



Invested in America

June 24, 2013

Via E-rulemaking Portal

Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Re: **RIN 1506-AB21, RIN 1506-AB22, and RIN 1506-AB23 – Imposition of Special Measures Against Halawi Exchange Co., Kassem Rmeiti & Co. for Exchange, and Liberty Reserve S.A. as Financial Institutions of Primary Money Laundering Concern**

Dear Sir or Madam:

The Securities Industry and Financial Markets Association (“**SIFMA**”)¹ appreciates the opportunity to comment on the proposals of the Financial Crimes Enforcement Network (“**FinCEN**”) to impose special measures under Section 311 of the USA PATRIOT Act² against Halawi Exchange Co. (“**Halawi**”), Kassem Rmeiti & Co. for Exchange (“**Rmeiti**”), and Liberty Reserve S.A. (“**Liberty Reserve**”),³ each of which has been found to be a financial institution of primary money laundering concern.⁴

FinCEN’s proposed rules would impose the first and fifth special measures against each of Halawi and Rmeiti,⁵ as well as the fifth special measure against Liberty Reserve. The first

¹ SIFMA brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA’s mission is to develop policies and practices that strengthen financial markets and encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association.

² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the “**USA PATRIOT Act**”), Pub. L. No. 107-56 (Oct. 26, 2001).

³ *Imposition of Special Measures Against Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern*, 78 FR 24584 (April 25, 2013); *Imposition of Special Measures Against Kassem Rmeiti & Co. for Exchange as a Financial Institution of Primary Money Laundering Concern*, 78 FR 24576 (April 25, 2013); *Imposition of Special Measure Against Liberty Reserve S.A. as a Financial Institution of Primary Money Laundering Concern*, 78 FR 34008 (June 6, 2013).

⁴ *Notice of Finding That Halawi Exchange Co. Is a Financial Institution of Primary Money Laundering Concern*, 78 FR 24596 (April 25, 2013) (the “**Halawi Finding**”); *Notice of Finding That Kassem Rmeiti & Co. for Exchange Is a Financial Institution of Primary Money Laundering Concern*, 78 FR 24593 (April 25, 2013) (the “**Rmeiti Finding**”); *Notice of Finding That Liberty Reserve S.A. Is a Financial Institution of Primary Money Laundering Concern*, 78 FR 34169 (June 6, 2013).

⁵ The first special measure is currently in effect with respect to Halawi and Rmeiti pursuant to temporary orders issued by FinCEN. See *Order Imposing Recordkeeping and Reporting Obligations on Certain U.S. Financial Institutions With Respect to Transactions Involving Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern*, 78 FR

special measure would impose recordkeeping and reporting requirements for transactions and attempted transactions involving Halawi or Rmeiti. The fifth special measure would prohibit or condition the opening or maintaining of correspondent or payable-through accounts for, or on behalf of, foreign banking institutions if such accounts would be used to process transactions involving Halawi, Rmeiti or Liberty Reserve.

SIFMA supports FinCEN's efforts to detect and prevent money laundering and the financing of terrorist activity, whether through the identified financial institutions or otherwise. To that end, SIFMA respectfully submits that the clarifications and modifications requested below with respect to the proposed rules would better facilitate compliance with the special measures and, through consistency in the information provided to FinCEN by covered financial institutions, effective monitoring by FinCEN of the parties at issue.

I. Requirements With Regard to the First Special Measure

The proposed rules imposing the first special measure would require that a covered financial institution or principal money transmitter take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction involving Halawi or Rmeiti:

- (i) The identity and address of the participants in a transaction or an attempted transaction, including the identity of the originator and beneficiary of any funds transfer;
- (ii) The legal capacity in which Halawi or Rmeiti, as applicable, is acting with respect to the transaction or attempted transaction and, to the extent Halawi or Rmeiti is not acting on its own behalf, the customer or other person on whose behalf Halawi or Rmeiti is acting; and
- (iii) A description of the transaction or attempted transaction and its purpose.

The proposed rules would require reporting within 15 business days following the day when the covered financial institution or principal money transmitter engaged in a transaction or became aware of an attempted transaction. Reports would need to be filed electronically in a comma separate value format. An institution's filing of a Suspicious Activity Report within the 15 business day period with respect to a reportable transaction would be deemed to comply with the reporting requirement under the proposed rules.

A. Participants in a Transaction or an Attempted Transaction Involving Rmeiti or Halawi

The proposed rule imposing the first special measure against Rmeiti and the proposed rule imposing the first special measure against Halawi (the "**Proposed First Special Measures**")

24601 (April 25, 2013); *Order Imposing Recordkeeping and Reporting Obligations on Certain U.S. Financial Institutions With Respect to Transactions Involving Kassem Rmeiti & Co. for Exchange as a Financial Institution of Primary Money Laundering Concern*, 78 FR 24599 (April 25, 2013). These orders, which were effective on April 23, 2013, will remain in effect until August 21, 2013.

would, in Section 1010.658(b)(1)(i) and Section 1010.659(b)(1)(i), require covered financial institutions to report, with respect to any transaction or attempted transaction involving Rmeiti or Halawi, as applicable, “[t]he identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer.”

FinCEN states in the sections of the Rmeiti and Halawi notices of proposed rulemaking analyzing the proposed rules that a transaction “involving” Rmeiti or Halawi would include, at a minimum, a transaction for which the documentation, such as the transmittal order, payment instruction, or SWIFT message, includes as a party in any capacity the name of Rmeiti or Halawi, as applicable; the name of any of its branches, offices or subsidiaries; or the name of any of its principals identified in the Rmeiti Finding or the Halawi Finding, as applicable, that appears to be acting on behalf of Rmeiti or Halawi.

FinCEN specifies in its analyses of the proposed rules that the information required to be reported pursuant to the Proposed First Special Measures would include any identifying information a covered financial institution obtained in the ordinary course of business, including the information required under 31 CFR 1010.410(f) (generally known as the “**travel rule**”), such as name, account number if used, address, the identity of the beneficiary’s financial institution, or any other specific identifier of the recipient received with the transmittal order. FinCEN states further that a financial institution would be required to provide any additional information that it collects in the ordinary course of business relevant to the identity of the participants in a transaction or an attempted transaction.

FinCEN states its expectation that a covered financial institution would not seek additional information not originally included in a received instruction from financial institutions in a chain of intermediaries beyond the immediate counterparty from which the covered financial institution received the instruction.

SIFMA believes as a general matter that FinCEN’s analyses of the proposed rules in the notices of proposed rulemaking contain helpful clarifying information. To facilitate covered financial institutions’ compliance with the rules and ensure consistency in the information reported to FinCEN, SIFMA believes that the relevant analyses, as well as some additional clarifications, should be included directly in the rule text. Specifically, SIFMA respectfully requests that FinCEN revise the text of Sections 1010.658(b)(1)(i) and 1010.659(b)(1)(i):

- (i) To include a definition of the term “involving” with respect to the transactions to be reported, similar to the definition provided by FinCEN in its analyses of the proposed rules. With respect to that definition, SIFMA requests that FinCEN remove the phrase “at a minimum” and instead specify any other transactions that would be covered.
- (ii) To specifically identify all known branches, offices and subsidiaries of Halawi and Rmeiti.
- (iii) To specify that covered financial institutions would be required to report any identifying information obtained in the ordinary course of business relevant to the identity of the participants in a transaction, such as, *to the extent applicable*, the

information required under 31 CFR 1010.401(f). SIFMA notes in this regard that information of the type specified in the travel rule is only required for financial institutions covered by the Bank Secrecy Act with respect to funds transfers or transmittals of funds of \$3,000 or more. In addition, the name and address of the beneficiary (or recipient) are not strictly required. Rather, financial institutions are required to retain and pass along name and address information in the payment order or transmittal order only if this information was received with the payment order or transmittal order.

- (iv) To include a definition of the term “participants” that specifies whether there are any parties beyond the originator (or transmitter) and beneficiary (or recipient) of any funds transfer on which FinCEN would wish for covered financial institutions to report, to the extent that any relevant information is available to them. For example, FinCEN’s references to the travel rule suggest that information regarding the bank or other financial institution of the beneficiary (or recipient) should be reported. Does FinCEN wish to include other banks or other financial institutions in the chain of the funds transfer or transmittal of funds, such as the originator’s (or transmitter’s) bank or financial institution or any intermediary bank or financial institution?
- (v) To remove the term “attempted transaction” or, alternatively, to include a definition of the term. The lack of specificity regarding what would be covered by the term is problematic, and could result in inconsistent interpretations among covered financial institutions and possibly overreporting to FinCEN.
 - (a) To the extent the term is not removed, SIFMA believes it should be defined to mean a transaction in which a covered financial institution was requested to, but determined not to, engage. SIFMA believes such a definition would be consistent with FinCEN’s analyses with respect to the filing requirements under Sections 1010.658(b)(2) and 1010.659(b)(2).
 - (b) Further, to the extent the term is not removed, SIFMA notes that the travel rule requirement applies only to **executed** funds transfers and transmittals of funds – and not to **attempted** funds transfers and transmittals of funds. SIFMA would therefore respectfully request that the Proposed First Special Measures specify that covered financial institutions would be required to report any identifying information obtained in the ordinary course of business relevant to the identity of the participants in an attempted transaction, without reference to the travel rule requirements.

B. Legal Capacity

The Proposed First Special Measures would, in Section 1010.658(b)(1)(ii) and Section 1010.659(b)(1)(ii), require a covered financial institution to report the legal capacity in which Rmeiti or Halawi is acting with respect to the transaction or attempted transaction being reported and, to the extent applicable, the customer or other person on whose behalf Rmeiti or Halawi is acting.

FinCEN states that this information would include any identifying information collected by the financial institution in the ordinary course of business and must include the roles of Rmeiti, Halawi or their customers in a transaction as set out in the transmittal order, such as transmittor or recipient of the transmittal order or as intermediary financial institution involved in the payment chain associated with the transaction. FinCEN states that the proposed rules would not require the covered financial institution to seek additional information regarding the legal capacity of the parties involved beyond what it already has in its possession in the ordinary course of business.

SIFMA respectfully requests that these clarifications regarding the legal capacity reporting requirement be included in the rule text, or that FinCEN issue accompanying guidance at the time final rules are adopted.

C. Reporting Requirements

The Proposed First Special Measures would, in Section 1010.658(b)(2) and Section 1010.659(b)(2), require a covered financial institution to make any required report within 15 business days following the day when the institution engaged in the transaction or became aware of the attempted transaction. In its analyses of these provisions, FinCEN acknowledges that additional time may be required in some cases. In such cases, FinCEN indicates that a report should be filed within the 15 business day timeframe, and that any additional information discovered should be submitted as a supplemental or corrected report.

With respect to attempted transactions, SIFMA respectfully requests that the text of the rules require reporting within 15 days of an institution's decision not to engage in a transaction, as described in FinCEN's analyses of the rules, rather than requiring reporting within 15 days of an institution's becoming aware of an attempted transaction. SIFMA believes such a change would avoid issues regarding what would constitute awareness of an attempted transaction and whose awareness would trigger the reporting requirements. In addition, SIFMA requests that the ability to file a supplemental or corrected report be reflected in the rule text.

D. Currently Effective Orders Imposing First Special Measure

As noted in footnote 5 above, the first special measure is currently in effect with respect to Halawi and Rmeiti pursuant to temporary orders issued by FinCEN. The comments made in this Section I apply both to the proposed rules to impose the first special measure against Rmeiti and Halawi and to the temporary orders. In addition, pending clarification or guidance with respect to the temporary orders concerning the points addressed above, we note that institutions currently subject to the temporary orders may be applying different, and potentially inconsistent, interpretations of the first special measure.

II. Requirements With Regard to the Fifth Special Measure

FinCEN's proposed rules would prohibit a covered financial institution from establishing, maintaining or managing in the United States any correspondent account for, or on behalf of, a foreign banking institution if such correspondent account is being used to process a transaction that involves Rmeiti, Halawi or Liberty Reserve, including any of their branches, offices or subsidiaries.

The proposed rules would also require a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against their use to process transactions involving Rmeiti, Halawi or Liberty Reserve. That special due diligence must include: (1) providing notice to correspondent account holders that the covered financial institution knows or has reason to know provide services to Rmeiti, Halawi or Liberty Reserve, as applicable, that such correspondents may not provide such entity with access to the correspondent accounts maintained at the covered financial institution; and (2) taking reasonable steps to identify any use of its correspondent accounts by Rmeiti, Halawi or Liberty Reserve to the extent that such use can be determined from transactional records maintained in the normal course of business.

The rules would also require a covered financial institution to take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its correspondent accounts to process transactions involving Remeiti, Halawi or Liberty Reserve.

SIFMA respectfully requests that FinCEN reconsider the necessity of the notice provision, as we believe it may be burdensome and unnecessary, and may not be the most effective way of achieving the goals of the proposed rules. Given that many U.S. financial institutions have thousands of correspondent accounts – most of which have no dealings with Rmeiti, Halawi or Liberty Reserve – it would seem to be an extremely inefficient use of resources to require notice to all correspondents, when these resources could be applied toward other efforts to detect and prevent money laundering and the financing of terrorist activity.

In addition, the notice provision would result in many foreign banks being inundated with the same notification from the many different U.S. financial institutions that are required to send the notice because the foreign banks have correspondent relationships with them. Moreover, the notice would require in many cases a separate mailing, at considerable time and expense since firms do not regularly schedule mailings targeted solely to correspondent account holders.

As an alternative, SIFMA believes the goals of the notification provision could be achieved by FinCEN's efforts to publicize the special measure worldwide. We respectfully submit that FinCEN could accomplish its goals by working with foreign governments and central banks to provide notice to their financial institutions.

If FinCEN determines to retain the notice requirement, we request that FinCEN specifically identify in the rules imposing the fifth special measure all known branches, offices and subsidiaries of Halawi, Rmeiti and Liberty Reserve. In addition, we request that FinCEN consider permitting other methods of providing the required notice, such as posting it on the website of a covered financial institution. Another alternative would be to permit firms to use other means of notification, including through mechanisms already in place under other provisions of the USA PATRIOT Act, such as the certification pursuant to Sections 313 and 319. Such flexibility would allow firms to build on current systems and provide notice more efficiently and effectively.

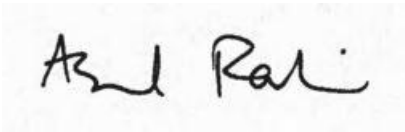
If the notice requirement is retained, we request further that FinCEN provide clarification in the rules with regard to the timing of the required notice. Specifically, we request clarification

with respect to whether notice should be transmitted: (1) at the time FinCEN issues final rules, and/or (2) at the time of initiation of a new customer relationship or opening of a new account, and/or (3) only once a covered financial institution suspects a correspondent is using its correspondent account to process transactions involving Rmeiti, Halawi or Liberty Reserve. Based on prior practice and statements in the notices of proposed rulemaking, it is the industry's view that the rules were only intended to require notice at one time, when FinCEN issues final rules.

* * *

SIFMA greatly appreciates FinCEN's consideration of the clarifications and modifications suggested above in connection with the proposals to impose special measures on Rmeiti, Halawi and Liberty Reserve. Please do not hesitate to contact me at (202) 962-7388 if you would like to discuss any of the foregoing matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Aseel Rabie". The signature is written in a cursive, fluid style.

Aseel M. Rabie
Managing Director and Associate General Counsel