

(Recommendation 15). The recommendation applies equally to banks and non-banks.⁹

Extending counter-money laundering controls to “non-traditional” financial institutions, not simply to banks, is necessary both to ensure fair competition in the marketplace and because non-bank providers of financial services as well as depository institutions are an attractive mechanism for, and are threatened by, money launderers. *See, e.g., Financial Action Task Force Annual Report, supra, Annex 1* (Recommendation 8). For example, the international consensus is that currency dealers and exchangers are vulnerable to abuse not only by money launderers but also by those wishing to finance terrorist activity. On October 31, 2001, FATF issued its *Special Recommendations on Terrorist Financing*. Special Recommendation Four provides that:

[i]f financial institutions, or other businesses or entities subject to anti-money laundering obligations, suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations, they should be required to report promptly their suspicions to the competent authorities.

For purposes of FATF’s Special Recommendation Four, the term “financial institutions” is intended to refer to both banks and non-bank financial institutions including, among other non-bank financial institutions, bureaux de change.¹⁰ On December 4, 2001, the European Parliament and the Council of the European Union issued Directive 2001/97/EC amending *Directive on Prevention of the Use of the Financial System for the Purpose of Money Laundering* for the purpose of, among other things, reinforcing that anti-money laundering provisions

⁹ This recommendation revises the original recommendation, issued in 1990, that required institutions to be either “permitted or required” to make such reports. (Emphasis supplied.) The revised recommendation reflects the international consensus that a mandatory suspicious transaction reporting system is essential to an effective national counter-money laundering program and to the success of efforts of financial institutions themselves to prevent and detect the use of their services or facilities by money launderers and others engaged in financial crime.

¹⁰ *See Guidance Notes for the Special Recommendations on Terrorist Financing and the Self-Assessment Questionnaire*, Special Recommendation Four, paragraph 19 (March 27, 2002). FATF defines “bureaux de change” as “institutions which carry out retail foreign exchange operations.” *See also Financial Action Task Force Annual Report, supra, Annex 1* (Interpretive Note to Recommendations 8 and 9 (Bureaux de Change)).

should apply to currency exchange offices.

II. Notice of Proposed Rulemaking

The final rule contained in this document is based on the notice of proposed rulemaking published October 17, 2002 (the “Notice”) (67 FR 64075). The Notice proposed the following amendments to the MSB SAR rule found at 31 CFR 103.20: (1) Adding currency dealers and exchangers to the list of money services businesses required to report suspicious transactions to the Department of the Treasury under 31 CFR 103.20, (2) adding a fourth reporting category to the suspicious transaction reporting rule applicable to money services businesses, and (3) adding to the rule the telephone number for FinCEN’s Financial Institutions Hotline (1-866-556-3974).

The comment period for the Notice ended on December 16, 2002. FinCEN received one comment letter, submitted by a trade association of community banks. The commenter discussed the importance of ensuring adequate scrutiny of MSBs for compliance with the requirement to report suspicious activity, and advised that FinCEN should monitor for evidence of money laundering activity through check cashers in order to determine whether to extend the suspicious transaction reporting requirement to such entities. FinCEN is committed to ensuring fairness in examining for, and enforcing, compliance with BSA regulations, and will continue to review whether it is appropriate to extend the suspicious activity reporting requirement to other categories of money services businesses not currently subject to the rule.

III. Section-by-Section Analysis

In light of the fact that FinCEN did not receive any comments directly dealing with the language contained in the Notice, the format and terms of the final rule are consistent with the format and terms of the rule proposed in the Notice.

A. 103.20(a)—General

Paragraph 103.20(a)(1) generally sets forth the requirement that certain money services businesses, including currency dealers and exchangers,¹¹ issuers, sellers, and redeemers of traveler’s checks and money orders, and money transmitters, report suspicious

¹¹ The terms currency “dealer” and “exchanger” in 31 CFR 103.11(uu)(1) were intended to be interchangeable to ensure that the regulation captured the same type of activity whether denominated as exchanging or dealing—the physical exchange of currency for retail customers.

transactions to the Department of the Treasury. It should be noted that a money services business is subject to suspicious transaction reporting only with respect to transactions that involve or relate to the business activities described in 103.11(uu)(1), (3), (4), (5), or (6). Thus, for example, a currency dealer or exchanger (a money services business described in 103.11(uu)(1)) that is also a check casher (a money services business described in 103.11(uu)(2)) would not be required to report under the MSB SAR rule with respect to its check cashing activities in general, although it would be required to report check cashing activity that was part of a series of transactions that led to, for example, a suspicious currency exchange.

B. 103.20(a)(2)—Reportable Transactions

This document amends the MSB SAR rule by adding a fourth reporting category, described at 31 CFR 103.20(a)(2)(iv), for transactions involving use of the money services business to facilitate criminal activity. The addition of a fourth category of reportable transactions to the rule is intended to ensure that transactions involving legally-derived funds that the money services business suspects are being used for a criminal purpose, such as terrorist financing, are reported under the rule.¹² The addition of this reporting category is not intended to effect a substantive change in the rule. Rather, the fourth category has been added to make explicit that transactions being carried out for the purpose of conducting illegal activities, whether or not funded from illegal activities, must be reported under the rule.

C. 103.20(b)(3)—Filing Instructions

This document amends paragraph 103.20(b)(3) to include FinCEN’s Financial Institution Hotline (1-866-556-3974) for use by financial institutions wishing voluntarily to report to law enforcement suspicious transactions that may relate to terrorist activity. Money services businesses reporting suspicious activity by calling the Financial Institutions Hotline must still file a timely SAR-MSB to the extent required by 31 CFR 103.20.

¹² The fourth reporting category has been added to the suspicious activity reporting rules promulgated since the passage of the USA PATRIOT ACT to make this point clear. *See* 31 CFR 103.19 and 103.21.