DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Money Services Businesses

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing this interim final rule to prescribe minimum standards applicable to money services businesses pursuant to the revised provision of the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, ATTN: Section 352 MSB Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 MSB Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480 (not toll-free numbers).

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 (USA PATRIOT ACT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to provide additional tools to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum, (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. The statute further permits the Secretary to exempt from this requirement those financial institutions not currently subject to Treasury's regulations implementing the BSA. In addition, Section 352(c) directs the Secretary to prescribe regulations by April 24, 2002, for anti-money laundering programs that are ''commensurate with the size, location, and activities'' of the financial institutions to which such regulations apply.

Money services businesses are defined as financial institutions under the BSA and are subject to registration, recordkeeping, and reporting obligations under the implementing regulations. They thus fall within the category of financial institutions to which Congress intended to apply the anti-money laundering program requirements. [1] Requiring money services businesses to implement anti-money laundering programs should enhance their ability to comply with their BSA obligations. This interim final rule prescribes minimum standards for anti-money laundering programs for money services businesses, tailored to the particular circumstances of their industry.

In requiring money services businesses to register with the Department of the Treasury, Congress recognized that money services businesses, like depository institutions, are subject to abuse by money launderers.[2] Following up on this finding, along with issuing regulations implementing the registration requirement, Treasury and FinCEN also issued regulations requiring money services businesses (with the exception of currency dealers or exchangers, check cashers, and issuers, sellers, and redeemers of stored value) to report to FinCEN suspicious activity occurring after December 31, 2001.[3] As Treasury and FinCEN acknowledged in promulgating these regulations, implementation of a comprehensive counter-money laundering strategy for this category of financial institution raises significant issues not present for depository institutions subject to the BSA such as banks because of a number of unique factors affecting the money services business industry.[4]

The money services businesses category of financial institutions subject to Part 103 includes a variety of non-bank financial institutions: currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders, or stored value; sellers or redeemers of traveler's checks, money orders, or stored value; and money transmitters.[5] The size and complexity of money services business enterprises range from the small and simple to the very large and complex; structures include sole proprietorships, partnerships, and corporations. Money services business enterprises range from small ''mom and pop'' operations based in one location to large, well capitalized firms that trade on major securities exchanges, enterprises with numerous branches or large agent networks, and also include the United States Postal Service. For some enterprises, such as grocery stores, convenience stores, and gas stations, the financial activities that make them money services businesses are not their core business activities but only incidental services offered along with core products and services. Other money services businesses are organized to provide several financial services to their customers similar to the full range of financial products provided by a bank. Issuers of traveler's checks, issuers of money orders, and primary money transmitter companies often operate through networks of independent enterprises that serve as distribution points throughout the country or the world. These agent networks make up the bulk of the sellers of traveler's checks and money orders and distributors of money transfer services in the United States.[6]

The interim final rule requires each money services business to establish a program reasonably designed to prevent

[1] Although Section 5318(a)(6) authorizes the Secretary to exempt any financial institution from any BSA requirement, in light of the vulnerability of the industry to money laundering described infra and the extent of existing BSA regulation of money services businesses, the Secretary is declining to exempt money services businesses from the anti-money laundering program requirement.

[2] Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act of 1994, Public Law 103–325 (September 23, 1994). Treasury's implementing regulations required all money services businesses to register with FinCEN by December 31, 2001. See 31 CFR 103.41(f).

[3] 31 CFR 103.20(f).

[4] *See* 62 FR 27903 (May 21, 1997).

[5] *See* 31 CFR 103.11uu(1)–(6).

[6] *See* 62 FR 27891–895 (May 21, 1997).

its use in money laundering or terrorist financing. Treasury and FinCEN have determined that the exact nature of an effective anti-money laundering program for money services businesses must be commensurate with the risks posed by the size and location of the particular money services business, and the nature and volume of the financial services it offers. Critical components of such a program are procedures for assuring that applicable customer identification requirements are met, all reports required under 31 CFR part 103, including but not limited to reports of suspicious transactions, are filed in a timely fashion, all required records are maintained in complete and accurate form, and requests for information from law enforcement agencies are handled with appropriate speed. The interim final rule mandates certain methods to attain such regulatory compliance, including documentation of policies, procedures, and internal controls, training, designation of a compliance officer, and program review. Finally, in addition to compliance with mandatory regulatory requirements, Treasury and FinCEN encourage money services businesses to implement procedures for voluntarily reporting suspected terrorist activity to FinCEN using its Financial Institutions Hotline (1–866–556–3974).

II. Analysis of the Interim Final Rule

Section 103.125(a) requires each money services business to have an effective anti-money laundering program, which is defined as a program reasonably designed to prevent the money services business from being used to facilitate money laundering or to finance terrorist activities. Section 103.125(b) provides that the program is to be commensurate with the risks posed by the financial services provided by the money services business, in light of their nature and volume, and the location and size of the money services business. Section 103.125(c) provides that each money services business must have a written anti-money laundering program.

Section 103.125(d) sets forth the minimum requirements for an effective anti-money laundering program. First, § 103.125(d)(1) provides that such a program must contain policies, procedures, and internal controls reasonably designed to ensure compliance with the applicable requirements of 31 CFR part 103, including recordkeeping, reporting, verifying customer identification, and responding to law enforcement requests. In addition, money services businesses that have automated data processing systems should integrate into their systems compliance procedures such as recordkeeping and monitoring transactions subject to reporting requirements.

In recognition of the fact that a number of issuers of money services instruments such as traveler's checks and money orders sell their products through other money services businesses, § 103.125(d)(1)(iii) permits such issuers and sellers to allocate responsibility for developing written policies, procedures, and internal controls among themselves. However, responsibility for implementation of the policies, procedures, and internal controls rests with each money services business, and, particularly with respect to internal controls, a money services business needs to be vigilant in ensuring that such controls are effective in the circumstances under which it operates.[7] This section also makes clear that a money services business may not contract away its responsibility to establish and maintain an effective anti-money laundering program.

In addition, § 103.125(d)(2) requires each money services business to designate a person or persons to be responsible for the program, i.e., a compliance officer. The compliance officer shall be responsible for day to day compliance with 31 CFR Part 103, ensuring the compliance program is updated as necessary and reflects current Treasury guidance, and overseeing the money services business's education and training program.

Section 103.125(d)(3) provides that each money services business must have an ongoing training or education program for employees concerning their responsibilities under the program and 31 CFR Part 103, including training in the detection of suspicious activities. Finally, under § 103.125(d)(4), each money services business must provide for an independent review of the program on a periodic basis. The independent review may be performed by an employee of the money services business, so long as the reviewer is not the compliance officer.

The interim final rule is designed to give money services businesses flexibility to tailor their programs to their specific circumstances so long as the minimum requirements are met. For example, the program for a money services business that provides a full range of financial services (e.g., check cashing, currency exchange, money order sales, money transmission services) from multiple branches would be structured differently than a program for a money services business that offers one or two services through an agent network. The educational component for an enterprise that offers multiple financial services may require more comprehensive training for employees to recognize aspects of suspicious activity associated with different transaction types and may differ based on the geographic location of the branches. An enterprise with multiple locations that offers multiple financial services may require more extensive oversight by its compliance officer than would an enterprise that offers one or two financial services incidental to its core business in isolated transactions. The former would also require more frequent independent review.

The interim final rule also permits programs to be tailored to the specific risks associated with the different financial services offered by money services businesses. For example, sales of traveler's checks, money orders, and money transfers may be particularly vulnerable to structuring—that is, the breaking up of a transaction into multiple transactions so as to fall beneath the thresholds for recordkeeping and reporting. [8] An appropriate anti-money laundering program for such an enterprise would include the training of employees to recognize indications of structuring.

FinCEN intends to issue guidance to assist money services businesses in complying with the interim final rule. Such guidance will be posted on the FinCEN web site dedicated to money services businesses (*www.msb.gov*).

III. Implementation Date Requirements

Pursuant to section 103.125(e), an existing money services business is required to comply with the anti-money laundering program requirements of 31 CFR 103.125 by July 24, 2002. Money services businesses coming into existence after that date must develop and implement such a program on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

IV. Administrative Procedure Act

The provisions of 31 U.S.C. 5318(h)(1), requiring all financial institutions to establish anti-money laundering programs with at least four identified elements, become effective

[7] For example, a money services business that offers products from different issuers must ensure that its internal controls are effective for all the products it offers, and not just blindly adopt controls generated by the issuer of one of the products it sells, which may not be applicable to its other products.

[8] See 62 FR 27911 (May 21, 1997).

April 24, 2002. This interim rule provides guidance to money services businesses on how to comply with the law in effect on that date and does not impose any obligation on any financial institution that is not required by section 352 of the Act. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary pursuant to 5 U.S.C. 553(b)(B), and to make the provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

V. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

VI. Executive Order 12866

This interim final rule is not a ''significant regulatory action'' as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

VII. Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this interim final rule has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1506–0020. 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 OMB.

Comments concerning the collection of information should be sent to the Office of Management and Budget, ATTN: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503, with copies to FinCEN at Department of the Treasury, Financial Crimes Enforcement Network, Post Office Box 39, Vienna, Virginia, 22183.

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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this interim final rule is in 31 CFR 103.125(c). The information will be used by federal agencies to verify compliance by money services businesses with the provisions of 31 CFR 103.125. The collection of information is mandatory. The likely recordkeepers are businesses.

In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 103.125(c) is presented to assist those persons wishing to comment on the information collection.

Description of Recordkeepers: Money services businesses as defined in 31 CFR 103.11(uu).

Estimated Number of Recordkeepers: 200,000.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the collection of information in this interim final rule is 1 hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 200,000 hours.

List of Subjects in 31 CFR Part 103

Authority delegations (Government agencies), Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for Part 103 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5331; title III, secs. 314, 352, Pub. L. 107–56, 115 Stat. 307.

2. In subpart I, add new § 103.125 to read as follows:

§ 103.125 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by § 103.11(uu), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this part.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in § 103.41(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this part. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this part;

(ii) The compliance program is updated as necessary to reflect current requirements of this part, and related

guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Effective date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

Dated: April 23, 2002.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 02–10453 Filed 4–24–02; 4:09 pm]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Mutual Funds

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Interim final rule.

SUMMARY: FinCEN is issuing this interim final rule to prescribe minimum standards applicable to mutual funds pursuant to the revised provision in the Bank Secrecy Act that requires financial institutions to establish anti-money laundering programs.

DATES: This interim final rule is effective April 24, 2002. Written comments may be submitted to FinCEN on or before May 29, 2002.

ADDRESSES: Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 352 Mutual Fund Regulations. Comments may also be submitted by electronic mail to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attention: Section 352 Mutual Fund Regulations.'' Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480; Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927; or Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

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 (USA PATRIOT) Act of 2001 (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Section 352(a) of the Act, which becomes effective on April 24, 2002, amends section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution to establish an anti-money laundering program that includes, at a minimum (i) the development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. Section 5318(h)(2) authorizes the Secretary, after consulting with the appropriate Federal functional regulator,[1] to prescribe minimum standards for anti-money laundering programs, and to exempt from the application of those standards any financial institution that is not otherwise subject to BSA regulation.

Although the BSA includes ''an * * * investment company'' [2] among the entities defined as financial institutions, FinCEN has not previously defined the term for purposes of the BSA. The Investment Company Act of 1940 (codified at 15 U.S.C. 80a–1 et seq.) (the 1940 Act) defines investment company broadly [3] and subjects those entities to comprehensive regulation by the Commission. However, entities commonly known as hedge funds, private equity funds and venture capital funds are specifically excluded from the 1940 Act definition of investment company.[4] For purposes of the section 352 requirement that financial institutions establish anti-money laundering programs effective April 24, 2002, Treasury is limiting the application of this interim rule to those investment companies falling within the category of ''open-end company'' contained in section 5(a)(1) of the 1940 Act, which are commonly referred to as ''mutual funds.'' [5]

Mutual funds are by far the predominant type of investment company. Other types of investment companies regulated by the Commission include closed-end companies and unit investment trusts. Closed-end companies typically sell a fixed number of shares in traditional underwritten offerings. Holders of closed-end company shares then trade their shares in secondary market transactions, usually on a securities exchange or in the over-the-counter market. Unit

[1] The Federal functional regulator for mutual funds is the Securities and Exchange Commission (Commission).

[2] 31 U.S.C 5312(a)(2)(I).

[3] Section 3(a)(1) defines ''investment company'' as any issuer which (A) is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities; (B) is engaged or proposes to engage in the business of issuing face-amount certificates of the installment type, or has been engaged in such business and has any such certificate outstanding; or (C) is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40 per centum of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis.

[4] Section 356 of the Act requires that the Secretary, the Federal Reserve and the Commission jointly submit a report to Congress, not later than October 26, 2002, on recommendations for effective regulations to apply the requirements of the BSA to investment companies as defined in section 3 of the 1940 Act, including persons that, but for the provisions that exclude entities commonly known as hedge funds, private equity funds, and venture capital funds, would be investment companies.

[5] By interim rule published elsewhere in this separate part of this issue of the **Federal Register**, Treasury is temporarily exempting investment companies other than mutual funds from the requirement that they establish anti-money laundering programs. Treasury is also temporarily deferring determining the definition of ''investment company'' for purposes of the BSA. However, it is likely that those entities excluded from the definition of ''investment company'' in the 1940 Act will be required to establish anti-money laundering programs pursuant to section 352.