June 24, 2013

Financial Crimes Enforcement Network
P.O. box 39
Vienna, Va. 22183

Re: RIN 1506 AB 21—Imposition of Special Measures Against Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern

RIN 1506 AB 22—Imposition of Special Measures Against Kassem Rmeiti & Co. for Exchange as a Financial Institution of Primary Money Laundering Concern

RIN 1506 AB 23—Imposition of Special Measure Against Liberty Reserve S.A. as a Financial Institution of Primary Money Laundering Concern

Dear Sirs:

The Clearing House Association L.L.C. ("The Clearing House")[1] and the American Bankers Association ("ABA")[2] (jointly, "the Associations") are pleased to comment on FinCEN's proposals to impose the first and fifth special measures under section 311 of the USA PATRIOT Act[3] against Halawi Exchange Co. ("Halawi") [4] and Kassem Rmeiti & Co. for Exchange ("Kassem")[5] and to impose the fifth special measure against Liberty

[1] Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs, and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost $2 trillion daily and representing nearly half of the automated-clearing-house, funds-transfer, and check-image payments made in the United States. See The Clearing House's web page at www.theclearinghouse.orgfor additional information.

[2] ABA represents banks of all sizes and charters and is the voice for the nation's $14 trillion banking industry and its two million employees. The majority of ABA's members are banks with less than $165 million in assets.

[3] 31 U.S.C. § 5318A.

[4] 78 Fed. Reg. 24,584 (Apr. 25, 2013).

[5] 78 Fed. Reg. 24,576 (Apr. 25, 2013).

Reserve S.A. ("Liberty").[6] FinCEN has designated each of these companies as an institution of primary money laundering concern under section 311; both Hawali and Kassem were designated because of connections to narcotics traffickers and terrorists,[7] while FinCEN found that Liberty is designed to facilitate money laundering; is not designed for legitimate use; and is regularly used to store, transfer, and launder illicit proceeds.[8] In addition, FinCEN imposed reporting requirements under the first special measure on covered financial institutions with respect to both Hawali and Kassem under a provision of section 311 that allows immediate imposition of this special measure.[9]

FinCEN has imposed or proposed imposing the fifth special measure on financial institutions that it has designated under section 311 a number of times over the past several years. These proposals break new ground in providing that "[a] covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, on behalf of, a foreign financial institution if such correspondent account is being used to process a transaction that involves [Hawali or Kassem]."[10] Previous impositions of the fifth special measure did not require the closing of the correspondent account, merely that covered institutions apply special due diligence to prohibit indirect use by the designated entity.[11]

The first special measure was first proposed against JSC CredexBank ("Credex") in May of last year, and FinCEN also proposed imposition of the fifth special measure against Credex.[12] The Clearing House and the American Bankers Association filed a joint comment letter on the Credex proposals making a number of suggestions as to how the special measures could be clarified and improved.[13] We are gratified that the new proposals reflect many of our comments. Nonetheless, we believe that there are a number of steps that FinCEN can take to clarify the proposed rules and make them less burdensome on covered financial institutions without in any way reducing the usefulness of the information reported to the government.

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[6] 78 Fed. Reg. 34,008 (Jun. 6, 2013).

[7] 78 Fed. Reg. 24,593 (Apr. 25, 2013) (designating Kassem Rmeiti & Co. for Exchange); 78 Fed. Reg. 24,596 (Apr. 25, 2013) (designating Hawali Exchange Co.).

[8] 78 Fed. Reg. 34,169 (Jun. 6, 2013).

[9] 78 Fed. Reg. 24,599 (Apr. 25, 2013) (Kassem Rmeiti & Co. for Exchange); 78 Fed. Reg. 24,601 (Apr. 25, 2013) (Hawali Exchange Co.).

[10] *See. e.g.*, 78 Fed. Reg. at 24,592 (Hawali).

[11] *See, e.g.,* 77 Fed. Reg. 31,794 (May 30, 2012) (JSC CredexBank).

[12] *Id*.

[13] Joint comment letter of The Clearing House Association L.L.C. and the American Bankers Association on RIN 1506-AB19 (Jul. 30, 2013).

SUMMARY

1. The proposed reporting requirements on Hawali and Kassem should be revised as we recommend and should be finalized to replace the reporting requirements that are currently in place.

2. The reporting requirements of the first special measure should be revised in several ways:

(a) The rule must be clear about which transactions are covered.

(b) Identification of the parties should be limited to the information that is included in the payment order under FinCEN's travel rule.

(c) We support FinCEN's proposal to limit the concept of "legal capacity" to the parties that are listed on the transaction instruction.

(d) FinCEN should follow the timing rules for suspicious activity reports ("SARs") in determining when information should be reported.

(e) The proposal misstates the actual burden of the requirement.

DETAILED COMMENTS

1. The proposed reporting requirements on Hawali and Kassem should be revised as we recommend and should be finalized to replace the reporting requirements that are currently in place.

FinCEN issued findings that Hawali and Kassem are financial institutions of primary money laundering concern effective April 22. At the same time, it immediately imposed reporting requirements on covered financial institutions with respect to transactions involving these two exchange houses, effective on April 23 and ending on August 21, 2013. These reporting requirements are identical to those that have been published for comment.

As noted, we believe that the reporting requirements can be made less burdensome on the covered financial institutions without limiting their effectiveness for the government. We therefore suggest that FinCEN finalize the proposed rules as we recommend and substitute the revised proposal for the current requirements as soon as possible.

2. The reporting requirements of the first special measure should be revised in several ways:

(a) The rule should be revised so that it is clear about which transactions are covered.

The proposed rules regarding collection and reporting of transactions or attempted transactions involving Hawali and Kassem are identical to those that were proposed for Credex. In our letter on the Credex proposal, we commented that the proposed rule is not clear and that the meaning of the term *attempted transaction* was not clear. It would seem that with the new proposals, FinCEN has sought to clarify this language by stating in the Federal Register notice that

> ''Transactions involving Rmeiti Exchange'' include, at a minimum, any transactions for which the documentation, such as the transmittal order, payment instruction, or SWIFT message, includes the following as a party in any capacity: the name of Rmeiti Exchange; the name of any branches, offices, or subsidiaries of Rmeiti Exchange; or the names of any of the principals of Rmeiti Exchange identified in the finding that appear as acting on behalf of Rmeiti Exchange.[14]

While this is helpful, it still does not explain the difference between a transaction and an attempted transaction or why that distinction is meaningful. The phrase *at a minimum* also creates confusion. If a bank does not get a payment order or other transaction instruction with the name of one of the designated parties in it, how can it be aware of any transaction that should be reported? If FinCEN has something else in mind, it should specify it.

At the same time, it should be articulated clearly that principals, branches, or subsidiaries of both designated entities are restricted to those identified in the findings so that examiners do not impose a secondary and additional due diligence beyond what FinCEN has set forth in the proposal.

We recommend that the rule be clarified as follows:

1. Covered financial institutions would be required to report only those transactions in which a designated entity appears in the transaction instruction as a party. As noted in the Federal Register notice, this will allow banks to put the names of designated entities in their OFAC filters so that they can be readily identified and reported.[15]

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[14] 78 Fed. Reg. at 24,578.

[15] *Id*.

2. FinCEN should eliminate the distinction between transactions and attempted transactions and focus instead on transaction instructions (e.g., a funds-transfer payment order) received by a covered financial institution in which a designated entity appears as any party to the transaction. A report would be required whether the bank accepted or rejected the instruction.

(b) Identification of the parties should be limited to the information that is included in the payment order under FinCEN's travel rule.

The proposed rules state that required report is to include "[t]he identity and address of the participants in a transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer."[16] The section-by-section analysis states that the information to be reported

> would include any identifying information the covered financial institution or principal money transmitter obtained in the ordinary course of business, including the information required under 31 CFR 1010.410(f) (generally known as the ''travel rule''), such as name, account number if used, address, the identity of the beneficiary's financial institution, or any other specific identifier of the recipient received with the transmittal order.[17]

We commented on an almost identical provision in the Federal Register notice regarding Credex by stating that the reportable information would "include" information in the institution's possession, FinCEN implies that if an institution does not have the required information, it would be required to obtain it. This, however, would require U.S. banks to engage in a most likely futile quest. FinCEN addresses this point in the new proposals by saying that

> there is no expectation that a covered financial institution or principal money transmitter seek additional information from financial institutions in a chain of intermediaries beyond the immediate counter party from which the covered financial institution or principal money transmitter received the instruction. Some requests for additional information may not yield every item of additional information sought. To supplement the information received from the immediate counter party, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that they collect in the

[16] *Id*. at24,583, proposed 31 C.F.R. § 1010.658(b)(1)(i).

[17] *Id*. at 24,578.

> ordinary course of business relevant to the identity of the parties involved in the transaction or attempted transaction.[18]

While this is somewhat helpful, we continue to believe that the better course would be to limit the reporting requirement to information that is included in the payment order or other transaction instruction and that there be no requirement for covered institutions to make inquiries of their senders for additional information.

At the same time, FinCEN should provide a simple list of the designated principals and subsidiaries of Hawali and Kassem. To be sure that all financial institutions are alerted to the mandate, we also suggest that FinCEN provide a special alert. One possible venue to do this would be the section 314(a) process established under the USA PATRIOT Act.

(c) We support FinCEN's proposal to limit the concept of "legal capacity" to the parties that are listed on the transaction instruction.

The proposed rule provides that a covered financial institution must report on

> [t]he legal capacity in which Kassem Rmeiti & Co. For Exchange is acting with respect to the transaction or attempted transaction and, to the extent Kassem Rmeiti & Co. For Exchange is not acting on its own behalf, then the customer or other person on whose behalf Kassem Rmeiti & Co. For Exchange is acting.[19]

FinCEN explains that

> [t]he proposed rule would not require the covered financial institution or principal money transmitter to seek additional information regarding the legal capacity of the parties involved in the transaction beyond what it already has in its possession in the ordinary course of business.[20]

In other words, the "legal capacity" of the designated entity is determined by the payment order or other transaction instruction, and there is no need to look beyond that document to identify other parties, such as undisclosed principals. If this is all that is required, then we do not have any objection to this requirement.

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[18] *Id.*

[19] Proposed 31 C.F.R. § 1010.658(b)(1)(iii), 78 Fed. Reg. at 24,583.

[20] 78 Fed. Reg. at 24,579.

(d) FinCEN should follow the rules for suspicious activity reports ("SARs") in determining when information should be reported.

FinCEN proposes that reports be due 15 business days after the date of the transaction.[21] This is an improvement over the 10-business-day period that was specified for reports under the Credex proposal.[22] Nonetheless, given the potential need to seek information from customers, we still believe that additional time is needed.

FinCEN has given banks the option of filing the required reports as part of a SAR—a proposal we strongly support—although the time for filing that SAR is advanced to 15 days after the transaction. We do not see a good reason for advancing the time for filing, and recommend that both for filing the SAR or the stand-alone report should be 30 days from the date of the transaction as set out in the regulations governing SARs.[23]

Moreover, the process for reporting additional information not readily available at the outset to satisfy the 15-day turnaround required in the proposal seems unduly cumbersome. Instead of requiring an institution to file an initial report and then file a new report reflecting additional information, we recommend that an institution be permitted to file a preliminary notice with FinCEN to explain that it is under investigation and then report, adhering to the existing timing provisions under the SAR rules, when it has all necessary information. Having duplicate reports is burdensome to the industry and likely to be confusing to law enforcement since it could appear as though two transactions are being reported.

(e) The proposal misstates the actual burden of the requirement.

While FinCEN suggests that the impact on smaller financial institutions will be minimal, it bases that assertion by extrapolating from the number of reports that can be anticipated, based primarily on the premise that the account activity of the two designated entities is limited and thus reporting will be limited. This overlooks the critical factor that *every* financial institution must ensure that its filters and screens are updated to monitor for possible transaction activity; in fact, it has been reported that examiners are already questioning even smaller community banks about their policies, procedures and processes for complying with these mandates.

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[21] Proposed 31 C.F.R. § 1010.658(b)(2), 78 Fed. Reg. at 24,583.

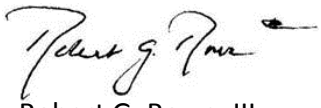
[22] Proposed 31 C.F.R. § 1010.658(b)(2), 77 Fed. Reg. at 31,802.

[23] 31 C.F.R. § 1020.320(b)(3).

We hope this comment is useful. If you have any questions, please contact Joe Alexander at 212-612-9234 or joe.alexander@theclearinghouse.org or Rob Rowe at 202-663-5029 or rrowe@aba.com.

Very truly yours,

Joseph R. Alexander
Senior Vice President, Deputy General Counsel, and Secretary



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