7

April 3, 2003

Office of Chief Counsel
FinCEN
P. O. Box 39
Vienna, VA 22183
ATTN: ANPRY–Sections 352 and 326–Vehicle Seller Regulations

regcomments@fincen.treas.gov

Re: 31 C.F.R. 103. Financial Crime Enforcement Network; Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales
Advanced Notice of Proposed Rulemaking (68 Fed. Reg. 8568)

Dear Sir or Madam:

On behalf of the Texas Automobile Dealers Association (TADA), a state association comprised of approximately 93% of the Texas new motor vehicle and truck dealerships, I appreciate the opportunity to respond to the Advance Notice of Proposed Rulemaking regarding anti-money laundering programs for businesses engaged in vehicle sales as published in the February 24, 2003, *Federal Register*.

The new motor vehicle and truck dealerships in Texas, as well as in all states, are a vital part of the state and national economy, as recognized by the Department of Treasury in the "Background" information to this Notice.[1] The members of TADA shoulder their responsibilities seriously and are ever-mindful of their communities where their families, employees, and customers live and work and want to do their part to safeguard the nation.

---

[1]Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales, 68 Fed. Reg. 8269 (February 24, 2003) (to be codified in 31 C.F.R. pt 103).

The members of TADA are very diverse. The annual new motor vehicle sales volume and variations in locations range from over 8000 units at Houston area dealerships,

a city with over two million, to dealerships whose annual sales volume is under 100 units in communities throughout the state, such as in towns like Shiner and Edna, Texas.[2] Texas has six towns with less than a 1,000 population which boast a new motor vehicle dealership.

With the wide range of members and communities, the following applies.

Issues for Comment

1. What is the Potential Money Laundering Risk Posed by Vehicle Sellers? Do Money Laundering Risks Vary by (1) Vehicle Type (e.g. Boat, Airplane, Automobile); (2) Market (Wholesale vs. Retail); or (3) Business Line (International Sales, Sales to Governments)?

Money laundering is " 'the process by which one conceals the existence, illegal source, or illegal application of income and then disguises that income to make it appear legitimate.' In other words, the process used by criminals through which they make 'dirty' money appear 'clean.' "[3]

The risk of laundering money through a licensed franchised vehicle seller is minimal. First of all, a franchised dealer is scrutinized for capitalization requirements as well as business experience by the manufacturer prior to being approved as a dealer and awarded a franchise. In Texas, a dealer must obtain several licenses and renew those licenses annually in order to stay in business. One of the licenses, from the Office of Consumer Credit Commissioner, requires certain dealership officers who acts as a "holder,"[4] to be fingerprinted.[5] Those prints are then sent to state and federal authorities for examination and to obtain

---

[2]Texas Cross-Sell Statewide Dealer Summary (December 2002) [Source: Texas Department of Motor Vehicles].

[3]"FBI Law Enforcement Bulletin," Vol. 70, Number 5 (May 2001), quoting President's Commission on Organized Crime, Interim Report to the President and the Attorney General, *The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering* 7 (1984).

[4]"Holder" means: (A) retail seller; or (B) if a retail installment contract or the outstanding balance under the contract is sold or otherwise transferred, the person to whom it is sold or otherwise transferred (Texas Finance Code, § 348.001(3)(Vernon 1998)).

[5]Texas Finance Code, § 14.151; §§ 348.501 - 348.518 (Vernon 1998); (Vernon Supp. 2003)).

criminal history information prior to obtaining a license. This process is assuring to both customers and fellow dealers.

As recognized, a dealership must submit a Form 8300 when it receives more than $10,000

in cash in one transaction or in two or more related transactions. In addition, if a transaction appears suspicious, then the Internal Revenue Service requests that a particular box be checked on the Form 8300.[6]

A concern of money laundering as outlined by the proposed rulemaking is "layering" which "involves the distancing of illegal funds from their criminal source through the creation of complex layers of financial transactions. Examples of layering through the vehicle sellers industry might include trading in vehicles for other vehicles and engaging in successive transactions of buying and selling both new and used vehicles."[7]

It appears that "layering" as a method of laundering money in the motor vehicle industry would not only be cumbersome and costly but easily traceable by law enforcement. For example, the person would have to trade continually his personal vehicle or vehicles. A dealer is likely to question why a buyer is constantly buying and selling his vehicle. For the years 1980 to 2000, the average number of years that a vehicle is kept in the household is over 7 years.[8] If an individual is continually buying and selling vehicles and that person is not a dealer or a wholesaler, then such activity will likely be considered questionable by the dealer.

In addition, because in Texas each retail vehicle purchase requires a motor vehicle title and registration as well as the payment of motor vehicle sales tax, the purchases are easily traceable which also

---

[6]According to the General Instructions provided by the Form 8300, a "Suspicious Transaction" is "a transaction in which it appears that a person is attempting to cause Form 8300 not to be filed or to file a false or incomplete form. The term also includes any transaction in which there is an indication of possible illegal activity."

[7] *Id.* at 68 Fed. Reg. 8570.

[8]According to CNW Marketing Research, Inc., a vehicle purchased in 1980 was kept in the household for 7.7 years; 1981, 7.9 years;1982, 8.1 years; 1983, 8.1 years; 1984, 7.6 years; 1985, 7.5 years; 1986, 7.6 years; 1987, 7.4 years; 1988, 7.5 years; 1989, 7.4 years; 1990, 7.6 years; 1991, 7.7 years; 1992, 7.8 years; 1993, 7.8 years; 1994, 7.6 years; 1995, 7.4 years; 1996, 7.2 years; 1997, 7.1 years; 1998, 7.4 years; 1999, 7.5 years; and, in the year 2000, a vehicle purchased in that year was kept in the household for 7.3 years. (Provided by the National Automobile Dealers Association.)

takes away anonymity from the vehicle buyer or potential money launderer. Finally, since an automobile is not an appreciating asset, trading in a used vehicle on a new vehicle can be costly, which makes buying and selling vehicles even less appealing for laundering money.

Currently, TADA believes that the franchised dealer is more susceptible to being a victim

of identity theft than in being an unknowing participant in money laundering.

2. *Should Vehicle Sellers Be Exempt from Coverage under Sections 352 and 326 of the Patriot Act?*

3. *If Vehicle Sellers, or Some Subset of the Industry, Should Be Subject to the Anti-Money Laundering Program Requirements, How Should the Program Be Structured?*

Franchised motor vehicle dealers should be exempt from the additional regulatory burden of establishing an anti-money laundering program under Sections 352 and 326 of the Patriot Act.

Franchised dealers utilize the Form 8300; reminders are periodically given to the sales personnel and finance managers regarding being watchful for a suspicious transaction as well as not to structure a transaction which would avoid the Form 8300. Although FinCEN has received reports that some vehicle sellers have engaged in structuring,[9] TADA believes this is more likely an indication of a consumer who is unwilling for a document to be filed with the IRS versus an indication of the laundering of money.

Franchised dealers assign almost all of their new motor vehicle purchases, i.e., the dealer does not act as a lienholder as the motor vehicle retail installment contract is typically assigned to a finance company, such as GMAC or Ford Motor Credit.

Dealers have procedures to assist in identifying the buyer, such as obtaining a credit report and copying a driver's license. Some dealers now ask to see a copy of a utility bill in order to verify the buyer's address as well as copying information regarding a buyer's motor vehicle insurance.

A bill has been introduced in Texas' 78th Regular Legislative Session which would allow an automobile dealer to "swipe" the electronically readable information on the buyer's Texas driver's license.[10]

---

[9] *Id.*, 68 Fed. Reg. 8570.

[10] House Bill 2773 by Solomons, 78th Regular Legislative Session (2003).

The swiping of this magnetic stripe will assist in protecting both the buyer and the seller from identity theft and should also assist in preventing money laundering.

Dealers are also working to implement the Federal Trade Commission's final Safeguards Rule (Gramm-Leach-Bliley Act, §§ 501 and 505(b)(2), effective May 23, 2003), as well integrating Executive Order 13224, which prohibits a dealer from entering into a transaction with a person who is on OFAC's List of Specially Designated Nationals.

Based on the dealer's current regulatory requirements and because there is an incentive to protect both buyer and seller from the risk of loss, TADA requests vehicle sellers to be exempt from coverage under sections 352 and 326 of the Patriot Act.

4. *How Should a Vehicle Seller Be Defined? Should There Be a Minimum Threshold Value in the Definition? Should it Include Wholesale and Retail Sellers? Should Sellers of Used Vehicles Be Included?*

As an association of franchised motor vehicle dealers, TADA's comments are limited to the experiences of its members.

Few new motor vehicle purchasers pay in cash; however, checks are often given for the down payment. The typical motor vehicle purchase is assigned by the dealer and financed by lenders such as General Motors Acceptance Corporation (GMAC), Ford Motor Credit, Toyota Credit, etc., or the customer pre-arranges financing through the local bank or credit union for the vehicle purchase.

Motor vehicle retail installment contracts for the purchase of used vehicles at franchised dealerships are also generally assigned, i.e., there is little or no in-house financing at the franchised dealership.

Some franchised dealers have off-site used vehicle lots in which some in-house financing occurs. In the typical in-house finance purchase, payments are regular and may be weekly or every other week. Payments are kept low in order to satisfy the needs of the buyer. This scenario of low and frequent payments for the purchase of one automobile does not appear to be ripe for laundering money.

The wholesaler who purchases used vehicles from the franchised dealer and sells those vehicles to other dealers generally gives a draft or a check for the purchase, which allows for a paper trail for the vehicle purchase. In addition, a completed assignment form is required by the Texas Department of Transportation showing who is the dealer purchasing the vehicle as well as who is the dealer selling the vehicle. The assignment form requires the dealer's name, address, and dealer number on the back of a

Texas Certificate of Title.

Since state licensing and a paper trail occur for the franchised motor vehicle dealer, the wholesale motor vehicle dealer, and the used motor vehicle dealer, the transactions that would appear to be the most likely to involve money laundering are those purchases that do not necessarily involve a paper trail, i.e., those vehicles sold from one individual to another individual. Thus, TADA suggests that the dealers who are licensed and regulated by their respective states not be included within a definition of "vehicle seller."

5. *Do Vehicle Sellers Maintain "Accounts" for Their Customers?*

In-house financing rarely occurs on the purchase of a new motor vehicle and because vehicle ownership averages 7 years before the vehicle is traded or sold, *(See* Footnote 8), franchised dealers do not establish an account for the new motor vehicle purchaser.

A charge account may be established for a business which owns multiple vehicles for service or parts, but not for the purchase of vehicles. Franchised dealers operate on such a slim margin of profit that few customers enjoy the privilege of an in-house charge plan.[11]

Conclusion

TADA submits that the current state licensing requirements as well as the federal and state regulatory structure, including the soon-to-be-effective rules from the Federal Trade Commission, allow for adequate coverage of the franchised new motor vehicle industry without the need for additional rules. Unfortunately, certain of the rules are difficult with which to comply and place a hardship on businesses.

Yet, there is a willingness on the part of all franchised dealers to work with the regulators to safeguard our nation. However, what is necessary for a successful implementation of any regulatory

---

[11]According to the National Automobile Dealers Association (NADA), the average new vehicle selling price (retail) for December Year-to-Date, 2002, is $26,163 with an average gross profit of $1,531. The average advertising expense per new vehicle retailed is $507 and the average rent and equivalent per new vehicle retailed is $468 ("AutoExec," March 2003, at 26). Nationally, the average net profit in 2002 per vehicle sold including aftermarket income, is $233 for a new motor vehicle and $162 for a used motor vehicle (Information supplied by NADA).

requirement is that a rule be easy to understand, easy to implement, and have a nexus between what is being required and the goal that is set. Assistance and guidance from the regulators is always welcome.

TADA recommends that if it is determined that an additional requirement for franchised vehicle dealers is necessary, that the Department of Treasury consider lowering the $10,000 threshold for the current Form 8300 in lieu of any additional requirements.

Franchised dealers do not, as a matter of course, act as a "financial institution." Assignment of motor vehicle contracts is the norm. Cash transactions are few. The concern for verifying the identity of the buyer is done through credit reports and verifying a driver's license. If Texas passes legislation to allow a dealer to swipe the magnetic stripe on a driver's license, then both buyer and seller will be more assured of the veracity of the transaction.

The range of TADA members varies from the dealer who sells less than ten (10) new vehicles per month to the dealer who sells upward to seven hundred (700) new vehicles per month. The level of resources between these members is wide and is another reason why lowering the threshold on the Form 8300 is preferable to any additional regulatory requirements.

On behalf of TADA, I appreciate the opportunity to comment on the Advance Notice of Proposed Rulemaking. If you have any questions, please do not hesitate to contact me.

Sincerely,

Karen Coffey
Chief Counsel