

# Proposed Rules

Federal Register

Vol. 73, No. 214

Tuesday, November 4, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FARM CREDIT ADMINISTRATION

### 12 CFR Chapter VI

RIN 3052-AC42 and 3052-AC39

#### Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Mission-Related Investments, Rural Community Investments; Regulatory Burden

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule and notice of intent; public comment notification.

**SUMMARY:** In June of 2008, the Farm Credit Administration (FCA, we, or us) published in the *Federal Register* a proposed rule pertaining to investments in rural communities as well as a notice of intent pertaining to regulatory burden, both requesting comments from the public. For both, a total of five comments sent via the <http://www.regulations.gov> eRulemaking portal were not transmitted to the FCA. We are asking any member of the public who used this method to send comments to FCA and believes their comment may have been lost to contact the staff members listed below.

**DATES:** Please contact us on or before November 21, 2008.

**ADDRESSES:** You may review copies of comments we received on these two documents at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments."

**FOR FURTHER INFORMATION CONTACT:** Dale L. Aultman, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434; or Mary Alice Donner, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

**SUPPLEMENTARY INFORMATION:** On June 16, 2008, we published (73 FR 33931) a

proposed rule that would authorize each Farm Credit System bank, association, and service corporation to invest in rural communities across America under certain conditions. The comment period for this proposed rule ended on August 15. On June 23, 2008, we published (73 FR 35361) a notice of regulatory review and request for comment pertaining to regulatory burden. That comment period ended on August 22, 2008. However, due to a technical software error that is now corrected, a total of five public comments submitted via the <http://www.regulations.gov> eRulemaking portal were not transmitted to FCA. Four comments pertained to the proposed rule on rural community investments and one comment pertained to the regulatory burden notice.

The FCA supports public involvement and participation in its regulatory process. Therefore, we would like any member of the public who submitted a comment, via the eRulemaking portal, and believes their comment may have been lost to contact us so we may personally ensure that your comment is included. You may contact us by calling one of the two individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Dated: October 30, 2008.

**Roland E. Smith,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. E8-26273 Filed 11-3-08; 8:45 am]

**BILLING CODE 6705-01-P**

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA75

#### Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Commodity Trading Advisors

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

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Financial Crimes Enforcement Network ("FinCEN") is withdrawing the notice of proposed rulemaking, dated May 5, 2003, in which FinCEN proposed requiring

commodity trading advisors to establish and implement anti-money laundering programs.

**DATES:** The withdrawal is effective November 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107-56. Title III of the USA PATRIOT Act amended the anti-money laundering provisions of the BSA, which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332. The amendments were designed to promote the prevention, detection, and prosecution of international money laundering and terrorist financing.

Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.<sup>1</sup>

Section 352 of the USA PATRIOT Act amended section 5318(h) of the BSA. Section 352 requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (1) The development of internal policies, procedures, and controls; (2) the designation of a compliance officer; (3) an ongoing employee training program; and (4) an independent audit function to test programs. Section 352 authorizes the Secretary, after consulting with the appropriate Federal functional regulator,<sup>2</sup> to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not subject to rules implementing the BSA.

<sup>1</sup> Accordingly, references herein to the Secretary's authority apply equally to the Director of FinCEN.

<sup>2</sup> In the case of commodity trading advisors, the appropriate Federal functional regulator is the Commodity Futures Trading Commission ("CFTC").

Commodity trading advisors are defined as financial institutions under the BSA.<sup>3</sup> In November 2002, FinCEN temporarily exempted certain financial institutions, including commodity trading advisors, from the requirement to establish and implement an anti-money laundering program.<sup>4</sup>

## II. The 2003 Notice of Proposed Rulemaking and Subsequent Developments

### A. The 2003 Notice of Proposed Rulemaking

On May 5, 2003, FinCEN issued a notice of proposed rulemaking, in which it proposed requiring commodity trading advisors to establish and implement anti-money laundering programs.<sup>5</sup> FinCEN proposed to apply the rule to commodity trading advisors that are registered or required to be registered with the Commodity Futures Trading Commission and that direct client commodity futures or options accounts.

The comment period closed on July 7, 2003. FinCEN received three comment letters in response to the notice of proposed rulemaking. One of the comment letters was submitted by a registered futures association, another was submitted by a futures industry trade association, and the third was submitted by a commodity trading advisor. Comments focused on four matters: (1) Relief from AML obligations for certain commodity trading advisors; (2) allocation of certain money laundering obligations between commodity trading advisors and futures commission merchants; (3) liability issues for commodity trading advisors when outsourcing the performance of AML functions; and (4) access by federal examiners to the BSA records of a commodity trading advisor.

### B. Subsequent Developments

In June 2007, FinCEN announced that it would be taking a fresh look at BSA regulation to ensure that it is being applied efficiently and effectively across the industries that FinCEN regulates and the industries FinCEN has proposed to regulate. As part of that initiative, FinCEN is considering whether and to what extent it should impose requirements under the BSA on commodity trading advisors and similar entities.

As it considers its approach to commodity trading advisors, FinCEN has determined that it will withdraw the notice of proposed rulemaking that was published in May 2003. Given the passage of time, FinCEN has determined that it will not proceed with an anti-money laundering program requirement for commodity trading advisors without publishing a new proposal. This will give industry and other interested parties an opportunity to provide comment on the contents of any such proposal, as it may be affected by any developments since 2003 in industry operations as well as functional and BSA regulation.

Finally, since the time that the notice of proposed rulemaking was published, FinCEN has concluded the major rulemakings required by the USA PATRIOT Act for banks, broker-dealers, and futures commission merchants. Each of these institutions is subject to a comprehensive set of requirements under the BSA including, among other things, the obligation to establish and implement an anti-money laundering program,<sup>6</sup> the obligation to establish and implement a customer identification program,<sup>7</sup> the obligation to establish and implement a special due diligence program for foreign correspondent accounts and foreign private banking accounts,<sup>8</sup> the obligation to detect and report suspicious activity,<sup>9</sup> and the obligation to file currency transaction reports.<sup>10</sup>

Commodity trading advisors must conduct financial transactions for their clients through other financial institutions that are subject to BSA regulations. A client's commodity interests in particular must be carried with a futures commission merchant. Thus, as FinCEN continues to consider the extent to which BSA requirements should be imposed on commodity trading advisors, their activity is not entirely outside the current BSA regulatory regime.

## III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking, in which FinCEN proposed requiring certain commodity trading advisors to establish and implement anti-money laundering programs, as published in the **Federal Register** on May 5, 2003 (68 FR 23640), is hereby withdrawn.

Dated: October 29, 2008.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E8-26204 Filed 11-3-08; 8:45 am]

BILLING CODE 4810-02-P

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 103

RIN 1506-AA71

#### **Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking; Anti-Money Laundering Programs for Investment Advisers**

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

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** The Financial Crimes Enforcement Network ("FinCEN") is withdrawing the notice of proposed rulemaking, dated May 5, 2003, in which FinCEN proposed imposing on certain investment advisers a requirement to establish and implement an anti-money laundering program.

**DATES:** The withdrawal is effective November 4, 2008.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107-56. Title III of the USA PATRIOT Act amended the anti-money laundering provisions of the BSA, which is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332. The amendments were designed to promote the prevention, detection, and prosecution of international money laundering and terrorist financing.

Regulations implementing the Bank Secrecy Act appear at 31 CFR Part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.<sup>1</sup>

<sup>1</sup> Accordingly, references herein to the Secretary's authority apply equally to the Director of FinCEN.

<sup>3</sup> 31 U.S.C. 5312(c).

<sup>4</sup> 31 CFR 103.170. See also *Anti-Money Laundering Programs for Financial Institutions*, 67 FR 67547 (Nov. 6, 2002).

<sup>5</sup> *Anti-Money Laundering Programs for Commodity Trading Advisors*, 68 FR 23640 (May 5, 2003).

<sup>6</sup> 31 CFR 103.120.

<sup>7</sup> 31 CFR 103.121-103.123.

<sup>8</sup> 31 CFR 103.176 and 103.178.

<sup>9</sup> 31 CFR 103.17-103.19.

<sup>10</sup> 31 CFR 103.22.