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SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Treasury to consider the extent to which such standards are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

As a "business engaged in vehicle sales" (vehicle seller) is defined as a financial institution under the BSA, 31 U.S.C. 5312(a)(2)(T), it is subject to the anti-money laundering program requirement. On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted certain financial institutions, including vehicle sellers, from the requirement to establish an anti-money laundering compliance program. The purpose of the deferral was to enable FinCEN to study the affected industries and consider the extent to which anti-money laundering program requirements should be applied to them, taking into account the specific characteristics of the various

entities defined as financial institutions by the BSA.¹

In addition, section 326 of the Act added new subsection (l) to 31 U.S.C. 5318, which requires Treasury to prescribe regulations setting forth minimum standards for financial institutions to identify customers applying to open accounts. Section 326 applies to all BSA financial institutions that open accounts for their customers.

The business of vehicle sellers encompasses various segments, including sellers of: (1) New land-based vehicles, such as automobiles, trucks, RVs, and motorcycles; (2) new aircraft, including fixed wing airplanes and helicopters; (3) new boats and ships; and (4) used vehicles (as well as those who broker the sale of used vehicles).²

Businesses engaged in the selling of vehicles comprise a significant percentage of the total gross domestic product of the United States, and the vehicles that they collectively sell account for a major portion of U.S. consumption, exports, and other important economic indicia.³ As such, because of both the economic significance of this industry, and the important and pervasive role that vehicles, and therefore vehicles sales, play in the United States, this ANPRM is intended to assist FinCEN in striking a balance between the important statutory requirements of the Act, and the important benefits that vehicle sellers provide to our country.

Some vehicle sellers are tied to the manufacturing of the vehicles, while others may not be. While some vehicle sellers are publicly traded companies, most are privately held or family owned. Some may be characterized as wholesale sellers of vehicles, while others are engaged in retail sales of the vehicles. In each segment, there is often substantial variety in function and practice.

Vehicle sellers range in size from very large entities that sell vehicles with a total value that is measured in billions of dollars annually, to very small entities (such as a neighborhood used

car dealer) that may only sell a few vehicles each year. Vehicle sellers may sell either new or used vehicles, and may sell to customers domestic or foreign, or both. Moreover, the characteristics of vehicle sellers often vary based on the type of vehicles sold. For example, retail sellers of large, multi-engine commercial aircraft are generally much larger businesses than sellers of small, general aviation aircraft, reflecting the capital and business risks needed to maintain inventory. In a like manner, sales of large marine ships in excess of 100,000 deadweight tons are conducted very differently than sales of pleasure watercraft, such as sail boats. Similarly, sellers of used vehicles often have different characteristics than sellers of new vehicles, reflecting the different relationships with vehicle manufacturers and the differences in these markets.

II. Issues for Comment

1. What Is the Potential Money Laundering Risk Posed by Vehicle Sellers? Do Money Laundering Risks Vary by (1) Vehicle Type (e.g., Boat, Airplane, Automobile); (2) Market (Wholesale vs. Retail); or (3) Business Line (International Sales, Sales to Governments)?

The threshold issue being addressed by this ANPRM is the extent to which vehicle sellers pose a significant risk of money laundering.⁴ For example, a money laundering risk is presented where a vehicle is purchased with cash.⁵ This is particularly true for the placement stage of money laundering; that is, where the money launderer seeks to cleanse illegal proceeds by introducing them into the financial system. A large cash purchase of an expensive vehicle could form the placement stage for a money laundering scheme.⁶ While the risk of money laundering is minimized, to some

⁴ For the purpose of this ANPRM, FinCEN is focusing on the money laundering risks associated with the sale of the vehicles themselves, and not with the financing of such sales. Although some vehicle sellers that provide financing for their products (generally through a finance subsidiary) perform a function similar to that of traditional financial institutions such as banks and loan companies, that function will be addressed separately by a proposed rule to be issued that will require loan and finance companies to have anti-money laundering programs.

⁵ Recently, in Operation Lightning Strike, manufacturers of illegal liquor were convicted of laundering the illegal proceeds of untaxed liquor sales by using cash transactions and purchasing a number of vehicles in the names of other family members.

⁶ See, e.g., U.S. v. Cruz, 993 F.2d 164 (8th Cir. 1993) (narcotics dealer laundered proceeds by purchasing three automobiles for cash in amount that greatly exceeded his stated income).

¹ See 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002), as amended at 67 FR 67547 (November 6, 2002) (as corrected at 67 FR 68935 (November 14, 2002)).

² FinCEN does not intend to impose anti-money laundering program obligations on individuals in connection with the sale of their own personal vehicle to others, whether as a "trade-in" with a retail vehicle dealer or by private sale with another party, unless an individual is engaged in the business of selling vehicles.

³ According to the Department of Transportation, in the year 2000 there were 8,847,000 new automobiles, 578,700 boats, and 3,285 civilian aircraft sold at retail. U.S. Dept. of Transportation Bureau of Transportation Statistics, National Transportation Statistics 2002 (GPO July 2002).