



Department of the Treasury Financial Crimes Enforcement Network

Guidance

FIN-2008-G001

Issued: January 30, 2008

Subject: Application of Correspondent Account Rules to the Presentation of Negotiable Instruments Received by a Covered Financial Institution for Payment

The Financial Crimes Enforcement Network (“FinCEN”) is issuing this interpretative guidance to clarify how our rules implementing section 312 of the USA PATRIOT Act (the correspondent account rule) apply to a covered financial institution presenting a negotiable instrument for payment to another financial institution.¹ Specifically, this guidance addresses whether the presentation of a negotiable instrument for payment by a covered financial institution to a foreign financial institution on which the instrument is drawn would establish a correspondent account between the covered financial institution and the paying institution, subjecting the covered financial institution to compliance with the due diligence provisions of the correspondent account rule.

A covered financial institution may offer to a customer services including the processing of negotiable instruments drawn on another financial institution (the “paying institution”). After a negotiable instrument is received from the customer, the covered financial institution will present the instrument – which may be a check, a draft, or another type of negotiable instrument – to the paying institution for payment either directly or through a membership with a clearinghouse or an account with a clearing bank.²

The correspondent account rule applies to correspondent accounts that are established, maintained, administered, or managed by a covered financial institution for a foreign financial institution.³ An account is defined for the purposes of the correspondent

¹ See 31 C.F.R. § 103.176 (requiring covered financial institutions to conduct due diligence on a “foreign financial institution,” including a foreign bank, for which it establishes, maintains, administers or manages a “correspondent account”). See also 31 C.F.R. § 103.175(f) (defining “covered financial institution” to include U.S. banks, broker-dealers in securities, and futures commission merchants for purposes of complying with the correspondent account rule).

² When the covered financial institution presents a negotiable instrument for payment to or through another U.S. financial institution or a U.S. clearing facility, the due diligence provisions of the correspondent account rule would not be implicated.

³ See 31 C.F.R. § 103.175(d)(1)(i) (defining the term “correspondent account” as an account that is established “to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to [the] foreign financial institution”).

account rule to include only “formal relationships.”⁴ In the ordinary course of business, a covered financial institution may receive negotiable instruments for payment from a foreign financial institution with which it maintains a correspondent relationship. However, the presentation by the covered financial institution of these instruments to the paying institution for collection will not establish a correspondent account between the covered financial institution and the paying institution.

Regardless of the volume or frequency with which a covered financial institution may present negotiable instruments to a particular financial institution for payment, the covered financial institution effectively does not know with what paying institution it will be dealing until a customer presents a negotiable instrument for collection, and does not know whether it will ever present a negotiable instrument to that paying institution again. Thus, the covered financial institution does not enter into a relationship with the paying institution to govern the provision of regular services or future dealings, but rather presents negotiable instruments for collection to a paying institution on a transaction-by-transaction basis.⁵ FinCEN does not view the transaction-by-transaction presentation of a negotiable instrument to a foreign paying institution – either directly or through a clearing facility – to be the establishment of a formal banking or business relationship by a covered financial institution for purposes of complying with the correspondent account rule.

Financial institutions with questions about this guidance or other matters related to compliance with the Bank Secrecy Act and its implementing regulations may contact FinCEN's Regulatory Helpline at (800) 949-2732.

⁴ See 31 C.F.R. § 103.175 (d)(2)(i)-(iii) (defining the term “account,” respectively, for banks, broker-dealers in securities, and futures commission merchants).

⁵ This guidance covers the presentation of negotiable instruments for payment by means generally employed between covered financial institutions and the jurisdiction of the paying foreign financial institution in the normal course of business. This guidance may not apply if the covered financial institution and the paying institution enter into a different presentation procedure agreed between the parties.