



**REMARKS OF JAMES H. FREIS, JR.
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This past year has been a busy one in the money services business (MSB) area. As you may recall when we last met, I provided an overview of what FinCEN was trying to do with our efforts to bring a more comprehensive Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regime to the prepaid access industry.¹ I'm pleased to be able to say that we have since brought those ideas to fruition. Thus, today, I'd like to spend my time updating you on a number of regulatory initiatives since last September, as well as look forward to discuss some of our ongoing work in this area.

I would also like to thank the MTRA board members for setting the stage for me in their opening remarks by mentioning many examples of the close cooperation we have had with the States in the development of these changes and towards their successful implementation going forward.

Changes in the Regulation of Money Services Businesses

Let me first discuss the most recent expansion of FinCEN's AML/CFT regulations to establish a more comprehensive regulatory approach for prepaid access.² Because prepaid access is a type of money transmission, FinCEN issued a final rule in July of this year, that puts in place suspicious activity reporting (SAR), and customer and transactional information collection requirements on providers and sellers of certain types of prepaid access similar to other categories of money services businesses.³

¹ See http://www.fincen.gov/news_room/speech/pdf/20100901.pdf

² See http://www.fincen.gov/news_room/nr/html/20110726b.html

³ See http://www.fincen.gov/news_room/nr/pdf/20110726b.pdf

The final rule:

- Renames “stored value” as “prepaid access” to more aptly describe the underlying activity.
- Adopts a targeted approach to regulating sellers of prepaid access products, focusing on the sale of prepaid access products whose inherent features or high dollar amounts pose heightened money laundering risks.
- Exempts prepaid access products of \$1,000 or less and payroll products if they cannot be used internationally, do not permit transfers among users, and cannot be reloaded from a non-depository source.
- Exempts closed loop prepaid access products sold in amounts of \$2,000 or less.
- Excludes government funded and pre-tax flexible spending for health and dependent care funded prepaid access programs.
- Clarifies that a “provider” of “prepaid access” for a prepaid access program can be designated by agreement among the participants in the program or will be determined by their degree of its oversight and control over the program – including organizing, offering, and administering the program. Providers are required to register with FinCEN.

On September 9, FinCEN extended the compliance date for certain provisions of the final rule.⁴ While initial requirements went into effect just last week, full compliance will be expected by the end of March 2012.

To grant this extension, FinCEN considered the differing capacities and obstacles faced by both providers and sellers. Due to the effects of seasonal business cycles and practical constraints on retail business systems, sellers will have until March 31st to comply with the new requirements.

Providers will now have until March 31st to register as an MSB, and verify and collect the relevant customer information and transactional data. However, providers must have certain aspects of an anti-money laundering program and monitor and report suspicious activity by the rule’s effective date, September 27, 2011.

In developing these rules, FinCEN sought to achieve a balance that would not unduly stifle innovation in this rapidly growing area of consumer payments.⁵ While prepaid access is most often associated with a card, the new rule was designed to be technology neutral and is meant to be adaptable to a range of products, such as a plastic card, an internet system, or a mobile phone network.

Through extensive regulatory, law enforcement, and industry consultations, FinCEN identified risk indicia that determine whether products will be subject to the requirements of the prepaid access rule—such as whether a product is reloadable, can be transferred to other consumers, and, most relevant to the audience today, can be used to transfer funds outside the United States.

⁴ See <http://www.fincen.gov/whatsnew/pdf/20110909.pdf>

⁵ For a more detailed discussion of the background leading up to the prepaid access rule, see Prepared Remarks of FinCEN Director James H. Freis, Jr. delivered before the Money Transmitter Regulators Association (September 1, 2010), http://www.fincen.gov/news_room/speech/pdf/20100901.pdf.

The final rule addresses regulatory gaps that have resulted from the proliferation of prepaid access innovations over the last 12 years and their increasing use as an accepted payment method. FinCEN's prepaid access regulations also provide a balance to empower law enforcement with the information needed to attack money laundering, terrorist financing, and other illicit transactions through the financial system while preserving innovation and the many legitimate uses and societal benefits offered by prepaid access.

Now that we have defined prepaid access, FinCEN is embarking on our planned second stage of regulations related to the declaration of tangible prepaid access when it is transported across a border, similar to the existing declaration required for international transport of cash and monetary instruments. We will be publishing this proposal for public comment very soon.

Also in July 2011, FinCEN issued a final rule that clarifies which businesses qualify as MSBs and are subject to the BSA's AML rules.⁶ The rule enables entities to determine in a more straightforward way whether they are operating as MSBs subject to BSA rules. For example, an entity that engages in money transmission in any amount is subject to the BSA rules. Further, the rule ensures that certain foreign-located persons engaging in MSB activities within the United States are subject to the BSA rules as well. In addition, the rule requires foreign entities conducting MSB activities in the United States to register with FinCEN. The rule clarifies several other provisions, including:

- Revising MSB definitions to clarify what activities subject a person to the BSA rules pertaining to MSBs.
- Updating the MSB definitions to reflect past guidance and rulings and current business operations and to accommodate evolving technologies and emerging lines of business.
- Separating the provisions dealing with stored value from those dealing with issuers, sellers, and redeemers of traveler's checks and money orders in order to more readily accommodate changes that were implemented in FinCEN's Prepaid Access Final Rule.
- Making minimal nomenclature changes with respect to certain MSB categories to help clarify distinctions between them.
- Replacing the term "currency dealer or exchanger" with the new term "dealer in foreign exchange," a term used to include the exchange of instruments other than currency as a category of MSB.

Once again, many of these regulatory changes are designed to better align our rules with the business models of MSBs, including in the area of prepaid access, which continues to develop with technological evolution. Implicit in these regulations – but so important that I believe it deserves mention – that while it is at the core of FinCEN's mission to keep criminal activity out of the financial system, in so doing we also need to allow legitimate services to businesses and consumers to thrive. Hence, as resources permit, FinCEN seeks to continue its longstanding outreach and education efforts to the MSB industry, and promotes the needed interaction with banks and other financial services providers and their respective regulators.⁷

⁶ See http://www.fincen.gov/news_room/nr/pdf/20110715.pdf

⁷ See [http://www.fincen.gov/news_room/rp/reports/pdf/Banks_Under_\\$5B_Report.pdf](http://www.fincen.gov/news_room/rp/reports/pdf/Banks_Under_$5B_Report.pdf) (p. 52) and http://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2010.pdf (p. 309 - 313)

Outreach to the Prepaid Access Industry

As part of FinCEN's ongoing commitment to engaging in dialogue with the financial industry and continually learning more about the industries that we regulate, FinCEN is announcing today its interest in holding a town hall style meeting in its Vienna, Virginia offices with representatives from the prepaid access provider industry.⁸ The town hall is designed to hear feedback on the implications of recent regulatory responsibilities on this industry, and receive industry's input on where additional guidance would be helpful to facilitate compliance. Further, this outreach builds upon FinCEN's overall efforts to increase knowledge and understanding of the regulated industry and how they are affected by regulations.

I encourage those of you here today in the prepaid access industry to consider meeting with us and sharing your thoughts. The notice released on FinCEN's website today provides information on how to express an interest in volunteering. And I would like to note that replying to the invitation and/or attending the town hall does not make the responder a Provider of prepaid access as defined in the FinCEN rule. FinCEN will not infer that an entity that replies to this invitation or that attends the town hall meeting is in fact a Provider of prepaid access that is required to register with FinCEN.

BSA E-Filing

Another area in which we are conducting significant outreach is in the area of E-filing. In July 2011, FinCEN announced that the Registration of Money Services Business form (RMSB or FinCEN Form 107) was available for electronic filing with FinCEN.⁹ The updated form reflects changes made necessary by the MSB definition final rule. In August and September, FinCEN invited MSBs to participate in two Webinars that addressed their questions on the electronic filing of RMSBs and the final rule on MSB definitions. Both of these webinars were extremely well attended and in an effort to further inform industry, we have placed both the Power Point from the RMSB webinar, as well as a link to the complete webinar, on our public website, for use as educational materials going forward.¹⁰ Today, I am pleased to announce that we are publishing for comment the revised RMSB form which incorporates the changes to our regulatory definitions just discussed.

On September 14, FinCEN formally requested comment on its proposal that reports required under the BSA be electronically filed beginning June 30, 2012.¹¹ The benefits of E-Filing, both to the government and to the filer, are obvious and compelling. As more and more financial institutions migrate to E-filing, they will be impressed with the ease and convenience of using their basic Internet connections, while gaining immediate feedback to continually improve the quality and usefulness of the reported information in the effort to combat financial crimes.

⁸ See <http://www.fincen.gov/whatsnew/html/20111005.html>

⁹ See http://www.fincen.gov/news_room/nr/pdf/20110716.pdf

¹⁰ See <http://treas.yorkcast.com/webcast/Viewer/?peid=dc6ae9061c3a41e6abcd7c0a75c10a171d> and <http://www.fincen.gov/pdf/FinCENWebinar-MSBFinalRuleSlides.pdf>

¹¹ See http://www.fincen.gov/news_room/nr/pdf/20110914.pdf

BSA E-Filing is a free, web-based electronic filing system that allows filers to submit through a secure network their reports required under FinCEN's regulations implementing the BSA. BSA E-Filing is a faster and more convenient, secure, and cost-effective method of submitting their reports as well as for receiving confirmation of their acceptance and notices of any errors.

The greater use of BSA E-Filing also assists FinCEN in providing important information relevant to money laundering and terrorist financing investigations to law enforcement in the quickest manner possible. Through BSA E-Filing, reports are available to and searchable by law enforcement in two days, rather than two weeks, for example if filed on paper.

Enforcement Philosophy

We've spent time today discussing some of the new regulatory responsibilities in the MSB area and our move toward E-Filing. Let me change topics now to speak about how we approach situations where financial institutions fail to uphold their portion of the partnership, in other words, when they fail to comply with their AML/CFT obligations.

In any regulatory framework, establishing rules, providing education, guidance and feedback, and enforcing compliance are all critical components and mutually reinforcing. In the AML/CFT context, the basic types of rules can be simplified down to a few common categories: (i) knowing your customer and being vigilant against criminal abuse; (ii) keeping records so that they are available to "follow the money" if needed as part of an investigation of suspicious or criminal activity; and (iii) reporting of information, most critically SARs. And keep in mind that around the world it is recognized that AML/CFT regulations need to be applied not just to banks, but rather to a range of financial and other types of commercial institutions. Why? The reason is that any way that you can move money—any way that value can be intermediated—can be abused by criminals for money laundering, since the motive of almost all criminal activity is financial profit.

It is one thing to have rules in place, but the most important component is effective implementation. When an institution fails to uphold its compliance obligations, this creates a vulnerability—a crack in the foundation upon which our defenses against criminal abuse are built. Hence, in any regulatory framework, but certainly in the AML/CFT area, it is essential that compliance expectations be backed by a credible enforcement mechanism, which in FinCEN's case means the imposition of civil money penalties. Not only does this hold accountable those regulated institutions which have not followed the rules, but it is only fair to the financial institutions that are trying hard to implement credible AML/CFT controls, including bearing the responsibilities associated with these controls.

I believe that when institutions do not follow the rules, steps must be taken to hold them accountable. *I also believe that compliance actions, including enforcement penalties, also serve as a type of feedback to the financial industry about regulatory expectations.* Effective feedback which the financial industry can evaluate and understand, however, requires the sharing of information about the underlying compliance deficiencies.

It is with this in mind that over four years ago, I announced together with the U.S. Secretary of the Treasury as part of efforts to increase the efficiency and effectiveness of FinCEN's AML/CFT regulations, that, "[w]hen issues of non-compliance do arise, FinCEN will strive to better communicate how any penalties are correlated to the underlying violations, so as to avoid misimpressions about the nature of such conduct and provide a clear message to the industry about these actions."¹²

Three years ago at a conference very similar to this one – but sponsored by the American Bankers Association and American Bar Association, I dedicated my speech to explaining the way FinCEN approaches enforcement actions, including the following point: "Effective enforcement is based on the just and consistent application of the rules and enforcement penalties. Misperceptions about these matters will erode the trust and confidence in our financial system that (our regulations) seek to protect."¹³ My personal experience throughout my career gives me confidence in saying that financial regulators and supervisors take enforcement actions very seriously.

This past year alone, FinCEN has issued nine civil money penalties against banks, money services businesses, and casinos.¹⁴ Many of the compliance failures that we have seen may be characterized as a failure to apply effective AML/CFT controls to one or more of the institution's lines of business—for example, a business line with little or no customer due diligence, monitoring, or review; or insufficient follow-up such as further investigation or reporting when potential issues are uncovered.

Even for institutions with well-established compliance programs, a lapse may occur when key compliance personnel leave the institution and are not replaced, when developing new products or entering new business areas or markets without involving compliance personnel at an early stage, or, in more egregious cases where the financial institution recognizes the risks, but makes a choice not to invest the compliance resources that would be necessary to mitigate the risks.

On a case-by-case basis, FinCEN has carried through on my pledge to make as much detail of the compliance deficiencies as appropriate publicly available on FinCEN's website. This allows other financial institutions to learn from this feedback. Also, financial institutions that have made rational decisions to implement compliance mechanisms commensurate with the underlying risks, should take comfort when seeing the serious deficiencies that have led to significant enforcement actions.

Actions against Unregistered Money Transmitters

Note that while a substantial number of FinCEN's civil money penalties against banks have been in the tens of millions of U.S. dollars, violations by much smaller entities might also merit monetary penalties. In sectors that are not closely regulated or supervised, a credible

¹² See http://www.fincen.gov/statutes_regs/bsa/bsa_effectiveness.html, and "Bank Secrecy Act Effectiveness and Efficiency Fact Sheet at http://www.fincen.gov/news_room/rp/rulings/pdf/bsa_fact_sheet.pdf .

¹³ See http://www.fincen.gov/news_room/speech/pdf/20081020.pdf

¹⁴ See http://www.fincen.gov/news_room/ea/

enforcement posture may be even more important in promoting industry compliance. Of particular note, over the past year FinCEN has been engaged in an initiative to identify unregistered money services businesses, primarily independent money transmitters, which have been required to register with FinCEN since 1999, when the MSB regulations first went into effect in the United States. An entity acting as an MSB that fails to register as required is subject to civil money penalties and possible criminal prosecution.

Why is it important to identify unregistered MSBs? Through registration with FinCEN, MSBs identify themselves. It is an indication that they are aware of their compliance responsibilities. In the event that a criminal investigation follows the money to an MSB, failure to comply with registration requirements could deprive law enforcement of critical lead information.

Moreover, registration of the MSB serves as a *first step* in establishing the compliance framework for applicable FinCEN regulations designed to help mitigate the risks of criminal abuse of MSBs for money laundering and terrorist financing as the MSB seeks to provide financial services to customers for legitimate purposes. And industries that have solid anti-money laundering programs in place – and a strong culture of compliance – not only help protect their customers, but their businesses, from threats posed by fraud and deceit. The bottom line: protecting your customers is good for business.

FinCEN has engaged in longstanding, dedicated efforts to reach out to the MSB industry and educate MSB owners of the importance of mandatory registration and other regulatory requirements. FinCEN's MSB Registration List, which is updated and posted on a monthly basis, contains entities that have registered as MSBs.¹⁵

In a small number of cases, some MSBs may seek to turn a blind eye to their compliance responsibilities. The entities that do not register, who do not identify themselves, may have customers involved in activity that should raise suspicion of possible criminal behavior. Over the past year, FinCEN used its authority to bring enforcement actions against several MSBs, primarily money transmitters, for registration violations, which involved monetary penalties in the thousands or tens of thousands of dollars. In some of these cases, we also took action for other compliance failures, such as failure to have an AML program, and structuring.

I would also like to underscore that from its inception, we at FinCEN sought to partner with our state regulatory counterparts that license money transmitters, to enforce our complementary regulations. This was evidenced in FinCEN's very first civil money penalty against a money service business for failure to register, and we have also undertaken subsequent actions in close coordination with law enforcement. We appreciate the ongoing cooperation in this area, which is so important in protecting against the risks of criminal abuse.

Agent Request Initiative

I'd like to conclude today in discussing one last initiative we have underway at FinCEN to better inform FinCEN of the MSB agent population, better known as our Agent Request Initiative

¹⁵ See http://www.fincen.gov/financial_institutions/msb/pdf/msb_registration_list.pdf

(ARI).¹⁶ As you all know, under the BSA, an MSB that has agents must prepare and maintain a list of its agents as of January 1 of each year and report the list to FinCEN upon request. An agent is a separate business entity from the principal that the principal authorizes, through a written agreement or otherwise, to sell its instruments or, in the case of funds transmission, to sell its send and receive transfer services.

In April 2011, FinCEN requested that such MSBs provide a list of their agents.¹⁷ We requested the agent list from any MSB that reported on its registration form that it had one or more agents authorized to conduct business on behalf of the MSB. We further requested that if an MSB determined that it had registered in error that it correct its registration.

In August, FinCEN posted a reminder to our website for any MSBs that had not yet responded to the request, either by submitting their agent list or correcting their registration.¹⁸ While we have received agent information from the largest MSB principals, we continue to identify and collect information on the smaller principal MSBs. As part of this effort, FinCEN has worked with the states to verify our MSB registration information and get additional information on entities that we can reach out to who have not yet responded.

This initiative marked the first time that FinCEN has requested agent information from the entire population of MSBs that reported having agents, and the resulting information has provided us a better understanding of the structure of this industry sector. Based on the number of entities contacted, for example, we have learned that the number of principals was much smaller than registration figures showed, indicating that a number of entities, particularly the small businesses that provide MSB activities as a part of their main business, such as a grocery store, had an incorrect understanding of what constitutes the principal/agent relationship. However, we are seeing that the number of agents providing MSB activities is quite large.

Through this initiative, we are also learning about other aspects of the MSB agent population, such as banking patterns or whether an agent conducts multiple MSB activities or is an agent for more than one principal. The information we have learned through this initiative will also inform any decisions we make regarding possible changes to the overall MSB registration process, not only to protect against criminal abuse, but increasingly for us to more efficiently carry out FinCEN's regulatory and supervisory functions.

Conclusion

In conclusion, I want to express my sincere and strong thanks to those state regulatory officials that are in this room and that sponsor this conference. It is an important conference for industry, law enforcement and state and federal regulators to speak about the MSB industry.

FinCEN has a strong partnership with state regulators. Currently, we have information sharing agreements with 52 state regulatory agencies and are looking to sign more related to the MSB industry as well as some of the new industries where the states are the primary regulators.

¹⁶ See http://www.fincen.gov/financial_institutions/msb/agentrequest.html

¹⁷ See http://www.fincen.gov/news_room/nr/pdf/20110516.pdf

¹⁸ See http://www.fincen.gov/financial_institutions/msb/html/REMINDER-PressRelease-FINAL.html

Through these agreements, we coordinate on enforcement actions, some of which I discussed earlier, examination findings, analytical reports based on BSA information and basic statistics related to the MSB population.

We plan to continue to discuss with the states the findings we have received from our Agent Request Initiative and how that might inform the general registration process. Several state regulators participate in the Bank Secrecy Act Advisory Group and regularly provide us direct feedback regarding the MSB industry. Overall, industry should know that we attempt to coordinate closely at the federal level with the states to reduce duplication and enhance efficiencies. We plan to increase such coordination going forward.

Finally, I would like to build upon the closing point in my speech at this event last year. Now that FinCEN has established a solid regulatory framework for prepaid access in the United States, we must continue to promote analogous steps in foreign jurisdictions to mitigate risks of criminal abuse while still facilitating legitimate consumer demands. I welcome industry and governmental cooperation to that end.

Thank you for your attention this afternoon.

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