

NASD NOTICE TO MEMBERS 97-13

Bank Secrecy Act Recordkeeping Rule For Funds Transfers And Transmittals Of Funds

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Executive Summary

The Department of the Treasury's (Treasury) amendments to the Bank Secrecy Act (BSA), which facilitate tracing funds through the funds-transmittal process, became effective May 28, 1996. For transmittals of funds of \$3,000 or more, broker/dealers are required to obtain and keep certain specified information concerning the transmitter and the recipient of those funds. In addition, broker/dealers must include this information on the actual transmittal order.

Questions regarding this Notice may be directed to Samuel Luque, Jr., Associate Director, Compliance, NASD Regulation, Inc., at (202) 728-8472; or Susan DeMando, District Coordinator, Compliance, NASD Regulation, Inc., at (202) 728-8411.

Background

The BSA authorizes the Treasury to require financial institutions, including broker/dealers, to keep records and file reports about the source, volume, and movement of funds into and out of the country and through domestic financial institutions. In 1992, the Annunzio-Wylie Anti-Money Laundering Act (1992 Amendment) amended the BSA to give the Treasury and the Board of Governors of the Federal Reserve System (Fed.) joint authority to prescribe regulations for maintaining records of domestic and international transmittals of funds.

In April 1993, the Treasury and the Fed. published a joint proposal with amendments to the BSA for funds transfers, which was adopted in final form in early 1995 (Joint Rule). The Joint Rule requires additional recordkeeping related to certain funds transmittals and transfers by broker/dealers and other financial institutions. At the same time, the

Treasury adopted a companion rule (Travel Rule or Rule) that requires financial institutions to include on transmittal orders certain information that must be retained under the new recordkeeping requirements. Members may refer to *Notices to Members 96-67, 95-69, 95-88*, and "For Your Information" in the April 1996 *Notices to Members* for additional information on these amendments.

Questions And Answers

Listed below are frequently asked questions about the recordkeeping rules for transmittals of funds and funds transfers under the BSA. As with *Notice to Members 96-67*, which was also in a question-and-answer format, this information is not meant to be comprehensive and does not replace or supersede the terms of these provisions. NASD RegulationSM appreciates the assistance of the Treasury's Financial Crimes Enforcement Network (FinCEN) in the preparation of this Notice.

Q1: What travel requirements are in effect?

A1: A Rule is in place [31 CFR 103.33(g)] that requires all financial institutions to pass on certain information to the next financial institution when processing funds transmittals. This Rule complements the Joint Rule [31 CFR 103.33(e) and (f)].

Q2: Who issued this Rule?

A2: The Travel Rule was issued by FinCEN of the U.S. Department of the Treasury.

Q3: Are all transmittals of funds subject to this Rule?

A3: No. Only transmittals of funds equal to or greater than \$3,000

(or its foreign equivalent) are subject to this Rule. In addition, transmittals of funds governed by the Electronic Funds Transfer Act (Reg E) or made through an ATM or point of sale system are not subject to this Rule.

Q4: When did this new Rule take effect?

A4: This Rule took effect on May 28, 1996.

Q5: What are the Travel Rule's requirements?

A5: All transmitter's financial institutions must include and send the following in the transmittal order:

- the name of the transmitter;
- the account number of the transmitter, if used;
- the address of the transmitter;
- the identity of the transmitter's financial institution;
- the amount of the transmittal order;
- the execution date of the transmittal order;
- the identity of the recipient's financial institution;

and, if received:

- the name of the recipient;
- the address of the recipient;
- the account number of the recipient;
- any other specific identifier of the recipient.

An intermediary financial institution must pass on all of the information it receives from a transmitter's financial institution or the preceding intermediary financial institution, but has no general duty to obtain information not provided by the transmitter's financial institution or the preceding intermediary financial institution. Exceptions are noted below in Question # 6.

However, if the system used to effect the transmittal of funds (e.g., the Fedwire System) is not currently designed to meet these requirements, the name, address, and account of the transmitter, and the identity of the transmitter's financial institution need not be passed on, until such time as the bank that sends the order to the Federal Reserve Bank or otherwise completes its conversion to the expanded Fedwire message format.

***Note:** In "For Your Information" in the April 1996 Notices to Members, it was stated that NASD members that transmitted orders to another financial institution through a software application program that follows the format of the Fedwire could not avail themselves of this relief. However, since that publication, the Treasury has amended its regulations so that relief is extended to these situations.*

Moreover, if any lawful order is received at, or if a request from another financial institution is made to a recipient's financial institution, that financial institution must go back to the transmitter's financial institution, or any other preceding financial institution, if the transmitter's financial institu-

tion is unknown, and retrieve information not included in the transmittal of funds due to system limitations.

Q6: Are there any exceptions to these requirements?

A6: Yes. If the transmitter and the recipient are the same person, and the transmitter's financial institution and the recipient's financial institution are the same domestic bank or domestic securities broker, then the transaction is excepted from the requirement contained in these new rules.

In addition, if both the transmitter **and** the recipient, defined as the beneficial recipient, are any of the following, then the transmittal of funds is not subject to these rules:

- domestic bank;
- wholly owned domestic subsidiary of a domestic bank;
- domestic broker or dealer in securities;
- wholly owned domestic subsidiary of a domestic broker or dealer in securities;
- United States;
- federal agency or instrumentality;
- state or local government;
- state or local agency or instrumentality.

Q7: Does this Rule require any reporting to the government of any information?

A7: No. However, if a broker/dealer is a party to the transmittal

of funds, and if that transmittal seems to the broker/dealer to be suspicious, then a broker/dealer may choose to file a suspicious activity report with the Treasury. **Note:** *It is anticipated that in 1997, broker/dealers will be added to the list of financial institutions that are subject to the BSA's suspicious activity reporting requirement. Currently, banks must file reports of suspicious activity (whether or not that activity involves a transmittal of funds) to the Treasury.*

Q8: How long does a financial institution have to keep records required by these new rules?

A8: Five years.

Q9: What is the benefit of this Rule to the public?

A9: Law enforcement authorities have identified for the Treasury instances in which records maintained by financial institutions were incomplete or insufficient and thereby hampered criminal investigations. In addition, in certain criminal investigations, financial institutions were unable on a timely basis to provide law enforcement authorities with useful financial records of transmittals of funds. This Rule was created to ensure that in criminal investigations, as well as tax or regulatory proceedings, sufficient information would be available to quickly enable authorities to determine the source of the transmittal of funds and its recipient. Finally, it is anticipated that this Rule will permit law enforcement

authorities to more easily determine the parties to a transaction.

Q10: What is a "financial institution" for the purposes of this Rule?

A10: The term "financial institution" includes most importantly: banks; securities brokers or dealers; casinos subject to the BSA; and money transmitters, check cashers, currency exchangers, and money order issuers and sellers subject to the BSA. Please see 31 CFR 103.11 for more information.

Q11: Does this Rule treat banks and non-bank financial institutions differently?

A11: No. Banks and non-bank financial institutions are treated identically under the Travel Rule.

Q12: What are some of the implications of the Travel Rule for financial institutions subject to this Rule?

A12: The most important implication is that financial institutions must be aware that if a transmittal of funds involves both bank and non-bank financial institutions, each financial institution must carefully analyze and understand all of the definitions that apply to its role in the transmittal of funds. This is important because the Rule's requirements on financial institutions differ, depending on what role a financial institution plays (*i.e.*, a transmittor's, an intermediary's, or a recipient's financial institution) in a transmittal of funds.

For example, in a situation in which the customer of a securities broker/dealer initiates a transmittal of funds that is sent through a bank, that bank is an intermediary financial institution for the purposes of the Travel Rule and the broker/dealer is the transmittor's financial institution.

The next important implication is that financial institutions must carefully understand the role of the succeeding financial institution in the chain of each transmittal of funds, particularly where a transmittal of funds moves from a bank to a non-bank, or vice versa. This is important because the Travel Rule's requirement to pass information to the next financial institution in the chain implicitly requires financial institutions that effect transmittals of funds to coordinate the transfer of information required by these new rules.

Finally, as the range of services offered by financial institutions expands, financial institutions must recognize that a single transmittal of funds may involve two or more funds transfer systems (*e.g.*, SWIFT, CHIPS, Fedwire). In such cases, it is important that each financial institution understand its role(s) in such a complex transmittal of funds, because its duties under this Rule arise from its role(s) in the transmittal of funds.

Q13: What is the relationship between the terms used in this Rule and those used within Article 4A of the Uniform Commercial Code (UCC)?

A13: This Rule uses terms that are intended to parallel to those used in UCC Article 4A, but that are applicable to all financial institutions, as defined within the BSA's implementing regulations.

Terms for <i>all</i> financial institutions	UCC 4A terms
Transmittal of funds	Funds transfer
Transmittal order	Payment order
Transmittor	Originator
Transmittor's financial institution	Originator's bank
Intermediary financial institution	Intermediary bank
Recipient's financial institution	Beneficiary's bank
Recipient	Beneficiary
Receiving financial institution	Receiving bank
Sender	Sender

Q14: Do the terms created in this regulation apply to transmittals of funds to or from anywhere in the world?

A14: Yes. However, the requirements of the BSA apply only to activities of financial institutions within the United States. Thus, for example, part, but not all of an international transmittal of funds can be subject to the Travel Rule.

Q15: Is this Rule limited to wire transfers?

A15: No. The term transmittal of funds includes other transactions and transfers besides wire transfers or electronic transfers.

Q16: What are examples of transmittals of funds that are not wire transfers?

A16: Financial institutions sometimes effect transmittals of funds using correspondent accounts or journal entry trans-

fers, such as "due from" and "due to" accounts. In such cases, covered transmittals of funds have occurred even though no wire transfer occurred.

In addition, a check can be the transmittal order within a transmittal of funds. This limited case occurs when Customer 1 goes into Financial Institution A and orders a transmittal of funds be sent to Customer 2 at Financial Institution B. Financial Institution A, perhaps because it is a small financial institution or because the transaction involves a function (such as a trust) that is segregated from the rest of the financial institution, sends a check, payable to Financial Institution B, directly to Financial Institution B, and does not send the check directly to Customer 1 or to Customer 2. This check must be Financial Institution A's own check (however, it need not be drawn on Financial Institution

A), and not the check of the customer. This check contains with it instructions to have Financial Institution B subsequently credit Customer 2's account. In such a case, the check and its instructions are the transmittal order effecting a transmittal of funds.

Q17: How should aggregated transmittals of funds be treated?

A17: This is a situation where a financial institution pools many separate requests for transmittals of funds into one pooled transmittal of funds.

Whenever a financial institution aggregates separate transmittals of funds from separate transmittors, the transmittor's financial institution itself becomes the transmittor, for the purpose of the Travel Rule. Conversely, any time a financial institution pools separate recipients from separate transmittals of funds, the recipient's financial institution itself

becomes the recipient, for the purpose of the Travel Rule.

For example, if a money transmitter has five customers who wish to have funds disbursed to five separate recipients at a separate broker/dealer, and the broker/dealer uses a bank to effect the movement of funds, the bank might aggregate the five separate customers. In such an instance, the bank may list as the transmitter for the purposes of the Travel Rule the transmitters' broker/dealer, and the recipient as the recipients' broker/dealer. However, the transmitters' broker/dealer itself is independently obligated "to make travel" the required information to the recipients' broker/dealer. Thus, the information is still required to 'travel' in an aggregated transmittal of funds, although not necessarily in the same manner or by the same parties as in a non-aggregated transmittal of funds.

Q18: How should joint party transmittals of funds be treated?

A18: If, for example, Ms. A and Ms. B, sisters, with different names

and addresses, jointly act as the transmitter or as the recipient. In such cases, it may be impossible to transfer all the information required under the Travel Rule. In this instance, the Treasury suggests the following:

When a transmittal of funds is initiated by more than one transmitter, or sent to more than one recipient, the transmitter's financial institution may select one transmitter, or one recipient, as the person whose information must be passed under the Travel Rule. In all cases involving a transmittal of funds from a joint account, the account holder that ordered the transmittal of funds should be identified as the transmitter on the transmittal order. Please note that for the Joint Rule [31 CFR 103.33(e) and (f)], records must still be kept on all parties.

Q19: How should a financial institution treat a customer who uses a code name or a pseudonym, or a customer who has requested that the financial institution hold his/her mail?

A19: In all such cases, the financial institution must use the customer's true name and the customer's address. The use of a code name, or pseudonym, is prohibited. Similarly, a financial institution must not use the financial institution's own address, except where that is the actual address of record of the person.

Q20: To whom can a financial institution go, should it have further questions?

A20: Any financial institution may contact its primary BSA examination authority, or FinCEN at (800) 949-2732 or (703) 905-3920. In addition, FinCEN publishes information regarding money laundering, which is a great area of concern, and the impetus behind the Joint and Travel Rules, on the Internet at <http://www.ustreas.gov/treasury/bureaus/fincen/>.

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