



April 21, 2021

VIA Electronic Delivery Only

Michael Mosier, Acting Director,
Financial Crimes Enforcement Network,
P.O. Box 39,
Vienna, VA 22183
administrative.rulings@fincen.gov

Re: Request for an Administrative Ruling Pursuant to 31 CFR Part 1010 Subpart G to Exempt Regulated Financial Institutions from CTR Filing for Fulfillment of Institutions' Own Cash Order Needs

Dear Acting Director Mosier,

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 220 state and nationally chartered banks, savings and loan associations, and savings banks.

WBA has been made aware of recent bank examination findings made by the Federal Deposit Insurance Corporation ("FDIC") related to the filing requirement of the Financial Crimes Enforcement Network's ("FinCEN's") currency transaction reports ("CTRs") by banks in connection with the bank's own cash order shipments. FDIC has referred banks to seek instruction or exemption from FinCEN regarding the matter.

Request for Administrative Ruling

Question to be Answered

On behalf of its members, and pursuant to 31 CFR Part 1010 Subpart G, WBA requests FinCEN issue an administrative ruling providing an exemption for a federally-regulated financial institution ("FRFI") from completing CTR filings for its own cash order and cash pick-up shipments when the FRFI's shipment is performed by a registered money services business ("MSB") providing armored car services ("ACS") that complies with its own CTR filing of the FRFI's cash shipments and has created and follows its own robust Bank Secrecy Act ("BSA") and anti-money laundering ("AML") policies.

To the best of WBA's knowledge and belief, this request is not applicable to any ongoing state or Federal investigation, litigation, grand jury proceeding, or proceeding before any other governmental body involving either the requestor, any other party to the subject transaction, or any other party with whom the requestor has an agency relationship.

Description of the Situation for Ruling

WBA believes FinCEN is familiar with the fact pattern outlined herein due to many FRFIs making inquiries to FinCEN for instruction regarding how to complete FinCEN's CTR form for filing.

As shared by WBA's members, FRFIs enter into agreements with vendors for the purchase and sale of cash and coin. Pursuant to the agreement, FRFIs pay for their currency purchased through wire drawdowns from an account designed by each FRFI. Also, each FRFI's account is credited for currency sales through automated clearinghouse ("ACHs") transactions. The agreement also provides for the delivery and pickup of cash or coin order and armored car support.

While WBA does not believe the above subject situation to be hypothetical, we provide the following example to further substantiate our request upon material facts:

As shared by WBA's members, FRFIs enter into agreements with vendors, such as Thillens, Inc. ("Thillens") for the purchase and sale of cash and coin. Pursuant to the agreement, FRFIs pay for their currency purchased through wire drawdowns from an account designed by each FRFI. Also, each FRFI's account is credited for currency sales through ACHs transactions. The agreement also provides for the delivery and pickup of cash or coin order and armored car support.

According to the company's website, Thillens provides armored car services "to financial institutions, the video gaming business, ATM locations, Interactive Teller Machines at banks, and the retail market." The company's home base includes all of Wisconsin and Illinois. It is a registered money services business ("MSB") with FinCEN.

Again, due to the existence of agreements with Thillens, and other vendors, WBA does not believe the subject situation to be hypothetical. However, WBA provides the following comments below, justifying why the subject situation warrants the issuance of a ruling.

Justification for Administrative Ruling

General CTR Filing Requirement and Past Exemptions/Exceptions

WBA and its members recognize the requirement¹ that financial institutions are 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. BSA/AML rules and past FinCEN rulings further instruct what information needs to be included in the CTR filing.

WBA and its members also recognize that FinCEN has the authority to make exceptions and exemptions to the requirements under 31 CFR Chapter X². The exceptions and exemptions may be conditional or unconditional, may apply to particular persons or class of persons, and may be only to the extent of any limit expressly stated in an exemptive determination. The situation for this request for ruling involves certain ACS transactions.

In recent past, FinCEN released FIN-2013-R001³ regarding the treatment of ACS transactions conducted on behalf of financial institution customers or third parties for CTR purposes. The ruling sets forth a number of conditions which must be met when a financial institution's

¹ 31 CFR §§ 1010.311 and 1010.313.

² 31 CFR § 1010.970.

³ See FIN-2013-R001, "Treatment of Armored Car Service Transactions Conducted on Behalf of Financial Institution Customers or Third Parties for Currency Transaction Report Purposes," (July 12, 2013).

customer, pursuant to that customer's instructions or a third party, has contracted with an ACS for the physical delivery of cash to or from the financial institution.

In 2014, FinCEN released FIN-2014-R010⁴ regarding the application of FinCEN regulations to currency transporters, including ACS. Within the ruling, FinCEN articulated how a shipment may be exempted because the shipper is a FRFI, how a currency transporter may be eligible for an exemption when acting on instructions from a shipper, and how a conditional exemption may be available when a shipper acts on behalf of a current originator.

While FinCEN has issued the above, past exemptive relief for completion of CTRs on certain ACS transactions, the situation for this request for ruling is fundamentally different. Accordingly, a separate and distinct exemption is justified, and so requested.

Current Exemption Request

WBA requests that FinCEN issue a new exemption to CTR filing for the situation described in the subject situation for administrative ruling given the fact that the transactions outlined are structured differently from transactions outlined in past rulings and, furthermore, given the fact that the two parties involved in the transactions are FRFIs and a registered MSB which files CTRs for each cash shipment performed for its FRFI clients, as applicable.

As recognized by FinCEN in FIN-2014-R10, FRFIs are required to have robust BSA/AML programs, have full knowledge of requirements of BSA regulation requirements, and are subject to "stringent supervision and examination process at the state and Federal level with respect to both the adequacy of their AML programs and their compliance with BSA and other regulatory requirements."

Just as rigid in supervisory oversight, is agency examination of FRFIs' selection, contract structuring and review, and oversight of their third-party service providers via the agencies' third-party vendor management requirements⁵. Supervisory examination would include the review and scrutiny of an FRFI's monitoring of its ACS provider.

Regarding the subject situation for which the ruling is requested, WBA anticipates that FinCEN's review of the request is likely to focus upon the fact that cash shipments for FRFI branch location(s) are fulfilled via wire and ACH transactions through identified accounts with the registered MBS rather than from a Federal Reserve Bank or the FRFIs' correspondent account. However, this fact should not be an eliminating factor given the fact that the two parties involved in the transaction are regulated and examined entities—the FRFIs by state and federal prudential financial regulators, and the registered MSB by state regulators and FinCEN itself.

WBA recognizes that a non-bank financial institution is not required to file CTRs under 31 CFR §1010.311 with respect to a currency transaction between an institution and a commercial bank⁶. However, in these transactions, a registered MSB has filed CTRs, when applicable, for

⁴ See FIN-2014-R010, "Administrative Ruling on the Application for FinCEN Regulations to Currency Transporters, Including Armored Car Services, and Exemptive Relief," (September 24, 2014).

⁵ See FIL-44-2008, "Third-Party Risk Guidance for Managing Third-Party Risk," (June 6, 2008, as amended). See OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," (October 30, 2013, as amended). See FRB SR 13-19/CA 13-21, "Guidance on Managing Outsourcing Risk," (December 5, 2013, as amended).

⁶ 31 CFR §1010.315.

those cash shipments it conducts on behalf of its FRFI customers. FinCEN would know of these CTR filings through its own scrutiny and oversight of the registered MSB.

WBA is aware that not all registered MSBs voluntarily file CTRs when not otherwise required by regulation or have robust BSA/AML policies. However, FinCEN should not summarily discount the efforts of a registered MSB that does file applicable CTRs for the cash shipments it has fulfilled for its FRFI clients and does have a robust BSA/AML program. Nor should FinCEN disregard the additional layers of state and federal supervisory scrutiny and routine examination of FRFIs' BSA/AML policies and other relevant regulations. Just as FinCEN has instructed FRFIs to not treat MSBs in a wholesale, one-size-is-all fashion, but are to instead base account relationships with MSBs on a case-by-case risk-focused basis, so too should FinCEN⁷. In its considerations of CTR filing exemptions, FinCEN should take into consideration that an MSB, in its ACS functions, files CTRs for cash shipments it fulfills for its FRFI clients and has implemented robust BSA/AML policies.

Conclusion

FRFIs and registered MSBs are regulated entities subject to state and federal supervisory scrutiny and examination for compliance with BSA and AML laws and regulations. Additionally, FRFIs face the same robust standards for their selection of third-party service providers and their management thereof.

Because of the various layers of supervisory oversight and regulation, WBA requests FinCEN issue an administrative ruling exempting FRFIs from completing CTR filings for its own cash order and cash pick-up shipments when the FRFI's shipment is performed by a registered MSB that complies with its own CTR filing of the FRFI's cash shipments and has created and follows its own robust BSA and AML policies. If FinCEN declines to provide such an exemption, WBA requests FinCEN provide full instruction for completion of the CTR form as the scenario for placing and shipping an institutions own cash shipment is not neatly accommodated for within the form itself or its instructions, nor are the filings able to be completed electronically, as FinCEN's own reporting system does not accommodate the filings.

Furthermore, should FinCEN decline to provide an exemption, WBA requests that FinCEN not require back filing of past CTRs for the transactions as described in the subject situation of this request. These transactions provide no money laundering risk nor safety or soundness risk to the financial institution, and the registered MSB has actively filed CTRs for all reportable transactions it conducted on behalf of the federally-regulated financial institutions' cash order needs.

WBA appreciates your consideration of this matter.

Sincerely,



Rose Oswald Poels
President/CEO

⁷ See "FinCEN Statement on Providing Banking Services to Money Services Businesses," (November 10, 2014).