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DEPARTMENT OF THE TREASURY

31 CFR Part 103

Conditional Exceptions to **Bank Secrecy Act** Regulations Relating  
to Orders for Transmittals of Funds by **Financial** Institutions

AGENCY: **Financial Crimes Enforcement Network**, Treasury.

ACTION: Grant of conditional exceptions.

SUMMARY: This document contains two conditional exceptions to a provision of the **Bank Secrecy Act** regulations. The exceptions permit **financial** institutions to comply more efficiently with requirements for inclusion of certain information in transmittal orders for transmissions of funds.

EFFECTIVE DATE: January 26, 1998.

FOR FURTHER INFORMATION CONTACT: Peter Djinis, Associate Director, FinCEN, (703) 905-3920; Charles Klingman, **Financial** Institutions Policy Specialist, Office of Program Development, FinCEN, (703) 905-3920; Stephen R. Kroll, Legal Counsel, FinCEN, and Cynthia L. Clark, Acting Deputy Legal Counsel, Office of Legal Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION:

#### I. Introduction

The statute generally referred to as the "**Bank Secrecy Act**," Titles I and II of Public Law 91-508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5330, authorizes the Secretary of the Treasury, inter alia, require **financial** institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters, and to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the **Bank Secrecy Act** (codified at 31 U.S.C. 5311-5330) appear at 31 CFR part 103. The authority of the Secretary to administer the **Bank Secrecy Act** has been delegated to the Director of FinCEN.<SUP>1</SUP>

\1\ Information relating to the Paperwork Reduction **Act** appears at the end of this Issuance.

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II. FinCEN Issuance 98-1

This document, FinCEN Issuance 98-1, grants two conditional exceptions to the operation of the rules contained at 31 CFR 103.33(g). The background, purpose, and terms of the two exceptions are explained below.

Background

On January 3, 1995, the **Financial Crimes Enforcement Network** ("FinCEN") of the Department of the Treasury issued a rule, 31 CFR 103.33(g) (the "Travel Rule"), requiring **financial** institutions to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more. The Travel Rule complements the rules jointly issued by the Board of Governors of the Federal Reserve System and FinCEN (the "Joint Rule") requiring the maintenance of records by insured depository institutions and other **financial** institutions with respect to domestic and international transmittal of funds transactions.<SUP>2</SUP> The Joint Rule defines the terms used in both that Rule and the Travel Rule.

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\2\ The provisions of 12 U.S.C. 1829b(b), amended the **Bank Secrecy Act** (i) to require the Secretary of the Treasury and the Federal Reserve Board jointly to promulgate recordkeeping requirements for international funds transfers by depository institutions and nonbank depository institutions, and (ii) to authorize the Secretary and the Board jointly to promulgate regulations for domestic funds transfers by depository institutions. The Secretary is authorized by 31 U.S.C. 5318(g) to require **financial** institutions to carry out anti-money laundering programs. Both 31 U.S.C. 5318(h) and 12 U.S.C. 1829b(b) were added to the **Bank Secrecy Act** by the Annunzio-Wylie Anti-Money Laundering **Act** of 1992 (Title XV of Pub. L. 102-550).

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Both the Joint Rule and the Travel Rule were amended on April 1, 1996, in response to a request for regulatory relief by affected **financial** institutions. The changes to the Travel Rule made at that time included addition of a "safe harbor" for Travel Rule compliance prior to the date of an institution's conversion to the expanded message format of the Fedwire funds transfer system of the Federal Reserve Banks.<SUP>3</SUP> The "safe harbor" permits an institution-- prior to the completion of its Fedwire conversion--to omit from a transmittal order some of the information otherwise required by the Travel Rule, so long as the missing information is retrieved and supplied in a reasonable amount of time in response to a law **enforcement** request or a judicial order, or to a request by another **financial** institution that would otherwise have received the information to assist the latter institution in its own **Bank Secrecy Act** compliance efforts.

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\3\ The expanded Fedwire format was announced by the Federal Reserve Board on the same day as the Joint Rule and the Travel Rule. See 60 FR 220 and 60 FR 234 (January 3, 1995).  
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#### Use of Customer Information File Information

A group of banks and brokers and dealers in securities (the "Working Group") <SUP>4</SUP>, has sought relief from the strict operation of the Travel Rule's requirement that each transmitter's **financial** institution and intermediary **financial** institution include in a transmittal order the transmitter's name and street address. See 31 CFR 103.33(g)(1) (i)-(ii) and (g)(2) (i)-(ii). Absent an exception or special rule of some kind, satisfaction of the terms of the Travel Rule require the use of true name and street address information. The **Bank Secrecy Act** rules for the maintenance of customer and transaction records (one of which is the Joint Rule), and for the reporting of various transactions or circumstances, require the use of true name and street address information, and prior guidance issued by FinCEN stated plainly that "[t]he use of a code name, or pseudonym is prohibited" under the Travel Rule. Question and Answer 19, Guidance for **Financial Institutions on the Transmittal of Funds "Travel Regulations"** (January 1997).<SUP>5</SUP>  
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\4\ The members of the Working Group are **Bank** of America, N.A.; The **Bank** of New York; Bankers Trust Company; The Chase Manhattan **Bank**; Citibank, N.A.; J.P. Morgan, Inc.; Marine Midland **Bank**; Merrill Lynch, Pierce, Fenner & Smith; MTB **Bank**; NationsBank, N.A.; Prudential Securities, Inc.; and Republic National **Bank** of New York.

\5\ The January 1997 Guidance document was distributed to banks, thrift institutions, and credit unions by their respective federal regulators and was the subject of NASD-R Notice to Members 97-13, sent to members of the National Association of Securities Dealers.  
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The Working Group has represented that the present ability of many covered institutions to satisfy the Travel Rule at all depends upon the ability of those institutions to make use electronically of information contained in the institutions' automated customer information files, or "CIFs." CIFs, the Working Group has told FinCEN, will always contain each customer's actual account number. However, CIFs will often contain a post office box mailing address rather than the customer's street address, or (somewhat less frequently) a nominee or "special" or coded name rather than the customer's true name; in other cases CIFs may contain both true and nominee, "special" or coded name or Post Office Box address information, but will be programmed to use the latter for communications purposes outside the institution itself. The result is that, although the originating institution will know a customer's street address and true name, reliance on CIFs as presently programmed could produce "traveling information" other than actual

names and street addresses. The banks and broker-dealers involved have further represented that reprogramming CIFs so that those files can produce true name and address information when necessary to satisfy the Travel Rule (if for some reason the files contain post office box addresses or nominee, "special," or coded names) will require significant resources and would likely involve diverting programming time away from more urgent programming needs, especially correction of the world-wide "Year 2000" problem.

#### Full Travel Rule Compliance Following Conversion to Expanded Fedwire Message Format

The "safe harbor" contained in 31 CFR 103.33(g) only applies prior to the date that an institution completes its conversion to the expanded message format of the Fedwire funds transfer system. Generally, that transformation is required to be completed by the end of 1997.

A number of **financial** institutions have represented to FinCEN that they have found it impossible to begin full compliance with the Travel Rule immediately upon conversion to the expanded Fedwire message format. The inability to meet the date for full compliance set out in the safe harbor arises because of delays in completing related programming tasks, for example the linking of inbound and outbound message systems.

#### Need for Flexibility in Administration of Travel Rule

Although the Travel Rule complements the Joint Rule, FinCEN has made clear in the past that the purposes of the Travel Rule are not incompatible with flexibility in applying the Rule's literal terms. The need for administrative flexibility is increased because Treasury intends, within the next 18 months, to review and consider making appropriate modifications to the Travel Rule. See 61 FR 14383, 14387-14388. Modifications are appropriate to meet particular operating problems, so long as complete information is available, at some point, in the domestic funds transfer chain and investigators are given adequate notice that the funds transmittal order itself must be supplemented by other information to provide a complete picture of the transmittal involved. See 31 CFR 103.33(g)(3).

#### Grant of Exceptions

By virtue of the authority contained in 31 CFR 103.45(a) and (b), which has been delegated to the Director of FinCEN, the following exceptions to the operation of the rules in 31 CFR 103.33(g) are approved:

1. A transmitter's **financial** institution that is otherwise subject to the terms of 31 CFR 103.33(g) with respect to transmittal of funds may satisfy (i) the requirement of 31 CFR 103.33(g)(1)(i) that the name of the transmitter be included in a transmittal order, and (ii) the requirement of 31 CFR 103.33(g)(1)(ii) that the transmitter's address be included in a transmittal order, with respect to a particular transmittal order, by including in the transmittal order the name and address information with respect to the transmitter contained in the **financial** institution's general automated CIFs, so long as:

(a) The CIFs are not specifically altered for the particular

transmittal of funds in question,

(b) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and as so programmed generate other than true name and street address information;

(c) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmitter of the order;

(d) The transmittal order includes a question mark symbol ("?") immediately following any designation of the transmitter other than by a true name on the order; and

(e) Any report required to be made under 31 CFR 103.21 or 31 CFR 103.22 by the institution with respect to the funds transmittal to which the transmittal order relates contains true name and street address information for the transmitter and plainly associates the report with the particular funds transmittal in question.

This exception has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. Moreover, institutions are reminded that the use of nominee, "special," or coded names is barred by the Travel Rule, in the absence of the foregoing exception with respect to CIFs only. Any new customer request for use of a nominee, or "special" or coded name in a CIF after the date of this Issuance should be carefully evaluated by depository institutions as a potentially suspicious transaction requiring reporting under 31 CFR 103.21, and reported unless an examination reveals that the request is made for an independent lawful business purpose and is the sort in which the customer involved would be expected to engage.

2. A **financial** institution will have complied with the terms of 31 CFR 103.33(g) for a transmittal order sent prior to April 1, 1998 and on or after the date of the conversion to the expanded Fedwire message format of the **bank** sending the transmittal order, if

(a) The transmittal order was an order to which the terms of 31 CFR 103.33(g)(3) would have applied if the order had been sent prior to the date of such conversion, and

(b) The terms of 31 CFR 103.33(g)(3) are satisfied with respect to such order as if such paragraph continued to apply by its terms to such transmittal order.

The foregoing exceptions do not in any way modify the obligations of **financial** institutions under any other provisions of 31 CFR part 103, including, without limitation, the obligation to maintain and retrieve information about transmittals of funds or the contents of orders for the transmittals of funds. Terms used in the foregoing exceptions and not defined in this document have the meaning given to such terms in 31 CFR part 103. The foregoing exceptions may be modified or revoked at any time in the sole discretion of the Department of the Treasury, by document published in the Federal Register. Exception 1, above, will expire on May 31, 1999, for transmittals of funds initiated after that date, if not revoked or modified with respect to such expiration date prior to that time.

### III. Paperwork Reduction **Act**

The collection of information contained in this issuance has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction **Act** (44 U.S.C. 3507) under

control number 1506-0008. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The collection of information in this issuance is in the Grant of Exceptions section of this issuance, paragraph 1.(d). This information is required to comply with the **Bank Secrecy Act**. This information will be used to assure that a code or "special" name (i.e., a name other than the transmitter's true name) on accounts at banks and with brokers and dealers in securities are not used to launder money or hide assets derived from illegal activities. The collection of information is mandatory. All information collected pursuant to the **Bank Secrecy Act**, including this information collection, is confidential pursuant to 31 U.S.C. 5316(c) and may be shared with regulatory and law **enforcement** authorities but its availability is strictly limited. All records required to be retained by 31 CFR part 103 must be retained for five years.

The likely respondents are banks and brokers and dealers in securities.

Frequency: Each time a transmittal order contains a code or special name, i.e., a name other than the transmitter's true name.

Estimated Number of Such Transmittal Orders: 5,000.

Estimate of Total Annual Burden:

Reporting burden estimate = approximately 250 hours for reporting.

Recordkeeping burden estimate = approximately 1,250 hours for recordkeeping.

Estimate of Total Annual Cost for Hour Burdens: Based on \$20 per hour, the total cost of compliance is estimated to be approximately \$33,000.

Estimate of Total Other Annual Costs to Respondents: None.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the Paperwork Reduction **Act** of 1995 requires agencies to estimate the total annual cost burden to respondents or recordkeepers resulting from the collection of information. Thus, FinCEN also specifically requests comments to assist with this estimate. In this connection, FinCEN requests commenters to identify any additional costs associated with the collection of information. These comments on costs should be divided into two parts: (1) Any additional costs associated with reporting; and (2) any additional costs associated with recordkeeping.

Comments concerning the accuracy of the burden estimate and suggestions for reducing the burden should be directed to the Office of Management and Budget, Attention: Desk Officer for the Treasury Department, Office of Information and Regulatory Affairs, Washington, D.C., 20503.

Signed this 16th day of January 1998.  
William F. Baity,

Acting Director--FinCEN, Department of the Treasury.  
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