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Department of the Treasury
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183-0039

COMMENTS RE: SECTION 352 – REAL ESTATE SETTLEMENTS

RE/MAX International, Inc. (“RE/MAX”), representing over 80,000 real estate professionals (64,000 in the United States) in 43 countries, respectfully submits the following comments to the Treasury's Financial Crimes Enforcement Network ("FinCEN") Advanced Notice of proposed rulemaking for Anti Money Laundering Program Requirements for “Persons involved in Real Estate Closings and Settlements” under Section 352 of the USA Patriot Act (the "Act"). FinCEN seeks comments with respect to (1) what are the money laundering risks in real estate closings and settlements; (2) how should persons involved in real estate closings and settlements be defined; (3) should any persons involved in real estate closings or settlements be exempted from coverage under Section 352; and (4) how should the anti-money laundering program requirement for persons involved in real estate closings and settlements be structured.

RE/MAX supports the goals and objectives of the Act in its fight to detect and prosecute money laundering activities that finance terrorism and terrorist activities. However, it is RE/MAX's position that real estate licensees are neither necessary parties to a real estate closing or settlement, nor are they in the best position to monitor and report money laundering risks incident to a real estate transaction. As such, RE/MAX urges FinCEN to exempt real estate licensees from the Act's definition of "persons involved in real estate closings and settlements". In support of RE/MAX's position, I offer the following comments and observations with respect to the duties and roles of real estate licensees in a typical real estate transaction.

The role of a real estate licensee in a real estate transaction depends upon whether the real estate licensee is the seller's agent who lists the property for sale (the "Listing Agent"), or the buyer's agent who represents the buyer in the purchase of real estate (the "Buyer's Agent"). The role of the Listing Agent is to market and expose the property to interested buyers by various marketing techniques designed to reach potential buyers. The role of the Buyer's Agent is to assist the buyer in locating a property, prepare a purchase offer for the property, and present the purchase offer to the seller along with an earnest money down payment.

Regardless of whether the real estate licensee is a Listing Agent or Buyer's Agent, the role of the real estate licensee is to bring together a willing buyer and willing seller and accommodate the sale of the property. In a typical real estate transaction, the Buyer's

Agent will, in most cases, obtain an earnest money payment from the Buyer. The earnest money is usually in the form of a check made payable to the seller or the Buyer's Agent trust account, is attached to the purchase offer, and then tendered to the Listing Agent. The earnest money check may be cashed and the proceeds placed in the Buyer's Agent's trust account or it may simply be held by the Buyer's Agent and presented to the seller at closing. Real estate licensee trust accounts are regulated by the real estate commissioner's of the various states and earnest money payments in cash of \$10,000 or more are subject to currency reporting requirements if received in a 12-month period. Under the Act, if cash or monetary instruments are used, the person receiving them in the transaction must report to the Internal Revenue Service (IRS) and FinCEN on *Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business*. If a wire transfer, check or other means of payment is used, a bank or financial institution is involved. A bank's involvement triggers the bank's anti-money laundering process.

With the exception of the earnest money down payment, the real estate licensee neither handles nor distributes funds representing the purchase price of the real estate. Proceeds of the sale are distributed directly to the seller at the closing, typically by an escrow agent, title insurance company agent, attorney representing the purchaser, or lender. The real estate closing may proceed with or without the real estate licensee being present. For purposes of the real estate closing, the real estate licensee does not act as a closing agent and is not a necessary party to the closing.

In defining persons involved in real estate closings and settlements, FinCEN must identify who is best positioned or suited to know when money laundering is occurring. To that end, an individual's involvement with the actual flow and distribution of funds used to purchase property should be considered. As we have discussed, a real estate licensee typically only handles a small earnest money down payment. The distribution of funds, and therefore the ability to identify potential money laundering activities, is more likely to be detected by an escrow agent, title insurance company agent, attorney representing the purchaser, or lender. Because of a real estate licensees limited involvement with the flow and distribution of funds, real estate licensees are not in the best position to know when money laundering is occurring and, therefore, RE/MAX urges FinCEN to exclude real estate licensees from the definition of "persons involved in real estate closings and settlements".

It is further submitted the cost of any compliance program mandated to report evidence of possible money laundering, the development of internal policies, procedures and controls, the designation of a compliance officer, the creation of an ongoing employee training program, and the establishment of an independent audit of the program would outweigh any benefits to be derived from FinCEN's goals and objectives of detecting money laundering. If the costs of implementing such a compliance program are not capable of being absorbed by the real estate licensee, the result will likely be higher commission costs and fees to consumers involved in real estate transactions.

I appreciate the opportunity to share my comments and concerns about FinCEN's proposed rulemaking with respect to money laundering activities. In its final analysis, it

is RE/MAX's position a real estate licensee's role is limited to bringing together a willing buyer and willing seller and assisting in the sale of the real estate. Real estate licensees are not necessary parties to a real estate closing and are not involved in the distribution of funds representing the sale of the real estate. Because of their limited role, real estate licensees are not in the best position to determine if money laundering is occurring. For these reasons, RE/MAX urges FinCEN to exempt real estate licensees from the Act's definition of "persons involved in real estate closings and settlements".

I thank you for the opportunity to comment on this very important issue.

Sincerely,

Daryl L. Jespersen
CEO - RE/MAX International, Inc.