

By Electronic Mail (regcomments@fincen.treas.gov)

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

Paul, Hastings, Janofsky & Walker LLP (“PaulHastings”) appreciates the opportunity to submit these comments regarding potential Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales on behalf of a firm financial company client.

We are filing these comments by electronic mail pursuant to the solicitation of public comments published in the *Federal Register* on February 24, 2003 (68 Fed. Reg. 8568).

The scope of our comments is narrow, and seeks only to clarify certain aspects of the ANPRM relating to “finance companies.” Specifically, we desire that the Financial Crimes Enforcement Network (“FinCEN”) confirm that, whomever is ultimately covered under any final rule by the “vehicle seller” definition (*see* 31 U.S.C. 5312(a)(2)(T)), such rule shall not be written so broadly to include finance companies which may sell vehicles – or cause them to be sold – from time to time as an incidental part of its business as a financing company. It is our position that, such financing companies are not intended to be, and will not be, covered by this particular set of rules.

This interpretation is logically consistent with the information included in footnote 4 of the ANPRM, which exempts financing companies from the scope of any final rule (*see* 68 Fed. Reg. 8569).¹ Specifically, the above-mentioned segment of the *Federal Register* notice stated that this ANPRM is “focus[ed] on the money laundering risks associated with the sale of vehicles themselves, and not with the financing of such sales,” and notes further that “financing...will be addressed separately by a proposed rule to be issued that will require loan and financing companies to have anti-money laundering programs.” However, we are concerned with certain ambiguities in this regard.

¹ The ANPRM notes that the money laundering risks, if any, associated with the financing of vehicle sales will be addressed separately by a proposed rule to be issued that will require loan and finance companies to have anti-money laundering programs.

*Issues for Comment*²

2. Should Vehicle Sellers (Or Any Category Thereof) Be Exempt from Coverage Under Sections 352 and 326 of the Patriot Act?

PaulHastings provides comments on this query as it relates to the issue of whether there should be an exemption from the anti-money laundering provisions under Sections 352 and 326 of the Patriot Act promulgated under any final rule for vehicle sellers, or any category thereof.

PaulHastings respectfully requests that FinCEN exempt from these provisions those financing companies who sell vehicles, or cause to be sold, as an incidental part of their financing business. To the extent that financing companies which may sell vehicles – or cause them to be sold – from time to time as an incidental part of its business are considered vehicle sellers for the purposes of this rulemaking – such financing companies should 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?

PaulHastings believes that – in the event that FinCEN determines to propose requirements on vehicle sellers under Sections 352 and 326 of the Patriot Act – financing companies should be fully excluded from the definition of vehicle sellers for the purposes of this rule. As outlined above, PaulHastings believes that the primary lending activities and any incidental aspects of financing companies' business will be the subject of a separate ANPRM in the future – and therefore, this rule should not consider or apply to financing companies as vehicle sellers in any way.

² PaulHastings provides written comments relating to two of the five *Issues for Comment* published in the *Federal Register* notice. These additional comments do not affect our primary position that financing companies, nor any aspect of their business, are not covered by these rules and will rather be covered by a different set of rules in the future.