



4900 Cox Road . Glen Allen, VA 23060-3314
804 935 4504 . FAX 804 217 6819

Patricia E. M. Covington
Associate General Counsel

April 10, 2003

VIA Electronic Mail

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, Virginia 22183

Re: ANPRM—Sections 352 and 326—Vehicle Seller Regulations

Ladies and Gentlemen:

CarMax Auto Superstores, Inc. ("CarMax") is writing in response to the advance notice of proposed rulemaking issued by the Financial Crimes Enforcement Network ("FinCEN"), published February 24, 2003. CarMax appreciates this opportunity to comment on the questions presented by FinCEN to determine whether anti-money laundering compliance and customer identification programs, and associated requirements, should be promulgated pursuant to the USA Patriot Act (the "Patriot Act") for vehicle sellers. CarMax is a seller of motor vehicles, both new and used, with locations in thirteen states across the country. CarMax operations also include the wholesale auctioning of used vehicles to other dealers

Set forth below are CarMax's responses to the five groups of questions presented by FinCEN:

- 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)?*

The crime of money laundering touches on almost all retail businesses, from local seven eleven stores to sellers of luxury goods. The money laundering activities that FinCEN hopes to detect under the Patriot Act, however, are sizeable amounts with the ultimate goal of funding terrorism. Illegally obtained funds (hereinafter "illegal money") could, and most certainly are, used to purchase motor vehicles. For purposes of presenting our comments, the following are the markets affected by money laundering that CarMax will comment on: (i) the retail purchase by a money launderer (hereinafter

“criminal”) of a motor vehicle (new or used) (hereinafter “Retail Purchase”); (ii) the retail trade-in of a motor vehicle originally purchased with illegal money in exchange for the purchase of another motor vehicle (new or used), or for cash (hereinafter “Retail Trade-in”); (iii) a retail motor vehicle dealer laundering money through its business activities [e.g. purchasing inventory (new or used) with illegal money] (hereinafter “Dealer Business”); and (iv) a wholesale dealer laundering money through its business activities (e.g. wholesaling used vehicles purchased with illegal money) (hereinafter “Wholesale Business”).

With respect to Retail Purchases, there is no question that criminals do purchase vehicles with illegal money. And because the purchase price of motor vehicles (new or used) are in the thousands of dollars, rather than hundreds, it is a simple way of converting a very modest amount of illegal money into a laundered product or integrating illegal money back into the economy. Unless the motor vehicle dealer sells very high end inventory, it is not, however, an effective way of laundering a large quantity of cash. To be effective, it would require a significant number of Retail Purchase transactions. Furthermore, this type of money laundering rarely results in cash for later use. Unless the integration stage of money laundering is the target of detection, this type of money laundering is likely of little significance to FinCEN, since its primary focus under the Patriot Act is detecting funds for later use in terrorism. Furthermore, unless a high end motor vehicle is involved, motor vehicles are not a worthwhile investment due to their rapid depreciation in value. It is not to say, however, that a vehicle purchased with illegal money could not be used in a terrorist act. This, however, would be true for any other commonly purchased goods.

With respect to Retail Trade-Ins and Wholesale Businesses, these business markets are more susceptible to money laundering activities. The sources of used vehicles are diverse and unfettered, attractive to fraudulent and criminal activity. Unlike new vehicles, used vehicles can be purchased from one of many sources—a wholesale auction, from the public, from other motor vehicle dealers, etc. Furthermore, used vehicles are titled differently in every state, as well as, the District of Columbia. There are differences among the states’ and D.C.’s titling laws, from what information is collected by the titling agency to issue a title, to what information appears on the title. Individuals exploit these differences, frequently using states with less restrictive requirements to obtain duplicate titles for motor vehicles fraudulently obtained (e.g. stolen) or to launder branded titles into clean ones (e.g. turning a salvage vehicle into a free and clear title). Due to these titling differences, used motor vehicle markets encounter more fraudulent activity.

The Dealer and Whole Businesses could also be affected by money laundering activity; however, it would most likely be limited to the owner or well-placed employee using illegal money to purchase inventory, or pay for business expenses. This could involve large volumes of money.

With regard to business lines, the sale of new motor vehicles to other countries or individuals for export is not prevalent in the motor vehicle seller industry. Most manufacturers prohibit the sale of their new vehicles to parties outside of the United States, and used motor vehicles are not frequently purchased for exportation. The exportation of motor vehicles, moreover, is fairly regulated.

2. *Should vehicle sellers be exempt from coverage under Sections 352 and 326 of the Patriot Act?*

Based on the foregoing, it is CarMax's position that motor vehicle sellers be subject only to Section 326 of the Patriot Act, and exempt from Section 352. As provided above, the industry is not a source of noteworthy amounts of money laundering activities, particularly activities that launder cash for use in terrorism. The only exception would be where the dealer itself is involved.

Certainly, purchases are made with illegal money; but this is the experience of virtually every retail business. Furthermore, this activity is already addressed with the Internal Revenue Code's Section 60501 requirement for reporting cash transactions in excess of \$10,000.

As relates to Section 326 of the Patriot Act, however, a strong customer identification program is the best possible instrument to detect and protect against money laundering. Deception and fraud are fundamentals of money laundering. Criminals seek to hide their identities when using illegal money, consequently, a strong identification program would be the most effective tool to detect money laundering.

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?*

Notwithstanding CarMax's answer to Question 2, in the event that FinCEN determines that motor vehicle dealers are an effective instrument to prevent and/detect money laundering, the program should focus on customer identification and the reporting of suspicious, or better described as questionable, transactions to a central database where the information is available to FinCEN for its own data mining purposes.

With regard to the Retail Purchase, an effective manner of tracking suspicious activity would be to track and report multiple purchases conducted by an individual within a designated time frame to a central database. This would enable FinCEN to collect information regarding individuals doing volume purchasing. Thereafter the motor vehicle or individual can be tracked for integration into commerce.

With regard to the Retail Trade, an effective manner of tracking suspicious activity would be to track and report transactions wherein an individual has equity in the motor vehicle over a certain threshold (e.g. \$5,000). In the event the motor vehicle being traded-in was purchased with illegal money, and either laundered through the purchase of another motor vehicle, or for the receipt of cash, FinCEN could investigate the legitimacy thereof. This requirement would be similar to the current Internal Revenue Code \$10,000 cash reporting requirement.

With regard to Retail and Wholesale Businesses, the likelihood of these owners being engaged in money laundering activity are probably no greater than most other retail businesses. However, if FinCEN chose to regulate this industry's businesses, they could be required to register with FinCEN, in addition to having financial reporting, document retention, and inspection requirements. The financial reporting should focus on cumulative year end totals for the number and types of transactions completed, in addition to ordinary year end financial information to determine the legitimacy of the business.

A strong customer identification program should be the foundation of any compliance program. Business Dealers already collect a significant amount of information from its customers, ranging from name and address to social security number and/or driver's license identification number. Most of this information is required on the various state mandated forms for registration and titling. As stated above, deception and fraud are at the root of money laundering, and the criminal has a strong incentive to hide his/her identity, achieve anonymity, and distance himself/herself from the illegal money, or vice versa.

Another more effective and comprehensive approach to detect money laundering activities in the motor vehicle industry would be to track the registration and titling of all motor vehicle transactions. Most all motor vehicles must be titled and registered. Business Dealers are usually involved in this titling and/or registration process. If this information was reported to a centralized database, FinCEN would have available a significant amount of information to data mine. It could track the number of transactions in which any one particular Individual was involved. Business Dealers could collect

and report information relating to the type(s) of payments received in each transaction (e.g. paid \$5,000 cash and \$5,000 equity from a trade-in). This approach would be the most effective manner of uncovering money laundering activity. There is currently a centralized database of vehicle title information being implemented, known as the National Motor Vehicle Title Information System ("NMVTIS"). NMVTIS was implemented pursuant to the Anti Car Theft Act of 1992, to deter trafficking in stolen vehicles. The Department of Transportation was directed to implement the system; and pursuant to the Anti Car Theft Improvements Act of 1996, the Department of Justice is responsible for the system. Currently, it has been implemented in six (6) states, including Arizona, Indiana, Kentucky, New Hampshire, Tennessee, and Virginia.

Finally, the Internal Revenue Code \$10,000 cash reporting threshold requirement could be lowered to capture more transactions involving large sums of cash.

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?*

The answer to this question will depend upon whether FinCEN decides to regulate all types of vehicle sales, or a subset. Whatever approach FinCEN ultimately decides to take, the definition of a vehicle seller could be modeled on a state created definition for the particular type of vehicle seller. In the case of motor vehicles, a motor vehicle seller could be defined as an individual who sells or facilitates the sale (to include brokers) of more than five (5) or more motor vehicles a year.

5. *Do vehicle sellers maintain "accounts" for their customers?*

Traditionally, motor vehicle sellers do not maintain "accounts" as such term is currently defined. Frequently, motor vehicle sellers finance the purchase of motor vehicles for their customers through retail installment contracts. In some instances, dealers will maintain and collect on the contract, which is known as seller financing. However, most motor vehicle sellers sell the installment contract to a bank or finance company. Installment sales involve credit accounts to which customers make monthly payments, in accordance with the terms of the instrument. These accounts are not revolving and cannot be used to purchase any other motor vehicle or goods. They are established for payment purposes only.

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CarMax supports the goals of Sections 326 and 352 of the Patriot Act, and we hope that our comments provide some measure of guidance to FinCEN. We thank you for the opportunity to present our views. Should you require any additional information, please do not hesitate to contact me. I may be reached by phone at (804) 935-4504, or by email at patty_covington@carmax.com.

Sincerely,

Patricia E. M. Covington