

April 21, 2003

FinCEN,  
P.O. Box 39,  
Vienna, Virginia 22183-0039,  
[regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov).

Re: ATTN: Conditional Exception Expiration

Ladies and Gentlemen:

The New York Clearing House Association L.L.C. (“The Clearing House”), the Securities Industry Association (“SIA”) and the American Bankers Association (“ABA”) (collectively, the “Associations”)<sup>1</sup> appreciate the opportunity to comment jointly on the notice (the “Notice”) issued by the Financial Crimes Enforcement Network (“FinCEN”) of the expiration on May 31, 2003 of a conditional exception (the “CIF Exception”) to certain requirements of the regulations promulgated under the Bank Secrecy Act, 31 C.F.R. § 103.33(g) (the “Travel Rule”).

The Associations and their member institutions are committed to assisting the Government in detecting and preventing money laundering and terrorist financing. Since the passage of the USA PATRIOT Act (the “Act”)<sup>2</sup>, we have worked diligently with the Department of the Treasury and other agencies to develop sound and effective rules to achieve these fundamental objectives. In some cases that has meant identifying regulatory requirements that we believe are less effective in the overall effort, so that resources can be used in more focused and ultimately more productive ways.

The Associations firmly believe that allowing the CIF Exception to expire would impose requirements on financial institutions that would serve little purpose, require substantial time to implement, and deflect resources away from other, more productive efforts (e.g., compliance with the Act’s new requirements). We, therefore,

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<sup>1</sup> See Annex A for a description of the Associations.

<sup>2</sup> Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56 (2001).

respectfully request that FinCEN make the CIF Exception permanent. At the very least, it should be extended indefinitely.

The Travel Rule, which was originally adopted in 1995, requires banks, securities firms, and other financial institutions to include, among other things, the “name and address” of the transmitter in transmittal orders for funds transfers of \$3,000 or more. The Travel Rule by its terms does not require use of the street address and was originally interpreted by the financial services industry as requiring the account name as opposed to the actual name. This interpretation was reinforced by a 1996 FinCEN advisory. In June of that year, FinCEN issued an advisory containing answers to a number of frequently asked questions (“FAQs”). The FAQs addressed the *recordkeeping* requirements for funds transfers rather than the Travel Rule, but FinCEN’s recognition that financial institutions might use “various classification schemes in connection with their funds transfer records,” suggested that this position could be equally applicable to the Travel Rule. FinCEN noted, however, that an institution “must be able to retrieve the records...based on its customer’s true name, rather than the code name or pseudonym.” With regard to addresses, FinCEN noted that “[b]anks should obtain a complete address including street information *when possible*” (emphasis added). FinCEN Advisory (June 1996).

Financial institutions were, however, alerted to a problem with this approach in January 1997, when FinCEN issued additional FAQs specifically addressed to the Travel Rule. In those FAQs, FinCEN indicated that when a customer uses a code name or pseudonym, or a hold mail account, the financial institution “must use the customer’s true name, and the customer’s address. The use of a code name, or pseudonym is prohibited.” FinCEN Advisory (Jan. 1997).

This caused considerable concern at banks and securities firms because their ability to comply with the Travel Rule required them to use links to their customer information files (“CIFs”), which could contain a customer’s P.O. box mailing address rather than a street address and an account name or “code name” rather than the customer’s complete, actual name. The use of street address and actual name would have required (and would today still require) significant reprogramming.

In January 1998, in response to these concerns of the banking and securities industries, FinCEN issued the CIF Exception to the Travel Rule (FinCEN Issuance 98-1) which allowed financial institutions to exclude from transmittal orders true name and street address information for transmitters; *provided* that certain conditions are met. These conditions were designed to ensure that the CIF Exception did not frustrate law enforcement and financial institution efforts to detect and prevent money laundering. For example, the transmitter’s financial institution itself must know and be able to associate the CIF information used in the transmittal order with the true name and street address of the transmitter of the order. As a result, the true name and street address

information is always known to the institution and readily available to law enforcement authorities through a variety of ways, including, if appropriate, a request for information under Section 314 of the Act.

The CIF Exception, which was originally scheduled to expire by its terms on May 31, 1999, was extended twice, first to May 31, 2001 and then to May 31, 2003. On March 7, 2003 FinCEN published notice of the expiration of the CIF Exception and requested comment on a number of issues, including whether any technological barriers to full compliance with the Travel Rule remain and whether the CIF Exception has had an adverse effect on law enforcement.

The problems of compliance with the Travel Rule without the availability of the CIF Exception remain. Inclusion of true name and street address information in transmittal orders for transmitters is not possible without significant reprogramming of systems. Moreover, we are not aware of any law enforcement needs that require elimination of the CIF Exception. Use of transmitter account or code names rather than actual names, and mailing addresses rather than street addresses, in transmittal orders has not, to the best of our knowledge, been a hindrance to law enforcement. In fact, our member institutions have had very few requests for the true name and address information from law enforcement authorities during the time the CIF Exception has been in effect. For these reasons, the deployment of the significant resources necessary to accomplish this reprogramming appears unjustified.

It is important to recognize that there are legitimate reasons for using account and code names and P.O. box addresses. In the financial services industry, business customers often maintain accounts with different names, *e.g.*, "ABC Payroll Account" or "ABC Disbursement Account." These account names are programmed into CIFs and must be included in transmittal orders so that proper crediting and debiting can occur. Code names also may be used when accounts are established for specific transactions, such as mergers and acquisitions. In those cases, the account may be named for the transaction rather than the transmitter. P.O. box addresses are common for business account holders and for individual account holders in rural areas.

Although the focus in the Notice is on pseudonyms in private banking accounts, our member institutions believe that these are only used in exceptional cases, and then for security or market sensitivity reasons. For example, an account holder may be a public figure and the inclusion of her name in association with her street address and account information could place her at increased risk. Another example would be the use of a code name for an accumulation account where the identification of the account holder could tip off the market to a particular trading strategy of a prominent firm or figure. In these cases there may be, as the Notice indicates, the potential for abuse, but we are not aware of any actual abuses in this area.

In cases involving use of the account name rather than the true name of the customer, inclusion of the full true name of the customer in transmittal orders would have to be in addition to the account name and would require additional space in the transmittor field. The same issue arises with the inclusion of street address information. Because it is necessary to include mailing address information in CIFs in order to assure that statements and other correspondence is sent to the correct address, the street address information would be an additional item in the transmittal order. Addition of this information would require significant reprogramming of systems and would have to be coordinated with payments systems operators and service providers, such as SWIFT, CHIPS and Fedwire.

Moreover, the systems changes required by the Act are overwhelming our member institutions' systems administrators. Treasury should view the changes required by the expiration of the CIF Exception in the broader context of the requirements of the Act and determine whether the costs and burdens of complying do not far outweigh the benefits to be gained.

The principal reason provided in the Notice for elimination of the CIF Exception is not any specific problem, but a more generalized concern about financial transparency in the aftermath of the September 11 attacks and passage of the Act. The Associations, of course, concur with the general desirability of transparency, but we believe there is already transparency in the Travel Rule and accompanying recordkeeping rules. True name and street address information is always accessible to law enforcement authorities, and, as a result of the Act, authorities now have additional mechanisms for obtaining this information. As mentioned, over the past five years, law enforcement authorities have rarely, if ever, availed themselves of the information.

In addition, the Notice asserts that "[t]he financial community has had a number of years to address the technological issues posed by the Travel Rule, and the major programming issues posed by year 2000 compliance are now well behind it." But what this does not take into account is that through multiple extensions of the CIF Exception, FinCEN has created an expectation that the CIF Exception would not be allowed to expire without additional discussion with the industry.

We also note that the FATF Interpretive Note to Special Recommendation VII (the "Note") is similar to the current Travel Rule, for domestic funds transfers, in providing that full transmittor information need not be included if it can be made available to appropriate authorities by other means. For cross-border transfers, the Note indicates that the name of the transmittor should be included, but it does not require a street address. As FATF recognizes, there should be a consistent international standard for international payments. We encourage Treasury to continue to work closely with FATF to assure that a consistent international standard is ultimately adopted.

The Associations appreciate the opportunity to comment on the Notice, and would be pleased to discuss any of the points made in this letter in more detail. Should you have any questions, please contact H. Rodgin Cohen or Elizabeth T. Davy of Sullivan & Cromwell at (212) 558-4000, Norman R. Nelson of The Clearing House at (212) 612-9205, Alan Sorcher of the SIA at (202) 296-9410 or John Byrne of the ABA at (202) 663-5029.

Sincerely,

American Bankers Association

Securities Industry Association

The New York Clearing House  
Association L.L.C.

cc: Wayne Abernathy  
David Aufhauser  
(U.S. Department of the Treasury)

## ANNEX A

1. The **American Bankers Association** brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership, which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks, makes ABA the largest banking trade association in the country.
2. The **Securities Industry Association**, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs more than 700,000 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2002, the industry generated \$214 billion in U.S. revenue and \$285 billion in global revenues. (More information about SIA is available on its home page: [www.sia.com](http://www.sia.com).)
3. **The New York Clearing House Association L.L.C.** is the nation's oldest and largest clearing house. It frequently takes positions on legal and regulatory issues that are of importance to the banking industry. The members of The Clearing House are: Bank of America, National Association; The Bank of New York; Bank One, National Association; Citibank, N.A.; Deutsche Bank Trust Company Americas; Fleet National Bank; HSBC Bank USA; JPMorgan Chase Bank; LaSalle Bank National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association. Members of The Clearing House's affiliate, The Clearing House Interbank Payments Company L.L.C., that participated in the preparation of this letter and support its views are American Express Bank Ltd. and UBS AG, U.S. branches.