



Securities Industry Association

120 Broadway, New York, NY 10271-0080, (212) 608-1500, Fax (212) 608-1604
1401 Eye Street, NW, Washington, DC 20005-2225, (202) 296-9410, Fax (202) 296-9775
info@sia.com, <http://www.sia.com>

September 24, 1997

Peter Djinis
Associate Director
Office of Legal Counsel
Financial Crimes Enforcement Network
Department of the Treasury
2070 Chain Bridge Road
Vienna, VA 22182

**RE: Proposed Amendments to the Bank Secrecy Act Regulations-MSB Registration;
Money Transmitters-Special CTR Rule; and Suspicious Transaction Reporting-Money
Services Businesses**

Dear Mr. Djinis:

The Securities Industry Association ("SIA")¹ and the *Ad Hoc* Bank Secrecy Act ("BSA") Advisory Group² are pleased to have this opportunity to comment on proposed amendments to the BSA regulations relating to non-bank financial institutions.³ Specifically, the Department of the Treasury, Financial Crimes Enforcement Network ("FinCEN") is proposing to amend the BSA regulations to revise the definition of certain financial institutions, and group them together in a separate category called "money services businesses." Money services business is a new term that is generally defined to include businesses that provide check cashing, currency exchange, or money transmitting services, or that issue or redeem money orders, traveler's checks, or other similar instruments.

The proposed amendments would require certain money services businesses to register with the Department of the Treasury and to maintain a current list of their agents for examination, on request, by any appropriate law enforcement agency. Registered broker-dealers are included in the definition of money services business by virtue of being money transmitters, but are expressly excluded from the registration and list requirements. In addition, FinCEN is proposing rules that will require money transmitters, a class of money services businesses, to report and retain records of, and obtain identifying information for, transactions in currency or monetary instruments of at least \$750 but not more than \$10,000 in connection with the transmission or other transfer of funds to any person outside the United States. Finally, FinCEN is proposing to amend the BSA regulations to require money transmitters, and issuers, sellers, and redeemers of money orders and traveler's checks, to report suspicious transactions involving at least \$500 in funds or other assets. Broker-dealers are expressly excluded from suspicious activity reporting, no doubt because FinCEN intends to propose separate suspicious activity reporting

regulations for broker-dealers in the near future.

As you know, the securities industry has been supportive of Treasury's efforts to combat money laundering and many firms have been working with FinCEN to implement suspicious activity reporting. In fact, many firms currently file suspicious activity reports on a voluntary basis.

As proposed, the definition of money services business includes broker-dealers. The inclusion of broker-dealers in the definition is a disturbing development to the industry. Although the proposal exempts broker-dealers from the registration and suspicious activity reporting requirements, it includes broker-dealers for purposes of the requirement to report transactions of at least \$750 up to \$10,000 inclusive in connection with the transmission or other transfer of funds to any person outside the United States.

Many firms have expressed their concerns to Treasury about the application of this requirement to broker-dealers. At a public meeting conducted by FinCEN on July 28, 1997 in New York City, members of the securities industry stated that the need to focus on such small transactions at a time when the industry is focused on, and gearing up for, the implementation of suspicious activity reporting would be unfortunate. Moreover, it is our understanding that depository institutions have been exempted from this reporting requirement despite the fact that depository institutions accept fund transmission business from non-customers. Since broker-dealers deal virtually exclusively with clients, there is an even stronger argument in favor of providing this exemption to broker-dealers. In response to these comments, Stanley E. Morris, Director of FinCEN, has stated that his intent is to treat broker-dealers the same as depository institutions for purposes of this portion of the regulation. We appreciate his responsiveness and we applaud this approach.⁴

Ideally, we believe FinCEN should delete broker-dealers from the definition of money services businesses. As stated in the Release, these regulations were designed to focus on businesses that are largely unregulated and are frequently used in sophisticated schemes to transfer large amounts of money that are the proceeds of unlawful enterprises and to evade the requirements of Title II of the BSA, the Internal Revenue Code of 1986, and other laws of the United States.⁵ We understand FinCEN's concern regarding the pattern of abuse demonstrated in the Geographic Targeting Order. However, there is no evidence that broker-dealers are being similarly abused. Because broker-dealers are highly regulated and currently subject to the BSA, we see no reason for inclusion in the definition at this time, given that there is no other application to the industry. We therefore strongly urge FinCEN to delete broker-dealers from the definition.

Thank you for the opportunity to comment on the proposal. If you would like further information on our comments, please feel free to contact us.

Sincerely,

Judith Poppalardo
Assistant General Counsel
Securities Industry Association

Betty Santangelo
Ad Hoc BSA Advisory Group

cc: Kate McGuire, Securities and Exchange Commission

Footnotes

1 The Securities Industry Association ("SIA") is the trade association representing the business interests of about 760 securities firms in North America. Its members include securities organizations of virtually all types—investment banks, brokers, dealers, and mutual fund companies, as well as other firms functioning on the floors of the exchanges. SIA members are active in all exchange markets, in the over-the-counter markets, and in all phases of corporate and public finance. Collectively, they provide investors with a full spectrum of securities and investment services and account for 90% of securities firm revenue in the United States.

2 The *Ad Hoc* BSA Advisory Group is comprised of approximately 40 broker-dealers that meet for the purpose of sharing industry views on current anti-money laundering regulations.

3 See 62 Fed. Reg. 27890.

4 We also understand from Director Morris's comments that he is considering limiting these transactions to ones originating in currency and not monetary instruments. We believe that this modification makes a great deal of sense and encourage FinCEN to adopt these limitations.

5 62 Fed. Reg. 27890.