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ASBA

April 10, 2003

FinCEN
P.O. Box 39
Vienna, VA 22183

ATTN: ANPRM - Sections 352 and 326
Vehicle Seller Regulations

ASBA (The Association of Ship Brokers & Agents, USA)

ASBA hopes that our input will be useful for any policies that will prevent or deter money laundering. ASBA has approximately 130 membership companies comprised of dry cargo chartering brokers, tanker chartering brokers, sale & purchase (S+P) brokers and ship agents. ASBA S+P brokers are not involved with the sale of yachts or pleasure vessels.

ASBA was formed in 1934 to advance and foster ideals and standards of conduct and practices among those engaged in the international commercial (i.e. merchant marine) trade. ASBA promotes the common interests of those business establishments which are engaged in the business as ship brokers and agents.

There are 3-4 ship brokerage firms in the United States that provide sale and purchase (S+P) brokerage services exclusively (averaging 4-5 brokers per firm) and a handful of chartering brokerage firms that sell a few vessels during the year. Ships are sold in 2 ways: direct negotiations between the buyer/seller or by using a shipbroker as an intermediary.

ISSUES FOR COMMENT

1. We include the following discussions to describe the environment in which a ship sale & purchase (S&P) broker works. This discussion indicates that there is little potential money laundering risk posed.

Transparency: responsibility of a ship broker vs. a financial institution or ship registry:

A S&P broker is not responsible for opening bank accounts or registering a ship and does not exercise financial authority or have access to that information. It is unreasonable to expect a ship broker to be able to

detect money laundering via a ship sale transaction. S+P brokers never act as principals and, unlike car dealers, do not maintain an inventory for sale.

A financial institution has a relationship with the ship buyer that includes knowing the buyer's financial information and handles the movement of money etc.

How difficult is it to use a ship sale to launder money?

Owning and operating a commercial ship in international and domestic trades is a complicated process that requires extensive experience and a large amount of capital (which limits entry by people unfamiliar to the business). You can't just buy a ship and sail off for a few months and then resell the ship to launder your money. Shipping is a highly cyclical business with volatile vessel values. Ship operation is very expensive - it costs $5-10,000 minimum per day to operate a ship and if someone does not know what they are doing, the losses can pile up fast.

Size of ships/transaction amount:

U.S. S&P brokers focus on large vessels (10,000 deadweight and larger, usually 300-400 feet in length and larger) and the average sales prices are in excess of $4-5 mill. per vessel. U.S. brokers also sell ships for demolition (prices average $1-3 mill.)

For comparison, the Palestinian vessel that was recently caught carrying arms in the Mid East was about 500 tons deadweight and value of about $250,000.

What is the role of the ship broker in a ship sale?

In the regular course of his business the S+P broker knows the market and what ships are or may become available for sale and who may be interested in purchasing them.

The S+P broker provides sales candidates (i.e. a ship) to a buyer, arranges the inspection of the vessel, communicates the negotiations between the buyer/seller leading to an agreement, prepares the sales contract and coordinates the transaction until the ship is delivered and the agreed price is paid.

How much due diligence is required by a shipbroker to evaluate a buyer/seller?

The S&P broker knows the ships and his clients from a commercial standpoint but does not have access to the shipping company's financials and does not have any control of the money transfer of sale proceeds from one financial institution to another. The payment money usually moves

via wire transfers putting the due diligence responsibility to the financial institutions.

Offshore companies have been set up for decades with sophisticated structures that even financial institutions have trouble identifying who is the true ship owner - let alone the S&P broker who has no financial data available regarding a single purpose ship owning company.

The broker does not always speak directly with the owner or decision makers of the buyer/seller. In many cases a senior executive of the company handles the negotiations with the broker and this puts distance between the broker and the decision makers. The broker does not become involved with ship financing for example, arranging for purchase money mortgages.

Comparison: Real Estate brokers do not know the financial standing of their clients who are buying a house or the ownership structure of the company buying a building. The role of the broker in a house sale is very similar as with a ship sale.

2. S&P brokers, who handle the sale of large vessels, should be exempt because the broker who negotiates the sale of the vessel has no role in the monetary exchange between the vessel owner and purchaser.

3. Given the size of the S&P brokerage community in the United States and market share, any anti-money laundering program should be structured in a way that does not seriously impact or over burden these small firms with a handful of brokers and limited resources

How many ship sales are concluded by American brokers?

We estimate that approximately 1,000 large ships are sold worldwide per year and the U.S. brokers may sell 25-50 of those (roughly 2.5-5.0 percent).

There are more than a hundred ship brokerage firms outside of the U.S. that provide sale and purchase services. In the U.S. there is only a handful, so it should be noted that putting restrictions on their activities would put them at a competitive disadvantage with foreign brokers. Regulations must be universal and apply to brokers in all countries - we estimate that 95-97 % of ship sale transactions take place outside of the U.S.

If a ship owner has the choice between a foreign broker requiring no disclosure vs. a U.S. broker that requires extensive paperwork and registration, the choice is obvious and the small amount of business that currently gets done will dry up for the Americans.

Are there many U.S. based ship owners (i.e. who are the clients of the American shipbrokers)?

The 1986 Tax Act legislated that foreign controlled corporations had to pay tax on profits and since then U.S. based ship owners have all but disappeared. The few that remain are large publicly listed corporations like OMI and Overseas Shipholding Group - all of the U.S. flag liner companies have been sold to foreign companies and the U.S. flag fleet (Jones Act coastwise trading) is declining.

The majority of ships in the world fleet are owned by single purpose offshore companies - usually set up in Liberia or Panama to avoid paying taxes in their home countries. The owners of these companies are based worldwide and the ships are operated from offices in Greece, London, Norway, Hong Kong, Singapore, etc.

Relatively speaking there are very few ship owners located in the NCCT high risk countries - with the exception of Marshall Islands (where many ship owning companies are registered) and Russia/Ukraine.

4. Relative to the sale & purchase of vessels, we would suggest that a distinction be made based on the type of vessel, commercial vs. pleasure. The US S&P broker business focus on vessels for commercial use, not pleasure yachts. Again, we believe that there is little potential for money laundering in the sale and/or purchase of vessels to be used for commercial trade.

5. We would welcome an opportunity to further discuss the unique industry of the sale and purchase of commercial vessels. As you will note from the discussion, we are concerned that implementing more stringent money laundering regulations would prove to redirect the limited S&P business outside of the United States. As noted above, the US market represents a very small component of the overall S&P market.

We thank you in advance for this opportunity to respond and look forward to participating as an interested party in the future.

Very truly yours,

Jeanne L. Cardona

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