suspicious activity report filing obligation.

Further, nothing in this interpretation is intended to preclude a financial institution from filing a suspicious activity report to disclose additional information concerning the OFAC match,[8] nor does it preclude a financial institution from filing a suspicious activity report if the financial institution has reason to believe that terrorism or drug trafficking is taking place, even though there is no OFAC match. Finally, this interpretation does not apply to blocking reports filed to report transactions and accounts involving persons owned by, or who are nationals of, countries subject to OFAC-administered sanctions programs. Such transactions should be reported on suspicious activity reports under the suspicious activity reporting rules if, and only, if, the activity itself appears to be suspicious under the criteria established by the suspicious activity reporting rules.

[69 FR 74439, Dec. 14, 2004, as amended at 69 FR 76847, Dec. 23, 2004]

[8] Such a report would be a voluntary report under the statute and regulations. *See* 31 U.S.C. 5318(g)(3) (extending safe harbor protection from civil liability to voluntary filings).

PART 123 [RESERVED]

PART 128—REPORTING OF INTERNATIONAL CAPITAL AND FOREIGN-CURRENCY TRANSACTIONS AND POSITIONS

Subpart A—General Information

Subpart B—Reports on International Capital Transactions and Positions

Subpart C—Reports on Foreign Currency Positions

AUTHORITY: 22 U.S.C. 286f and 3101 *et seq.*; 31 U.S.C. 5315 and 5321.

SOURCE: 58 FR 58495, Nov. 2, 1993, unless otherwise noted.

Subpart A—General Information

§ 128.1 General reporting requirements.

(a) *International capital transactions and positions.* (1) In order to implement the International Investment and Trade in Services Survey Act, as amended (22 U.S.C. 3101 *et seq.*); and E.O. 11961, and to obtain information requested by the International Monetary Fund under the articles of agreement of the Fund pursuant to section 8(a) of the Bretton Woods Agreements Act (22 U.S.C. 286f) and E.O. 10033, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) United States claims on, and liabilities to, foreigners;

(ii) Transactions in securities and other financial assets with foreigners; and

(iii) The monetary reserves of the United States.

(2) Data pertaining to direct investment transactions are not required to be reported under this Part.

(3) Reports shall be made in such manner and at such intervals as specified by the Secretary of the Treasury. See subpart B of this part for additional requirements concerning these reports.

(b) *Foreign currency positions.* (1) In order to provide data on the nature and source of flows of mobile capital, including transactions by large United States business enterprises (as determined by the Secretary) and their foreign affiliates as required by 31 U.S.C. 5315, persons subject to the jurisdiction of the United States are required to report information pertaining to—

(i) Transactions in foreign exchange;

(ii) Transfers of credit that are, in whole or part, denominated in a foreign currency; and

(iii) The creation or acquisition of claims that reference transactions, holdings, or evaluations of foreign exchange.

(2) Reports shall be made in such manner and at such intervals as specified by the Secretary. See subpart C of this part for additional requirements concerning these reports.

(c) *Notice of reports.* Notice of reports required by this part, specification of persons required to file report, and forms to be used to file reports will be published in the FEDERAL REGISTER. Persons currently required to file reports shall continue to file such reports using existing Treasury International Capital Forms BL–1/BL–1(SA), BL–2/BL–2(SA), BL–3, BC/BC(SA), BQ–1, BQ–2, CM, CQ–1, CQ–2, S, and existing Treasury Foreign Currency Forms FC–1, FC–2, FC–3, and FC–4 until further notice is published in the FEDERAL REGISTER.

§ 128.2 Manner of reporting.

(a) *Methods of reporting*—(1) *Prescribed forms.* (i) Except as provided in § 128.2(a)(2), reports required by this part shall be made on forms prescribed by the Secretary. The forms and accompanying instructions will be published in accordance with § 128.1(c).