

bullion to the petitioner or when the Secretary is not convinced that the petitioner was an innocent purchaser or holder without knowledge that the gold coins were counterfeit.

PART 103—FINANCIAL RECORD-KEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

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APPENDIX TO PART 103—ADMINISTRATIVE RULINGS

AUTHORITY: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5330.

SOURCE: 37 FR 6912, Apr. 5, 1972, unless otherwise noted.

Subpart A—Definitions

§ 103.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section.

(a) *Accept*. A receiving financial institution, other than the recipient's financial institution, accepts a transmittal order by executing the transmittal order. A recipient's financial institution accepts a transmittal order

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by paying the recipient, by notifying the recipient of the receipt of the order or by otherwise becoming obligated to carry out the order.

(b) *At one time.* For purposes of § 103.23 of this part, a person who transports, mails, ships or receives; is about to or attempts to transport, mail or ship; or causes the transportation, mailing, shipment or receipt of monetary instruments, is deemed to do so "at one time" if:

(1) That person either alone, in conjunction with or on behalf of others;

(2) Transports, mails, ships or receives in any manner; is about to transport, mail or ship in any manner; or causes the transportation, mailing, shipment or receipt in any manner of;

(3) Monetary instruments;

(4) Into the United States or out of the United States;

(5) Totaling more than \$10,000;

(6)(i) On one calendar day or (ii) if for the purpose of evading the reporting requirements of § 103.23, on one or more days.

(c) *Bank.* Each agent, agency, branch or office within the United States of any person doing business in one or more of the capacities listed below:

(1) A commercial bank or trust company organized under the laws of any State or of the United States;

(2) A private bank;

(3) A savings and loan association or a building and loan association organized under the laws of any State or of the United States;

(4) An insured institution as defined in section 401 of the National Housing Act;

(5) A savings bank, industrial bank or other thrift institution;

(6) A credit union organized under the law of any State or of the United States;

(7) Any other organization (except a money services business) chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a State;

(8) A bank organized under foreign law;

(9) Any national banking association or corporation acting under the provisions of section 25(a) of the Act of Dec. 23, 1913, as added by the Act of Dec. 24,

1919, ch. 18, 41 Stat. 378, as amended (12 U.S.C. 611-32).

(d) *Beneficiary.* The person to be paid by the beneficiary's bank.

(e) *Beneficiary's bank.* The bank or foreign bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(f) *Broker or dealer in securities.* A broker or dealer in securities, registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(g) *Common carrier.* Any person engaged in the business of transporting individuals or goods for a fee who holds himself out as ready to engage in such transportation for hire and who undertakes to do so indiscriminately for all persons who are prepared to pay the fee for the particular service offered.

(h) *Currency.* The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.

(i) [Reserved]

(j) *Deposit account.* Deposit accounts include transaction accounts described in paragraph (q) of this section, savings accounts, and other time deposits.

(k) *Domestic.* When used herein, refers to the doing of business within the United States, and limits the applicability of the provision where it appears to the performance by such institutions or agencies of functions within the United States.

(l) *Established customer.* A person with an account with the financial institution, including a loan account or deposit or other asset account, or a person with respect to which the financial institution has obtained and maintains on file the person's name and address, as well as taxpayer identification number (e.g., social security or employer

identification number) or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.

(m) *Execution date.* The day on which the receiving financial institution may properly issue a transmittal order in execution of the sender's order. The execution date may be determined by instruction of the sender but cannot be earlier than the day the order is received, and, unless otherwise determined, is the day the order is received. If the sender's instruction states a payment date, the execution date is the payment date or an earlier date on which execution is reasonably necessary to allow payment to the recipient on the payment date.

(n) *Financial institution.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed below:

(1) A bank (except bank credit card systems);

(2) A broker or dealer in securities;

(3) A money services business as defined in paragraph (uu) of this section;

(4) A telegraph company;

(5)(i) *Casino.* A casino or gambling casino that: Is duly licensed or authorized to do business as such in the United States, whether under the laws of a State or of a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, a casino operating on the assumption or under the view that no such authorization is required for casino operation on Indian lands); and has gross annual gaming revenue in excess of \$1 million. The term includes the principal headquarters and every domestic branch or place of business of the casino.

(ii) For purposes of this paragraph (i)(7), "gross annual gaming revenue" means the gross gaming revenue received by a casino, during either the previous business year or the current business year of the casino. A casino or gambling casino which is a casino for

purposes of this part solely because its gross annual gaming revenue exceeds \$1,000,000 during its current business year, shall not be considered a casino for purposes of this part prior to the time in its current business year that its gross annual gaming revenue exceeds \$1,000,000.

(iii) Any reference in this part, other than in this paragraph (n)(7) and in paragraph (n)(8) of this section, to a casino shall also include a reference to a card club, unless the provision in question contains specific language varying its application to card clubs or excluding card clubs from its application;

(6)(i) *Card club.* A card club, gaming club, card room, gaming room, or similar gaming establishment that is duly licensed or authorized to do business as such in the United States, whether under the laws of a State, of a Territory or Insular Possession of the United States, or of a political subdivision of any of the foregoing, or under the Indian Gaming Regulatory Act or other federal, state, or tribal law or arrangement affecting Indian lands (including, without limitation, an establishment operating on the assumption or under the view that no such authorization is required for operation on Indian lands for an establishment of such type), and that has gross annual gaming revenue in excess of \$1,000,000. The term includes the principal headquarters and every domestic branch or place of business of the establishment. The term "casino," as used in this Part shall include a reference to "card club" to the extent provided in paragraph (n)(7)(iii) of this section.

(ii) For purposes of this paragraph (n)(8), *gross annual gaming revenue* means the gross revenue derived from or generated by customer gaming activity (whether in the form of per-game or per-table fees, however computed, rentals, or otherwise) and received by an establishment, during either the establishment's previous business year or its current business year. A card club that is a financial institution for purposes of this Part solely because its gross annual revenue exceeds \$1,000,000 during its current business year, shall not be considered a financial institution for purposes of this Part prior to the time in its current business year

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when its gross annual revenue exceeds \$1,000,000;

(7) A person subject to supervision by any state or federal bank supervisory authority.

(o) *Foreign bank*. A bank organized under foreign law, or an agency, branch or office located outside the United States of a bank. The term does not include an agent, agency, branch or office within the United States of a bank organized under foreign law.

(p) *Foreign financial agency*. A person acting outside the United States for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(q) *Funds transfer*. The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(r) *Intermediary bank*. A receiving bank other than the originator's bank or the beneficiary's bank.

(s) *Intermediary financial institution*. A receiving financial institution, other than the transmitter's financial institution or the recipient's financial institution. The term intermediary financial institution includes an intermediary bank.

(t) *Investment security*. An instrument which:

(1) Is issued in bearer or registered form;

(2) Is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment;

(3) Is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(4) Evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(u) *Monetary instruments*. (1) Monetary instruments include:

(i) Currency;

(ii) Traveler's checks in any form;

(iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of §103.23), or otherwise in such form that title thereto passes upon delivery;

(iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee's name omitted; and

(v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.

(2) Monetary instruments do not include warehouse receipts or bills of lading.

(v) *Originator*. The sender of the first payment order in a funds transfer.

(w) *Originator's bank*. The receiving bank to which the payment order of the originator is issued if the originator is not a bank or foreign bank, or the originator if the originator is a bank or foreign bank.

(x) *Payment date*. The day on which the amount of the transmittal order is payable to the recipient by the recipient's financial institution. The payment date may be determined by instruction of the sender, but cannot be

earlier than the day the order is received by the recipient's financial institution and, unless otherwise prescribed by instruction, is the date the order is received by the recipient's financial institution.

(y) *Payment order*. An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause another bank or foreign bank to pay, a fixed or determinable amount of money to a beneficiary if:

(1) The instruction does not state a condition to payment to the beneficiary other than time of payment;

(2) The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank.

(z) *Person*. An individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.

(aa) *Receiving bank*. The bank or foreign bank to which the sender's instruction is addressed.

(bb) *Receiving financial institution*. The financial institution or foreign financial agency to which the sender's instruction is addressed. The term receiving financial institution includes a receiving bank.

(cc) *Recipient*. The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary, except where the recipient's financial institution is a financial institution other than a bank.

(dd) *Recipient's financial institution*. The financial institution or foreign financial agency identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes

a beneficiary's bank, except where the beneficiary is a recipient's financial institution.

(ee) *Secretary*. The Secretary of the Treasury or any person duly authorized by the Secretary to perform the function mentioned.

(ff) *Sender*. The person giving the instruction to the receiving financial institution.

(gg) *Structure (structuring)*. For purposes of section 103.53, a person structures a transaction if that person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct one or more transactions in currency, in any amount, at one or more financial institutions, on one or more days, in any manner, for the purpose of evading the reporting requirements under section 103.22 of this part. "In any manner" includes, but is not limited to, the breaking down of a single sum of currency exceeding \$10,000 into smaller sums, including sums at or below \$10,000, or the conduct of a transaction, or series of currency transactions, including transactions at or below \$10,000. The transaction or transactions need not exceed the \$10,000 reporting threshold at any single financial institution on any single day in order to constitute structuring within the meaning of this definition.

(hh) *Transaction account*. Transaction accounts include those accounts described in 12 U.S.C. 461(b)(1)(C), money market accounts and similar accounts that take deposits and are subject to withdrawal by check or other negotiable order.

(ii) *Transaction*. (1) Except as provided in paragraph (ii)(2) of this section, transaction means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition, and with respect to a financial institution includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, purchase or redemption of any money order, payment or order for any money remittance or

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transfer, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(2) For purposes of § 103.22, and other provisions of this part relating solely to the report required by that section, the term “transaction in currency” shall mean a transaction involving the physical transfer of currency from one person to another. A transaction which is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order, and which does not include the physical transfer of currency, is not a transaction in currency for this purpose.

(jj) *Transmittal of funds.* A series of transactions beginning with the transmitter’s transmittal order, made for the purpose of making payment to the recipient of the order. The term includes any transmittal order issued by the transmitter’s financial institution or an intermediary financial institution intended to carry out the transmitter’s transmittal order. The term transmittal of funds includes a funds transfer. A transmittal of funds is completed by acceptance by the recipient’s financial institution of a transmittal order for the benefit of the recipient of the transmitter’s transmittal order. Funds transfers governed by the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630, 92 Stat. 3728, 15 U.S.C. 1693, *et seq.*), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

(kk) *Transmittal order.* The term transmittal order includes a payment order and is an instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or cause another financial institution or foreign financial agency to pay, a fixed or determinable amount of money to a recipient if:

(1) The instruction does not state a condition to payment to the recipient other than time of payment;

(2) The receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and

(3) The instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution.

(ll) *Transmitter.* The sender of the first transmittal order in a transmittal of funds. The term transmitter includes an originator, except where the transmitter’s financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.

(mm) *Transmitter’s financial institution.* The receiving financial institution to which the transmittal order of the transmitter is issued if the transmitter is not a financial institution or foreign financial agency, or the transmitter if the transmitter is a financial institution or foreign financial agency. The term transmitter’s financial institution includes an originator’s bank, except where the originator is a transmitter’s financial institution other than a bank or foreign bank.

(nn) *United States.* The States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.

(oo) *Business day.* Business day, as used in this part with respect to banks, means that day, as normally communicated to its depository customers, on which a bank routinely posts a particular transaction to its customer’s account.

(pp) *Postal Service.* The United States Postal Service.

(qq) *FinCEN.* FinCEN means the Financial Crimes Enforcement Network, an office within the Office of the Under Secretary (Enforcement) of the Department of the Treasury.

(rr) *Indian Gaming Regulatory Act.* The Indian Gaming Regulatory Act of 1988, codified at 25 U.S.C. 2701-2721 and 18 U.S.C. 1166-68.

(ss) *State.* The States of the United States and, wherever necessary to carry out the provisions of this part, the District of Columbia.

(tt) *Territories and Insular Possessions.* The Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Commonwealth of the Northern

Mariana Islands, and all other territories and possessions of the United States other than the Indian lands and the District of Columbia.

(uu) *Money services business.* Each agent, agency, branch, or office within the United States of any person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the capacities listed in paragraphs (uu)(1) through (uu)(6) of this section. Notwithstanding the preceding sentence, the term “money services business” shall not include a bank, nor shall it include a person registered with, and regulated or examined by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(1) *Currency dealer or exchanger.* A currency dealer or exchanger (other than a person who does not exchange currency in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(2) *Check casher.* A person engaged in the business of a check casher (other than a person who does not cash checks in an amount greater than \$1,000 in currency or monetary or other instruments for any person on any day in one or more transactions).

(3) *Issuer of traveler’s checks, money orders, or stored value.* An issuer of traveler’s checks, money orders, or stored value (other than a person who does not issue such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to any person on any day in one or more transactions).

(4) *Seller or redeemer of traveler’s checks, money orders, or stored value.* A seller or redeemer of traveler’s checks, money orders, or stored value (other than a person who does not sell such checks or money orders or stored value in an amount greater than \$1,000 in currency or monetary or other instruments to or redeem such instruments for an amount greater than \$1,000 in currency or monetary or other instruments from, any person on any day in one or more transactions).

(5) *Money transmitter—(i) In general.* Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who

engages as a business in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ii) *Facts and circumstances; Limitation.* Whether a person “engages as a business” in the activities described in paragraph (uu)(5)(i) of this section is a matter of facts and circumstances. Generally, the acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with a bona fide sale of securities or other property), will not cause a person to be a money transmitter within the meaning of paragraph (uu)(5)(i) of this section.

(6) *United States Postal Service.* The United States Postal Service, except with respect to the sale of postage or philatelic products.

(vv) *Stored value.* Funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically.

[52 FR 11441, Apr. 8, 1987; 52 FR 12641, Apr. 17, 1987, as amended at 53 FR 777, Jan. 13, 1988; 53 FR 4138, Feb. 12, 1988; 54 FR 3027, Jan. 23, 1989; 54 FR 28418, July 6, 1989; 55 FR 20143, May 15, 1990; 58 FR 13546, Mar. 12, 1993; 60 FR 228, Jan. 3, 1995; 61 FR 4331, Feb. 5, 1996; 61 FR 7055, Feb. 23, 1996; 61 FR 14249, 14385, Apr. 1, 1996; 63 FR 1923, Jan. 13, 1998; 64 FR 45450, Aug. 20, 1999; 65 FR 13692, Mar. 14, 2000]

Subpart B—Reports Required To Be Made

§ 103.15 Determination by the Secretary.

The Secretary hereby determines that the reports required by this subpart have a high degree of usefulness in