

**Before the
DEPARTMENT OF THE TREASURY
FINANCIAL CRIMES ENFORCEMENT NETWORK**

In the Matter of)
)
ANPRM—Sections 352 and 326—Vehicle)
Seller Regulations)
)
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)
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ATTN: Financial Crimes Enforcement Network, Treasury

COMMENTS OF THE NATIONAL AUTO AUCTION ASSOCIATION

The National Auto Auction Association (“NAAA”) submits these comments in response to the Financial Crimes Enforcement Network’s (“FinCEN”) Advance Notice of Proposed Rulemaking (“ANPRM”) relating to the establishment by financial institutions of anti-money laundering compliance and customer identification programs, under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“Patriot Act”). Anti-Money Laundering Programs for Businesses Engaged in Vehicle Sales, 68 Fed. Reg. 8568, 8569 (Feb. 24, 2003).

On behalf of its members who would be directly impacted by any unnecessary regulation pursuant to the Patriot Act and its implementing regulations, NAAA hereby submits comments responding to FinCEN’s questions pertaining to the anti-money laundering requirements for “business[es] engaged in vehicle sales” raised in the ANPRM. NAAA does not support the imposition of anti-money laundering program requirements or customer identification requirements on its members, who present a very low risk of money laundering danger and already have in place safeguards to comply with the intent of the Patriot Act, including existing government regulation, existing business practices and educational materials and programs.

NAAA is a wholesale trade organization with 360 member auctions. NAAA member auctions are wholesale auctions at which only properly licensed motor vehicle dealers are allowed to purchase in wholesale transactions in which the sellers are licensed dealers, manufacturers, banks, rental car companies, fleet companies and other commercial entities and government agencies. There are automobile auctions in the United States that allow consumers and individuals to buy and sell, however, those auctions are not eligible for membership in NAAA.

I. INTRODUCTION

A. The Patriot Act.

The Patriot Act amended the anti-money laundering provisions of the Bank Secrecy Act (“BSA”) to “increase the strength of United States measures to prevent, detect and prosecute international money laundering and the financing of terrorism.” See International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 297 (2001) (codified as amended at 31 U.S.C.A. § 5318 (2003)). Under the Patriot Act and BSA (as amended), “each financial institution [is to] establish anti-money laundering programs, including, at a minimum—(A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs.” 31 U.S.C.A. § 5318(h).

“Financial institution” has been defined broadly to include, *inter alia*, banks, savings associations, credit unions, money services businesses, insurance companies, travel agencies, dealers in precious metals, stones or jewels, pawnbrokers, and businesses engaged in vehicle sales. 31 U.S.C. § 5312(a)(2), (c)(1) (2003). The Patriot Act directed the Secretary of the Treasury to prescribe regulations implementing the anti-money laundering program requirements

by April 24, 2002 that “consider the extent to which [the requirements of section 5318(h)(1)] are commensurate with the size, location and activities of [various types] of financial institutions.” Interim Final Rule, Financial Crimes Enforcement Network; Anti-Money Laundering Programs for Financial Institutions, 67 Fed. Reg. 21110 (Apr. 29, 2002). Accordingly, the Department of the Treasury is authorized to issue regulations that prescribe different requirements for anti-money laundering programs, depending upon the type of financial institution at issue, and in fact may exempt certain financial institutions from the requirements of section 5318(h)(1). Id.

B. Regulation of Banks and Other Entities That Pose A Greater Risk of Money Laundering.

More traditional financial institutions such as banks, savings associations and credit unions have had anti-money laundering programs in place since 1987, as required by their federal regulators. See 12 C.F.R. § 21.21 (Office of the Comptroller of the Currency); 12 C.F.R. § 208.63 (Federal Reserve System); 12 C.F.R. § 326.8 (Federal Deposit Insurance Corporation); 12 C.F.R. § 563.177 (Office of Thrift Supervision); 12 C.F.R. § 748.2 (National Credit Union Administration). Since 1987, federal regulators have required banks, savings associations and credit unions to establish anti-money laundering programs that contain the same elements that now are required under the Patriot Act. Compare id with 31 U.S.C. § 5318(h).¹

On April 29, 2002, FinCEN issued interim final rules regarding anti-money laundering programs for financial institutions that prescribed requirements for banks, savings associations, credit unions, registered securities broker-dealers, futures commission merchants, regulated

¹ Banks also are subject to other stringent federal regulations that (among other things) require them to file reports of suspicious transactions (see 31 C.F.R. §103.18), create and retain records of transfers of funds of \$3,000 or more (31 C.F.R. §103.33), and make and maintain records for a variety of other transactions, including the sale and redemption of all certificates of deposit, the opening of any accounts and all deposits (31 C.F.R. §103.34).

brokers, casinos, money services businesses, mutual funds and operators of credit card systems. See 31 C.F.R. §§ 103.120; 103.125; 103.130; 103.135. In the interim final rules, FinCEN stated that banks, savings associations, and credit unions that have established anti-money laundering programs that comply with the regulations of their federal regulators governing such programs have been deemed to be in compliance with section 5318(h) of the Patriot Act. See 31 C.F.R. § 103.120(b) (2002). In addition, the interim final rules temporarily exempted all other businesses that came within the broad definition of financial institutions from Patriot Act requirements until October 24, 2002.² See 31 C.F.R. § 103.170. In the interim final rules, FinCEN noted that other financial institutions never have been subject to federal financial regulation, and that “[a]n inadequate understanding of the affected industries could result in poorly conceived regulations that impose unreasonable regulatory burdens with little or no corresponding anti-money laundering benefits.” 67 Fed. Reg. at 21112. The interim rule stated that the Treasury Department and FinCEN would continue to study the money laundering risks posed by the exempted institutions in order to develop appropriate anti-money laundering requirements. Id.

C. Businesses Engaged in Vehicle Sales.

On February 24, 2003, FinCEN issued the ANPRM, seeking comments on questions regarding what, if any, anti-money laundering compliance requirements should be imposed on businesses engaged in vehicle sales, including “the money laundering risks that are posed by these businesses, whether these businesses should be subject to [Patriot Act] requirements, and if so, how the requirements should be structured.” 68 Fed. Reg. at 8568. In the ANPRM, FinCEN

² On November 6, 2002, FinCEN amended the interim final rule and again temporarily deferred application of the anti-money laundering program requirements to other financial institutions so that it could engage in further study of the affected industries. See 67 Fed. Reg. 67547 (Nov. 6, 2002).

recognized that the business of vehicle sellers encompasses a diverse group, including sellers of automobiles, aircraft, boats and ships, used vehicles, and those who broker the sale of new or used vehicles. Id. at 8569. Given the variety of vehicle sales industries, the potential money laundering risk and need for anti-money laundering programs will vary widely; therefore each industry or business segment should be considered in its own context.

D. Additional Regulation of the Wholesale Automobile Auction Industry Is Unnecessary and Unjustified.

NAAA represents the wholesale automobile auction industry and its member auctions provide auction services in the sale of used cars at the wholesale level. As discussed in detail below, the automobile auction industry already is subject to state and federal regulatory requirements, and also has instituted a variety of measures that protect against money laundering and related crimes. Any consideration of further regulation of the automobile auction industry under the Patriot Act should be done in the context of the regulatory requirements and practices already in place. Therefore, the central issue for resolution with respect to automobile auctions is whether the risk of money laundering at such auctions is so great that it warrants going beyond the current regulatory requirements and self-imposed practices to impose additional requirements. As FinCEN has recognized, the issue involves a cost benefit analysis. Given the minimal risk of money laundering posed by wholesale automobile auctions, the anti-money laundering regulatory requirements already in place, and the safeguards that automobile auctions voluntarily have implemented to prevent and protect against illegal activity, any incremental benefit in reducing the risk of money laundering that could be achieved through further regulation is far outweighed by the substantial costs and burdens such measures would impose.

II. BACKGROUND

Automobile auctions receive consignments of vehicles from various sellers, including licensed new and used motor vehicle dealers, manufacturers, banks, rental car companies, fleet companies and other commercial businesses and government agencies. Individuals and consumers do not sell vehicles at NAAA member auctions. All of the vehicles are used³ and are to be sold at wholesale. The auctions handle all types of vehicles. Only licensed motor vehicle dealers are allowed to purchase vehicles at NAAA member auctions.⁴ For all NAAA auctions, nearly half of the cars consigned for sale come from large commercial accounts such as automobile manufacturers and their captive finance companies, lease companies such as banks, rental car companies, and similar commercial consignors.

When a vehicle is consigned to the auction site to be sold, its identification number and the year, make and model of the vehicle are recorded and verified. After a vehicle is checked in, auction sites typically prepare a vehicle condition report. Auctions frequently employ off duty law enforcement officers to check vehicle identification numbers, including confidential numbers, to prevent the sale of stolen vehicles. Auctions often warehouse vehicle inventories until the day of the auction, and they often provide advertising services regarding the sale of such vehicles. When an auction is held, buyers bid on the vehicles in which they are interested as the

³ On very rare occasions, vehicles with a manufacturer's statement of origin are sold through NAAA member auctions. An example would be a situation where the paint on new vehicles was damaged in a port and the manufacturer decided to sell those vehicles through an NAAA member auction rather than at retail.

⁴ In very limited circumstances, where required by state or federal law, the public is allowed to attend auctions at the facilities of NAAA members, however, these are very infrequent and are limited to repossessions and government sales in which financial institutions and governments are the sellers. NAAA members carefully separate these sales from their traditional "dealer only" sales. Some NAAA members conduct retail sales, however, these are also kept separate and apart from their traditional "dealer only" sales.

vehicles are driven through auction lanes and cross the auction block.⁵ After completing their purchases, buyers go to the auction's front office to finalize their transactions, which include paying for their purchases, transferring titles and possibly requesting a post-sale inspection of the vehicle's condition. Buyers may purchase their vehicles with certified checks, cashier's checks, company checks, money orders, cash, electronic funds transfers, drafts or authorized financing via a third party financial institution. The buyer's final price for a vehicle is usually the bid price for the vehicle, the buyer's fee to the auction, and payment for any other services that the buyer requests. Most auctions provide arbitration services to resolve disputes following the sale.

A wholesale automobile auction's primary source of revenue is the fees charged to sellers and buyers for facilitating the sale and purchase of the vehicles. Most auctions also provide reconditioning, certification and post-sale inspection services. Auctions also provide the service of processing the title documents necessary to transfer title from the seller to the buyer. Auctions themselves do not take ownership of or title to the vehicles. Akin to a clearinghouse, they do, however, guarantee payment to the seller of a vehicle and good title to the buyer of the vehicle. For example, following a successful sale of a vehicle at auction, an auction will pay a consignor for its vehicle when the title to the vehicle is provided to the auction, even if the buyer has not yet paid. This ensures that consignors are promptly paid, and that the auction bears the risk of and is responsible for collecting the money owed from the buyer. Auctions also provide title guarantees to buyers and are responsible for resolving breaches of title guarantees.

When a vehicle is sold, the auction makes payment to the seller by means of a check with a restrictive endorsement typically requiring the bank to deposit the funds in the payee's account.

⁵ Many NAAA members conduct sales over the internet as part of their wholesale motor vehicle auction business, however, these represent only a small portion of the total sales through NAAA member auctions, and the buyers and sellers are required to be registered to conduct business at the auction.

The endorsement ensures that the money paid to the seller is processed through the seller's bank. Occasionally, sellers receive payment through electronic wire transfer or by a draft, but the funds always travel through the seller's bank. Buyers make payment to the auctions for the vehicles that they purchase, and the auctions deposit those payments in the auctions' bank accounts. The overwhelming majority of buyers pay by check, draft or by means of financing provided by a bank or other lending institution.

Every vehicle seller and buyer must be registered and authorized by the auction to do business at the auction. Sellers are either dealers licensed by state licensing authorities or manufacturers, finance companies, banks, rental car companies, government agencies or other companies that are authorized by state law to sell vehicles without a dealer license. Buyers are licensed dealers who also must be registered with and approved by the auction before they can purchase vehicles at the auction. To register, sellers and buyers must provide detailed information that includes, *inter alia*, their federal and state taxpayer identification numbers, dealer and business license numbers, dealer plate registration, a copy of the dealership owner's driver's license and the licenses of all authorized representatives, and the identity of and information concerning their bonding company, insurance, and floor plan finance companies. Sellers and buyers also must provide their bank account information and a bank authorization letter that allows the bank to release credit information to the auction company. If a dealer is sending representatives to handle purchases, the dealer and any authorized representatives must be properly registered and approved and must provide their licenses, surety bond and other credentials required by the state. Dealers who complete the registration process and their registered representatives typically receive a permanent identification card that they must bring to the auction to be allowed to transact business.

III. DISCUSSION

A. **What is the Potential Money Laundering Risk Posed by Automobile Auctions, and Do Money Laundering Risks Vary by Vehicle Type, Market or Business Line?**

The money laundering risks posed by automobile auctions are minimal, given the types of vehicles sold. Automobile auctions provide auction services in the sale of used cars at wholesale. Used cars sold at wholesale do not present an attractive means of laundering large sums of money. The average price of vehicles sold through NAAA members in 2002 was \$8,505.00. Moreover, cash sales of automobiles account for a minute percentage of the revenue generated by most automobile auctions in the United States (probably less than 2%) and, as will be discussed in more detail later, NAAA member auctions carefully comply with the Internal Revenue Service Cash Transaction Reporting Requirements.

NAAA member auctions are licensed by states as either auction businesses or motor vehicle auctions or both; the dealers who purchase at their auctions are licensed by their jurisdictions; and many of the salespersons authorized to represent those dealers are licensed by their jurisdictions. Wholesale automobile auctions, by definition, almost exclusively facilitate the sale of used automobiles, however, they do not buy and sell automobiles. As FinCEN has recognized, however, "vehicle sellers" encompasses sellers of far more expensive and larger scale forms of transportation, including "trucks," "RVs," "airplanes," "helicopters," "boats" and "ships." 68 Fed. Reg. at 8569. Although some NAAA member auctions occasionally sell trucks, RVs or recreational boats, such sales constitute a de minimis (less than 1%) portion of their total sales.

The likelihood of money laundering at or through automobile auctions is further minimized because only registered licensed dealers and legitimate businesses and government

agencies may purchase and sell automobiles at the member auctions. Automobile auctions operate on the wholesale level, generally providing auction services in the sale of automobiles between automobile dealers licensed by the state legitimate businesses and government entities and with whom they have an established relationship, instead of through retail to random unknown members of the public. Such dealers are almost exclusively domestic U. S. entities and the transactions facilitated by auctions are largely between domestic U. S. buyers and sellers. In addition, every automobile bought and sold at auction has a legal title document that tracks the ownership of the vehicle. When a car is brought to an auction for sale, it is titled in the authorized seller's name and is registered with the motor vehicle department of the applicable state. When the car is sold, the title is transferred to the authorized buyer's name and is eventually registered with the appropriate state motor vehicle department. Thus, the fact that titling laws track ownership of automobiles sold at auction further minimizes the risk of money laundering through auto auctions.

As such, wholesale automobile auctions present very little risk of money laundering, especially in comparison to other more traditional financial institutions such as banks, savings associations, money services businesses, mutual funds and operators of credit cards. Banks and other traditional financial institutions, for example, constantly deal with large sums of cash and numerous members of the U. S. and foreign public. These traditional financial institutions present a much greater risk of money laundering that justifies the regulations that have been imposed and require the establishment of an anti-money laundering program. The auctioning of used wholesale automobiles to registered dealers does not present a risk of money laundering that justifies further regulation under the Patriot Act.

B. Should Automobile Auctions Be Exempt from Coverage Under Sections 352 and 326 of the Patriot Act? If Not, How Should Its Anti-Money Laundering Program Be Structured?

FinCEN should exempt automobile auctions from the requirements under section 352 and 326 of the Patriot Act because of the comparatively minimal risk of money laundering that is more than adequately addressed by industry practices that protect against money laundering and other financial crimes. As already mentioned, NAAA member auctions already are subject to regulatory requirements that further prevent money laundering and fraud. NAAA members insure that dealer payments to automobile auctions for purchased vehicles flow through banks and other traditional financial institutions that already have anti-money laundering programs in place and already must monitor and report such financial transactions. The current business practices of NAAA member auctions, including Form 8300 compliance and educational programs and materials fully comply with the intent of the Patriot Act, considering the function of said auctions in motor vehicle transactions.

1. Industry Practices.

NAAA members already voluntarily have instituted a variety of safeguards that prevent money laundering, fraud and other illegal activities. Although implemented for other purposes, the policies and procedures that automobile auctions have adopted more than adequately serve the purposes of the anti-money laundering and customer identification programs required under the Patriot Act.

For example, only registered dealers that are properly licensed and approved are permitted to conduct business and otherwise participate in NAAA members' auctions and the sellers are either licensed motor vehicle dealers or legitimate institutional sellers or governmental agencies. To register, dealers generally must demonstrate that they are licensed as a dealer by a

state licensing authority, identify their dealership(s), provide their federal tax identification or social security number, list bonding and liability insurance information, and provide information with respect to their bank accounts. Dealers also typically must list references and authorize automobile auctions to obtain bank customer information and a consumer report on the dealer. Once auctions receive such references, they generally contact the bank(s) identified by the dealer to verify the information provided and to assess the dealer's account history and balances for the preceding six months to a year.

Many of NAAA's member auctions also maintain dealer registration information on a central computerized database that their auction locations access to verify with whom they are dealing. One of NAAA's largest members, for example, enters dealer registration information on a database maintained by a third party provider. Once such information has been entered, the dealer (and any agent or representative of such dealer) receives an individualized photo identification auction card which is required to transact business at an auction.

Many of NAAA's member auctions also have policies that prevent dealers from making excessively large purchases. These auctions set limits for high volume, high dollar dealers that have been authorized to purchase automobiles at the auctions based on the dealer's credit history. The centralized computer database can track a dealer's universal credit limit information to ensure that a dealer does not exceed the limit through business at multiple auction locations. A dealer's credit can be automatically terminated when the authorized amount has been exceeded. A dealer may not make additional purchases on credit without additional authorization once his account has been flagged. The credit limit information for dealers also informs auctions when a dealer deviates from his usual purchase activities or levels.

Sellers at NAAA member auctions also present little, if any, risk of money laundering. For example, licensed automobile dealers, which account for approximately half of all vehicles sold at NAAA auctions, must likewise register before they sell their vehicles at auction. Furthermore, large reputable commercial manufacturers, finance companies, banks, rental car companies and similar commercial sellers provide virtually all of the other vehicles consigned to automobile auctions for sale.

NAAA and its member auctions also regularly educate employees that are involved with cash transactions regarding the Form 8300 information gathering, filing and reporting requirements, relevant definitions, record retention requirements, and the applicable penalties for non-compliance. Automobile auctions must complete and submit Forms 8300 to the Internal Revenue Service for each purchase involving more than \$10,000 in cash from one transaction, or two or more "related" transactions. NAAA and its members, for example, advise employees to report suspicious transactions, such as successive or related cash transactions that are structured to avoid Form 8300 requirements by involving cash amounts that are close to but do not exceed the threshold \$10,000 limit.

NAAA and its members, among other things, distribute educational materials regarding Form 8300 cash transaction reporting requirements to employees that are involved with cash transactions and their supervisors. Many NAAA members also require that such employees undergo formal training that, among other things, defines money laundering, explains the meaning of "related" or "structured" transactions, and stages examples of activity that should be deemed "suspicious" or "structured." NAAA regularly updates its members on 8300 form reporting requirements and promptly advised its members of the revisions that were part of the Patriot Act.

2. Existing Regulatory Requirements Track Cash Transactions.

The Form 8300 reporting and related recordkeeping requirements with which automobile auctions already must comply also ensure that large and suspicious cash transactions involving the purchase of automobiles are monitored and evaluated to prevent any form of illegality, including money laundering. The Forms 8300 require detailed information for such cash transactions, including the purchaser's name, address, social security number, occupation/profession/business, and date of birth. The purchaser's identity also is verified through the examination by the auctions of government issued identification, such as a driver's license or passport, and information taken from the government issued identification examined is included on the Form 8300. As a result of the detailed investigation of customers and their authorized representatives before they are allowed to register to do business at an NAAA member auction, the information on 8300 forms from NAAA member auctions is almost certainly more accurate and complete than most.

3. Traditional Financial Institutions With Existing Anti-Money Laundering Programs Track and Monitor All Automobile Auction Financial Transactions.

All payments for vehicles and services at automobile auctions eventually are processed through banks. For example, when a vehicle is sold, the auction writes a check to the seller with a restrictive endorsement. The endorsement ensures that the money paid to the seller is processed through the seller's bank. Occasionally, sellers receive payment through wire transfer or by draft, but the funds always travel through the seller's bank. Buyers usually pay auctions with checks or drafts for the vehicles that they purchase, which the auctions deposit with their banks. If a buyer purchases a vehicle with cash, the auction complies with the Form 8300 requirements, if necessary, and then deposits the funds with its bank. As mentioned earlier, that

information is almost certainly more accurate than the information contained on most Forms 8300. Financial institutions that already have anti-money laundering programs in place also monitor the financial transactions of automobile auctions and further redundant regulation is unnecessary. NAAA members do not pay sellers in cash.

4. Summary

Given the existing safeguards and regulations, and the high cost of imposing more onerous requirements, additional regulation of wholesale automobile auctions under the Patriot Act is unwarranted. FinCEN has acknowledged that “[b]usinesses engaged in the selling of vehicles comprise a significant percentage of the total gross domestic product of the United States, and the vehicles that they collectively sell account for a major portion of U.S. consumption, exports, and other important economic indicia.” 68 Fed. Reg. at 8569. FinCEN also has recognized the “economic significance” of the automobile industry, and that the “important and pervasive” role of vehicles mandates that FinCEN strike an appropriate balance between the requirements of the Patriot Act and the “important benefits” that vehicle sellers provide to our country. *Id.* Accordingly, given the minimal risk of money laundering in the wholesale automobile auction industry, and the existing safeguards that are in place to prevent and detect illicit transactions, there currently is no justification for the imposition of additional costly regulatory burdens that would yield marginal returns. If FinCEN determines that automobile auctions should establish a formal anti-money laundering program, however, the dealer registration requirements, credit limits, Form 8300 reporting and recordkeeping requirements, and various forms of member and employee education that NAAA and its members already have instituted should suffice. As such, if FinCEN decides that automobile auctions should establish anti-money laundering programs, it should do no more than codify

existing safeguards to be used by auctions in establishing their individual anti-money laundering programs and, at most, require the appointment of a compliance officer at the automobile auctions to oversee and ensure continued execution of existing protective measures. If any regulations are imposed on wholesale automobile auctions, it is very important for FinCEN to realize that it is impossible to create "one size fits all" regulations because what works for a small auction won't necessarily work for a large auction and what works for an auction with a particular mix of vehicles won't work for an auction with a different mix of vehicles.

C. How Should A Vehicle Seller Be Defined?

As established above, automobile auctions do not sell vehicles; instead, they provide auction services in the sale of vehicles by legitimate sellers to buyers who are licensed motor vehicle dealers. Although FinCEN, in the ANPRM, has defined sellers to include those who broker the sale of used cars, wholesale automobile auctions are not brokers, and simply provide auction services in these transactions. In fact, in many states, wholesale automobile auctions and brokers are separately licensed.⁶ The wholesale automobile auction industry is a very visible and well known industry, and if Congress has intended for them to be regulated by the Patriot Act, Congress would have specifically mentioned them. Wholesale automobile auctions need not and should not be regulated in the same way as traditional financial institutions.

⁶ Florida, for example, defines "motor vehicle auction" as any person offering motor vehicles or recreational vehicles for sale to the highest bidder where buyers are licensed motor vehicle dealers and provides that such auctions shall not sell a vehicle to anyone other than a licensed motor vehicle dealer. §320.27(1)(c)(4), Florida Statutes. Florida defines "motor vehicle broker" as any person engaged in the business of offering to procure or procuring motor vehicles for the general public, or who holds himself or herself out through solicitation, advertisement, or otherwise as one who offers to procure or procures motor vehicles for the general public, and who does not store, display, or take ownership of any vehicles for the purpose of selling such vehicles. §320.27(1)(d), Florida Statutes.

There is precedent for treating NAAA member auctions different from vehicle sellers. On October 29, 1986, Congress passed the Truth In Mileage Act of 1986 (TIMA), Pub. L. No. 99.579, §2. During the lengthy rulemaking proceedings to implement TIMA, the National Highway Traffic Safety Administration (NHTSA) repeatedly drew distinctions between the wholesale motor vehicle auctions that are members of NAAA, and imposed significantly different odometer disclosure and record retention requirements on wholesale motor vehicle auctions from those imposed on vehicle sellers and buyers. During the rulemaking process, at 54 Fed. Reg. 9858, 9859 (March 8, 1989), NHTSA described a transaction at a typical wholesale automobile auction and stated that the seller at an auction, not the auction, is obligated to provide odometer disclosure to the buyer. There are also separate odometer record retention requirements for auction companies at 49 C.F.R. § 580.9.

D. Do Vehicle Sellers Maintain “Accounts” for Their Customers?

The Patriot Act also directs the Secretary of the Treasury to “prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.” 31 U.S.C.A § 5318(l). The regulations are intended to “require financial institutions to implement . . . reasonable procedures for—(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable; (B) maintaining records of the information used to verify a person’s identity, including name, address, and other identifying information; and (C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person

seeking to open an account appears on any such list.” Id. at § 5318(l)(2). In formulating these regulations, the Department of the Treasury must consider “the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.” Id. at §5318(l)(3). FinCEN has solicited comments as to whether (and to what extent) vehicle sellers maintain “accounts” for their customers. 68 Fed. Reg. at 8571.

Although NAAA member auctions maintain information on dealers through registration and thereby provide many of them with credit limits, they do not provide special services to such dealers, nor is their information maintained as a traditional account set up to receive or disburse recurring payments. The dealer registration requirements that NAAA members have imposed, however, enable automobile auctions to verify the identity of any person seeking to sell or purchase vehicles. As such, even if auctions maintained accounts intended to be covered by the Patriot Act, the imposition of additional regulations requiring wholesale automobile auctions to establish formal customer identification programs or other anti-money laundering compliance programs with respect to such accounts (as is done for correspondent bank accounts) is unnecessary especially in light of the fact that dealers, whether buyers or sellers, are almost exclusively domestic U. S. entities.

IV. CONCLUSION

For the foregoing reasons, NAAA respectfully suggests it is neither necessary nor appropriate to subject wholesale automobile auctions to the requirements set forth in sections

352 and 326 of the Patriot Act. NAAA and its members remain willing to supplement these comments or provide any additional information to FinCEN on request.

Respectfully submitted,

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ASSOCIATION

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