

## FinCEN Rulings

### FinCEN Ruling 2000-1.

August 31, 2000

Dear [ ]:

You have asked how [ ](the "Bank") should properly report certain currency transactions on Form 4789 (a "CTR") in the circumstances described below. Your question was originally raised in a letter dated August 16, 2000, which was forwarded to the Financial Crimes Enforcement Network ("FinCEN").<sup>1</sup> There have also been follow-up conversations with my office. Our conversations make clear that the Bank supports both the spirit and intent of the Bank Secrecy Act (the "BSA"), and we appreciate the diligence shown by you and your colleagues in seeking to confirm how to properly comply with the BSA.

#### Facts

We understand the relevant facts to be as follows. Customer 1 is a seafood processing company. When it purchases seafood from a shrimpboat captain (or similar seafood supplier boat business), it customarily writes a check for the amount of the purchase price, drawn on Customer 1's account at the Bank, to the captain. The captain, in turn, endorses the check back to Customer 1, who then sends an employee to the Bank to cash the check. The Bank believes that Customer 1 uses the currency received when the check is cashed to pay the seafood supplier, ultimately, in currency.

Customers 2 and 3 are also seafood processing companies that are customers of the Bank. Customers 2 and 3, like Customer 1, engage in the transactions described above to pay seafood suppliers for seafood.

#### Question 1-Completion of Section A of CTR

Because Customer 1 purchases seafood from a number of boats, it often cashes several checks, endorsed back to it by the boat captains, on the same day. Some of those checks will be for \$10,000 or less; others may exceed \$10,000, depending upon the purchase price of the catch in each case. Often the total amount of the multiple checks brought in to the Bank by Customer 1 during a business day to be cashed for this reason exceeds \$10,000, thereby requiring the filing of a CTR.

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<sup>1</sup> Your letter was addressed to the [ ] (not the Bank's primary supervisor) and you also provided a copy to [ ]. The letter was forwarded to FinCEN by [ ].

Your first question relates to the manner in which the Bank should complete Section A of the CTR in these circumstances. Section A calls for information about the "Person(s) on whose Behalf Transaction(s) is Conducted." The answer depends upon the amount of each check that Customer 1 is exchanging for currency.

- To the extent that each double-endorsed check is payable to a different person and does not exceed \$10,000 (though the checks exceed \$10,000 in the aggregate), information about the person that is the original payee of each check (i.e., the shrimpboat captain) is not required and Section A of the CTR should be completed using information about Customer 1.
- If one or more of the batch of checks being cashed during a business day by Customer 1 in this fashion for a particular original payee exceeds \$10,000 (or two or more checks payable to the same or related payees exceed \$10,000 in the aggregate), the CTR filed for that day with respect to Customer 1 should include a separate Section A for each such payee, completed using information about such payee. If so, the Bank should check the "multiple persons" box (No. 1b) on the first page of the CTR. In addition, a Section A should also be completed using information about Customer 1 for those checks that do not exceed \$10,000.

Customer 1 could obtain currency in one of several ways to pay its seafood suppliers. For example, it could simply withdraw currency from its account with the Bank in amounts necessary to pay one or more of its suppliers. If it did so, the Bank would be required to file a CTR when such cash withdrawal exceeded \$10,000 and Section A on that CTR would be completed using information about Customer 1 only. However, Customer 1 has chosen to pay its suppliers by check, allow the check to be endorsed back over to it, and then facilitate payment in cash to the supplier by cashing the checks at the Bank.<sup>2</sup> In so doing, it has chosen to act on behalf of its suppliers in cashing the checks and, by so doing, has changed the nature of the transaction the Bank must report.<sup>3</sup>

The same analysis applies to the reporting of similar transactions by Customers 2 and 3.

#### Question 2 - Customer 1's Failure to Provide Necessary Information

The employee of Customer 1 who brings the double-endorsed checks to the Bank consistently either does not possess or refuses to provide to the Bank the information necessary to complete Part A of the CTR for seafood suppliers of Customer 1 who are the original payees of checks in excess of \$10,000. In those circumstances, the Bank is unable to complete fully Part A of the CTR.

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<sup>2</sup> The application of the currency reporting provisions of section 6050I of the Internal Revenue Code of 1986 to a particular supplier of Customer 1 who receives more than \$10,000 in currency in exchange for its catch is beyond the scope of this letter.

<sup>3</sup> Because Customer 1 has chosen to act on behalf of its seafood suppliers in cashing the checks, we do not believe an exemption otherwise applicable to Customer 1 under the revised CTR exemption procedures contained in 31 CFR 103.22(d) may be used for the benefit of the seafood suppliers who are the original payees of the cashed checks.

In general, a financial institution must (i) make a reasonable and good faith effort to obtain the information necessary to complete a CTR; and (ii) evaluate the reasons why such information is not available or provided during the transaction. The currency transaction reporting provisions do not necessarily require a financial institution to refuse a transaction if all of the information required for the completion of the CTR is not available or provided by the transactor; the decision whether to accept or reject a given transaction rests solely with the financial institution and should be made based upon a number of facts and circumstances unique to each transaction.

The Bank has noted that employees of Customers 2 and 3 consistently possess and provide the necessary information on the original payee of each cashed check in excess of \$10,000 when they engage in transactions similar to those described above, so that the Bank may fully complete Part 1, Section A of the CTRs relating to the checks cashed by Customers 2 and 3. In addition, the Bank believes that its locality and the businesses that locality supports are potentially high-risk for money laundering. All of these facts are relevant to a determination by the Bank whether Customer 1's conduct meets the requirements for the filing of a suspicious activity report under the provisions of 31 CFR 103.18 (previously 31 CFR 103.21), and the corresponding regulations of the Bank's federal banking supervisor, found in Title 12 of the Code of Federal Regulations.

When a financial institution determines to send a CTR to the Detroit Computing Center with an incomplete Section A, it must document the reasons why the information in Section A is incomplete, explain the reasonable, good faith efforts it made to obtain the information, and provide any other information it deems relevant, including whether a suspicious activity report was filed. If a CTR is submitted without Section A completed and without this information, it will be returned asking for the missing information.

Thank you for bringing this matter to our attention. We appreciate the Bank's efforts in complying with the requirements of the BSA to the fullest extent. Please do not hesitate to contact Dawn Adams of my staff at (202) 354-6417 should you have any questions.

Sincerely,

**-signed-**

Christine E. Carnavos  
Assistant Director  
Office of Compliance and Regulatory Enforcement