



Department of the Treasury Financial Crimes Enforcement Network

Advisory

FIN-2010-A007

Issued: June 21, 2010

Subject: Newly Released Mexican Regulations Imposing Restrictions on Mexican Banks for Transactions in U.S. Currency

The Financial Crimes Enforcement Network (FinCEN) is advising U.S. financial institutions of a recent change in Mexican financial regulations applying to Mexican banks that could affect the operations of U.S. financial institutions. On June 15, 2010 the Mexican finance ministry, Secretaría de Hacienda y Crédito Público de México (SHCP), announced new anti-money laundering (AML) regulations that will restrict the amounts of physical cash (banknotes and coins) denominated in U.S. dollars that Mexican banks may receive.¹ The Mexican regulation will still allow certain transactions up to relatively low value thresholds, as described in more detail below. The regulations do not restrict non-cash transactions denominated in U.S. currency (e.g., wire transfers, ACH payments, credit card transactions, traveler's checks, etc.). These new Mexican regulations are intended to mitigate risks of laundering proceeds of crime tied to narcotics trafficking and organized crime. The regulations state that the restrictions on U.S. currency transactions by banks with individuals will go into effect four business days after official publication on June 16, 2010. The restrictions on U.S. currency transactions by banks with legal entities and trusts will go into effect ninety (90) calendar days after official publication (on or about September 14, 2010).²

This Advisory is issued to assist financial institutions in understanding how the U.S. financial system may be affected by the changes in the Mexican regulations, to help U.S. financial institutions anticipate possible impacts on their businesses, including the risk profiles of certain classes of transactions and customers, and how various AML and counter-terrorist financing safeguards consistent with Bank Secrecy Act (BSA) regulations may be utilized to mitigate possible changes or increases in risks.

Background

The United States and Mexico maintain strong commercial and cultural ties, particularly evident around our shared border. There are many legitimate reasons that U.S. currency enters the Mexican economy, including in connection with border trade, tourism, and

¹ See SHCP Press Release No. 041/2010 (June 15, 2010), Anuncia la SHCP Medidas para Regularizar la Entrada de Dolares en Efectivo al Sistema Bancario Mexicano, available at http://www.hacienda.gob.mx/SALAPRENSA/doc_comunicados_prensa/2010/Junio/comunicado_041_2010.pdf.

² Other requirements upon Mexican banks, such as recordkeeping obligations will begin as early as four days after official publication, while additional reporting obligations will be required as of October 2010.

remittances.³ Nonetheless, a significant portion of the U.S. currency in Mexico is derived from illegal activity, specifically the sale of narcotics in the United States, some of the proceeds of which are smuggled as bulk cash into Mexico.⁴ Within Mexico, much of the U.S. currency, regardless of source, is intermediated through multiple transactions and ultimately make its way into the global financial system and repatriated back to the United States (in a process similar to that in most countries with respect to the processing of non-local currency).

FinCEN and U.S. financial regulators have previously taken steps aimed at raising awareness of the risks involved in the bulk shipment of cash between the United States and Mexico. In 2006, FinCEN issued guidance on the potential misuse of relationships with U.S. financial institutions by certain Mexican financial institutions, including Mexican casas de cambio, and the money laundering threat involving the smuggling of bulk U.S. currency into Mexico.⁵ More recently, on April 29, 2010, the Federal Financial Institutions Examination Council (FFIEC) released the revised *Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Examination Manual*,⁶ which included a new section providing guidance to banks on managing the risks associated with receiving bulk shipments of currency and implementing effective monitoring and reporting systems addressed to those risks. Although the FFIEC *BSA/AML Examination Manual* is issued by the Federal banking regulators regarding AML requirements applicable to banks, it contains guidance that may be of interest to all financial institutions covered by the BSA.

Summary of New Mexican Regulation

The SHCP has issued the new regulations, in consultation with the Mexican financial supervisor, the Comisión Nacional Bancaria y de Valores, pursuant to Article 115 of the Mexican Law of Credit Institutions, to be included among other AML requirements for banks issued pursuant to article 115.⁷ (See Annexes for a copy of the new regulations as issued, and an unofficial translation into English.) The regulations provide that Mexican banks shall be prohibited from receiving U.S. currency for transactions involving currency exchange, and for receipt of payment for services, or transfers or remittances of funds, subject to the following conditions:⁸

³ In announcing the new regulations (see footnote 1), the SHCP stated that more than 96% of remittances are transferred electronically and paid out in Mexican pesos, while the average remittance value is U.S. \$317. Hence, SHCP did not believe the changes would affect remittance payments.

⁴ See, e.g., 2010 National Drug Control Strategy, available at <http://www.whitehousedrugpolicy.gov/publications/policy/ndcs2010.pdf>; 2009 International Narcotics Control Strategy Report, Mexico Country Report, available at <http://www.state.gov/p/inl/rls/nrcrpt/2009/vol2/index.htm>; 2007 National Money Laundering Strategy, available at <http://www.ustreas.gov/press/releases/docs/nmls.pdf>.

⁵ http://www.fincen.gov/statutes_regs/guidance/html/advis04282006.html

⁶ http://www.ffeic.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf

⁷ http://dof.gob.mx/nota_detalle.php?codigo=5146921&fecha=16/06/2010

⁸ Additionally, transactions with foreign diplomatic offices, international organizations, and banks acting on their own behalf are exempt from these restrictions.

- For legal entities (in Spanish “personas morales”) and trusts that are *customers*, U.S. currency transactions will be prohibited, unless such customer is based or conducts most of its business within a tourist area (to be identified by SHCP at a later date), within twenty miles of the U.S. border, or within the States of Baja California or South Baja California; in which cases the bank may receive an aggregate limit of \$7000 in U.S. currency from its customer per calendar month.
- For legal entities and trusts that are *non-customers*, all U.S. currency transactions will be prohibited.
- For individuals who are *customers*, the aggregate limit in U.S. currency that the bank may receive from its customer per calendar month shall be \$4000.
- For individuals who are *non-customers*, the aggregate limits in U.S. currency that the bank may receive from the individual shall be \$300 per day, and \$1500 per month. Only the monthly threshold of \$1500 per person will apply to non-Mexicans (e.g., foreign tourists); the daily threshold will not apply. For all transactions for individuals who are non-customers, the Bank will be required to receive certain identification information from the transacting person.

Guidance

The change in Mexican regulations could have a significant impact on the operations of U.S. financial institutions, both directly with respect to the nature of activity and relationships with Mexican customers and financial institutions, and indirectly with respect to possible changes in activity both within the United States and through intermediary countries. Financial institutions are advised that some changes in transaction activity should be expected in advance of the effective date of the Mexican regulations. In addition, U.S. financial institutions should be aware that some Mexican banks have already implemented restrictions on accepting foreign currency. The end of this Advisory includes examples of possible changes in activity. These examples are by no means certain nor exclusive, but rather are illustrative and are being shared through this Advisory for the purpose of aiding U.S. financial institutions in developing assessments based upon their unique customer and business profiles.

Financial institutions should consider the possible impact of the restrictions when reviewing financial activity and monitoring transactions. The changes to the Mexican regulations could lead some customers to seek new relationships with U.S. financial institutions. Financial institutions are reminded of their requirement to have a Customer Identification Program, as applicable, as well as an AML Program to detect suspicious activity. Financial institutions that receive or offer services in connection with bulk cash shipments should have policies and procedures that mitigate the risks of those services.

While the transactional activity that U.S. financial institutions may experience as a result of the new Mexican restrictions may not be indicative of criminal activity, U.S. financial institutions should consider this activity in conjunction with other information, including

transaction volumes and source of funds, when determining whether to file a suspicious activity report (SAR).⁹ Financial institutions' requirements to report suspicious activity are significant, because SARs continue to be one of the most valuable sources of data for law enforcement and regulatory agencies in their investigation and prosecution of criminal activity.

Suspicious Activity Reporting

To assist FinCEN and law enforcement with efforts to better assess the impact of the changes in the Mexican regulations, particularly with respect to possible attempts by criminals to divert or alter their methods of laundering the proceeds of crime, we request that: (a) if a financial institution has determined that a transaction is suspicious and thus has an obligation to file a SAR with FinCEN; and (b) if the facts and circumstances of the transaction lead the financial institution to suspect that the transaction is being entered into as a result of the Mexican currency restrictions, then the financial institution should include the specific term "MX Restriction" within the narrative portion of the SAR filing and highlight the exact dollar amount(s) associated with the suspicious activity. We further request the Suspect/Subject Information Section in the SAR filing include all information available for each party suspected of engaging in this activity (including the individual or company name, address, phone number, and any other identifying information). With respect to currency shipments from Mexico that are deemed suspicious, include information on the common carrier, courier, or shipper of the currency, and information on the point of exportation of the currency from Mexico and the point of importation in the United States, if known.

FinCEN will continue to analyze U.S. currency flows between Mexico and the United States to better understand legitimate, as distinct from possible criminal, activity, and to aid in the detection, deterrence, investigation and prosecution of criminal activity. Future updates to this Advisory may be published as more specific information as to the effects of the new Mexican regulations become available.

Examples of Potential Activity

The new restrictions implemented by Mexico may have both direct and indirect effects on transactions occurring in the United States. Financial institutions may find the following examples of possible effects helpful in assessing risks and in ongoing monitoring of financial transactions.

- As the restrictions on Mexican bank activity with respect to U.S. currency is announced and goes into effect, it can be expected that the overall amount of U.S. currency repatriated by Mexican banks to the United States will decline, with a

⁹ Financial institutions shall file with FinCEN to the extent and in the manner required a report of any suspicious transaction relevant to a possible violation of law or regulation. A financial institution may also file with FinCEN a Suspicious Activity Report with respect to any suspicious transaction that it believes is relevant to the possible violation of any law or regulation but whose reporting is not required by FinCEN regulations. *See, e.g.*, 31 CFR § 103.18(a).

possible further consolidation of the Mexican entities seeking currency repatriation services. Prior to the effective date of the restrictions, there could be an increase in activity as pre-existing currency holdings of banks and their customers are drawn down.

- Individuals and businesses no longer able to deposit U.S. currency into Mexican banks may instead look directly to U.S. financial institutions to deposit U.S. currency.
- Within the United States, financial institutions in the region of the Mexican border or near frequently used ports of entry for travel to and from Mexico by land, sea or air, should consider whether significant changes in their U.S. currency activity might be related to the changes in Mexico.
- The limitations upon U.S. currency activity in Mexico may lead to increased demand by Mexican persons, and non-Mexican persons doing business with Mexico, for other types of payment services or products to settle debts that might previously have been paid in U.S. currency. This could include increased demand for Mexican peso banknotes; debit cards, credit cards and pre-paid products presented in Mexico to access funds in U.S. accounts; increased use of wire transfers; ACH; money orders, checks or other paper instruments; etc.
- Moreover, to the extent that one source of U.S. currency in Mexico has been proceeds of crime in the United States that has been bulk shipped to Mexico, the restrictions upon the ability to integrate bulk currency into the Mexican financial system may cause criminals in the United States to attempt to launder more U.S. currency within the United States. This may be accompanied by attempts to transfer non-cash proceeds to Mexico, such as through other types of payment services or products, transfer of goods or commodities, or other means, such as trade-based money laundering.¹⁰
- U.S. currency may be diverted from Mexico through intermediary countries – in particular, currency that is not tied to legitimate economic activity in Mexico, but rather related to narcotics trafficking or other organized crime. Financial institutions should thus consider, as part of their risk management related to bulk currency activities generally, whether they understand the causes of sudden significant increases in U.S. currency activities involving jurisdictions other than Mexico to avoid unknowingly facilitating the processing of U.S. currency diverted from past Mexican activity.

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¹⁰ See FinCEN Advisory FIN-2010-A001, Advisory to Financial Institutions on Filing Suspicious Activity Reports regarding Trade-Based Money Laundering (February 18, 2010), available at http://www.fincen.gov/statutes_regs/guidance/html/fin-2010-a001.html.

For questions regarding this Advisory, contact FinCEN's Regulatory Helpline at (800)949-2732.

Annex

Unofficial Translation http://www.fincen.gov/news_room/rp/files/06-2010-0238-eng-final.pdf

The original Mexican regulations referenced in this advisory may be found at:
http://dof.gob.mx/nota_detalle.php?codigo=5146921&fecha=16/06/2010