



*Homeland Security Investigations*

# Financial Investigations Handbook

HSI HB 14-03 / May 13, 2014



U.S. Immigration  
and Customs  
Enforcement

FOR OFFICIAL USE ONLY - LAW ENFORCEMENT SENSITIVE


## Foreword

The Financial Investigations Handbook provides a uniform source of national policies, procedures, responsibilities, guidelines, and controls to be followed by U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) and Intelligence Research Specialists when conducting or supporting financial investigations. This Handbook contains instructions and guidance to help ensure uniformity and operational consistency among HSI field offices. Oversight over the national Financial Investigations Program resides with the Unit Chief of the Illicit Finance and Proceeds of Crime Unit (IFPCU).

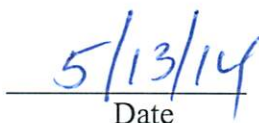
The Financial Investigations Handbook supersedes Chapter 24 of the former U.S. Customs Service (USCS) OI SA Handbook entitled, "Methods of Tracing Funds," dated January 14, 1991; Chapter 32 of the USCS OI SA Handbook entitled, "Currency and Money Laundering Investigations," dated December 5, 1988; and any other directives, handbooks, policies, memoranda, manuals, bulletins, procedures, and guidelines issued by the former USCS, U.S. Immigration and Naturalization Service, ICE OI, International Affairs, or Intelligence, or HSI on financial investigations prior to the date of issuance of this Handbook. (See Appendix A for a more complete list of superseded documents.)

The Financial Investigations Handbook is an internal policy of HSI. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. If disclosure of this Handbook or any portion of it is demanded in any judicial or administrative proceeding, the HSI Records and Disclosure Unit, as well as the appropriate ICE Counsel and/or U.S. Attorney, are to be consulted so that appropriate measures can be taken to invoke privileges against disclosure. This Handbook contains information which may be exempt from disclosure to the public under the Freedom of Information Act, Title 5, United States Code, Section 552(b), and protected from disclosure pursuant to the law enforcement privilege. Any further request for disclosure of this Handbook or information contained herein should be referred to the HSI Records and Disclosure Unit.

The HSI Policy Unit is responsible for coordinating the development and issuance of HSI policy. All suggested changes or updates to this Handbook should be submitted to the HSI Policy Unit which will coordinate all revisions with the IFPCU.



Peter T. Edge  
Executive Associate Director  
Homeland Security Investigations



5/13/14  
Date

**FINANCIAL INVESTIGATIONS  
HANDBOOK**

**Table of Contents**

**Chapter 1. PURPOSE AND SCOPE.....1**

**Chapter 2. INTRODUCTION.....1**

**Chapter 3. DEFINITIONS .....1**

- 3.1 Air Loans ..... 1
- 3.2 Anti-Money Laundering Examiner.....2
- 3.3 Advising Bank .....2
- 3.4 Bank .....2
- 3.5 Bank Cards.....2
- 3.6 Bank Frauds .....2
- 3.7 Banking Services .....3
- 3.8 Beneficial Ownership.....3
- 3.9 Beneficiary.....3
- 3.10 Broker .....3
- 3.11 Broker Dealer or Dealer.....3
- 3.12 Builder Bailout/Condominium Conversion .....3
- 3.13 Capital Market .....4
- 3.14 Capital Market Banks .....4
- 3.15 Cash.....4
- 3.16 Commercial Bank .....4
- 3.17 Commercial Loan.....4
- 3.18 Commercial Real Estate Loan Fraud .....4
- 3.19 Correspondent Banking .....5
- 3.20 Credit Card Machine Services and Networks.....5
- 3.21 Currency.....5
- 3.22 Digital or Virtual Currency.....5
- 3.23 Domestic Bank.....5
- 3.24 Equity Skimming .....5
- 3.25 Financial Fraud .....6
- 3.26 Financial Institution .....6
- 3.27 Financial Record .....6
- 3.28 Financial Services .....6
- 3.29 Financial Transaction.....6
- 3.30 Float .....6
- 3.31 Foreclosure Rescue Schemes.....7
- 3.32 Foreign Exchange Services.....7

- 3.33 Futures Contract.....7
- 3.34 General Partner .....7
- 3.35 Hawala .....7
- 3.36 Hedge Fund.....7
- 3.37 Home Equity Conversion Mortgage Fraud.....8
- 3.38 Illegal Property Flipping.....8
- 3.39 Income Method Approach .....8
- 3.40 Informal Value Transfer System.....8
- 3.41 Integration.....9
- 3.42 International Business Company/International Business Corporation ....9
- 3.43 Investment Banks.....9
- 3.44 Investment Companies.....9
- 3.45 Investment Services .....9
- 3.46 Issuing Bank.....10
- 3.47 Kiting .....10
- 3.48 Kleptocracy.....10
- 3.49 Kleptocrat.....10
- 3.50 Layering.....10
- 3.51 Limited Partner .....10
- 3.52 Loan Modification Scheme.....10
- 3.53 Monetary Instrument.....11
- 3.54 Money Services Business .....11
- 3.55 Mortgage Fraud Schemes .....11
- 3.56 Negotiable Instrument.....12
- 3.57 Offshore Finance.....12
- 3.58 Offshore Financial Centers .....12
- 3.59 Placement.....12
- 3.60 Politically Exposed Person .....13
- 3.61 Ponzi Scheme.....13
- 3.62 Prepaid Access.....13
- 3.63 Prepaid Card.....13
- 3.64 Private Bank.....14
- 3.65 Private Banking.....14
- 3.66 Pyramid Scheme .....14
- 3.67 Quit Claim Deed .....14
- 3.68 Securities.....14
- 3.69 Shell Banks .....15
- 3.70 Silent Second .....15
- 3.71 Smurfing .....15
- 3.72 Straw Buyer .....15
- 3.73 Structuring.....15
- 3.74 Time Deposit.....15

• 3.75	Trader .....	15
• 3.76	Underwriter .....	15
<b>Chapter 4. RESPONSIBILITIES.....</b>		<b>16</b>
• 4.1	Executive Associate Director, Homeland Security Investigations .....	16
• 4.2	Unit Chief, Illicit Finance and Proceeds of Crime Unit.....	16
• 4.3	Special Agents in Charge and Attachés .....	16
• 4.4	Special Agents and Intelligence Research Specialists .....	16
<b>Chapter 5. AUTHORITIES/REFERENCES .....</b>		<b>16</b>
• 5.1	Authorities.....	16
• 5.1.1	Annunzio-Wylie Anti-Money Laundering Act.....	17
• 5.1.2	Anti-Drug Abuse Act.....	17
• 5.1.3	Asset Sharing .....	17
• 5.1.4	Bank Secrecy Act.....	18
• 5.1.5	Bulk Cash Smuggling.....	18
• 5.1.6	Civil Administrative Forfeiture.....	19
• 5.1.7	Civil Judicial Forfeiture .....	19
• 5.1.8	Criminal Forfeiture .....	19
• 5.1.9	Edge Act (Foreign Banking).....	20
• 5.1.10	Intelligence Reform and Terrorism Prevention Act.....	20
• 5.1.11	Money Laundering and Financial Crimes Strategy Act .....	20
• 5.1.12	Money Laundering Control Act.....	20
• 5.1.13	Money Laundering Suppression Act .....	21
• 5.1.14	Reporting of Cash by Trades or Business.....	21
• 5.1.15	Structuring Transactions to Evade Domestic Reporting Requirements .....	21
• 5.1.16	Structuring Transactions to Evade International Reporting Requirements .....	22
• 5.1.17	USA PATRIOT Act.....	22
• 5.1.18	Utilizing Bank Secrecy Act Information in Financial Investigations.....	22
• 5.2	References.....	24
<b>Chapter 6. GENERAL FINANCIAL OVERVIEW .....</b>		<b>24</b>
• 6.1	Financial Services .....	24
• 6.2	Banks.....	24
• 6.3	Banking Services .....	25
• 6.4	Online Banking.....	25
• 6.5	Other Types of Banking Services .....	26
• 6.6	Foreign Exchange Services.....	26
• 6.7	Investment Services .....	27

- 6.8 Insurance.....27
- 6.9 Other Financial Services.....28
- 6.10 Letters of Credit.....29
- 6.10.1 Elements of a Letter of Credit.....29
- 6.10.2 Characteristics of a Letter of Credit.....30
- 6.10.3 Role of Advising Bank.....31
- 6.10.4 Step-by-Step Process.....33
- 6.10.5 Business Services.....34
- 6.10.6 Collection Departments.....34
- 6.10.7 Trust Departments.....35
- 6.10.8 Loans.....36
- 6.11 Electronic Funds Transfer.....37
- 6.12 Credit Cards.....37
- 6.13 Securities and Commodities (General).....37
- 6.14 Securities.....37
- 6.15 Commodities.....38

**Chapter 7. FINANCIAL INVESTIGATIONS.....38**

- 7.1 Objectives.....38
- 7.2 Undercover Operations.....38
- 7.3 (b) (7)(E).....39
- 7.4 Computer Forensics.....39
- 7.5 Evidence.....39

**Chapter 8. INTERNATIONAL INVESTIGATIONS AND RELATED RESOURCES..40**

- 8.1 Objectives.....40
- 8.2 International Operations.....40
- 8.3 Foreign Bank Secrecy Laws.....41
- 8.4 International Money Laundering Typologies.....41
- 8.5 Foreign Bank Account Report.....42
- 8.6 International Department of a Bank.....42
- 8.7 Interbank Payment Networks.....43
- 8.7.1 Clearing House Interbank Payment System.....43
- 8.7.2 Fedwire.....43
- 8.7.3 Society of Worldwide Interbank Financial Telecommunication.....44
- 8.7.4 Automated Clearing House.....44
- 8.8 Office of Foreign Assets Control.....44
- 8.9 Letters Rogatory.....45
- 8.10 Mutual Legal Assistance Treaties.....45
- 8.11 Customs Mutual Assistance Agreements.....45

**Chapter 9. FINANCIAL CRIMES.....46**

- 9.1 Overview.....46
- 9.2 Domestic Money Laundering .....46
- 9.3 International Money Laundering .....47
- 9.4 Sting Provision.....47
- 9.5 Money Transactions in Property Derived from a Specified Unlawful Activity .....48
- 9.6 Prohibition of Unlicensed Money Transmitting Business .....48
- 9.6.1 Elements of 18 U.S.C. § 1960.....48
- 9.6.2 Money Laundering via Money Services Businesses .....48
- 9.6.3 Determining Threshold Amounts for Money Services Businesses .....49
- 9.7 Investigations Involving Movement and Smuggling of Bulk Currency.....50

**Chapter 10. MONEY LAUNDERING METHODS.....51**

- 10.1 Overview.....51
- 10.1.1 (b) (7)(E).....51
- 10.1.2 .....51
- 10.1.3 .....51
- 10.2 Merchandising.....52
- 10.3 Commingling of Funds .....52
- 10.4 Use of Corporations .....52
- 10.5 Invoicing Schemes .....53
- 10.6 Trade-Based Money Laundering .....54
- 10.7 Black Market Peso Exchange .....54
- 10.8 Alternative Remittance Systems .....54
- 10.8.1 Virtual Currency and Non-Traditional Banking Methods .....54
- 10.8.2 Bitcoin.....55
- 10.8.3 Emerging Technologies in Financial Transactions.....55
- 10.9 Hawala .....55
- 10.10 Doleiro .....56
- 10.11 Mass Marketing Fraud .....56
- 10.12 Financial Fraud .....58
- 10.13 Check Purchasing Schemes (Smurfing).....58

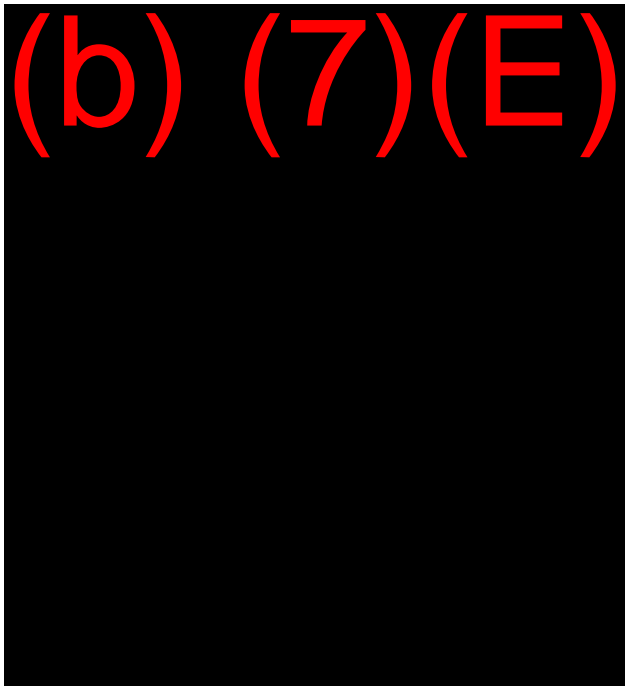
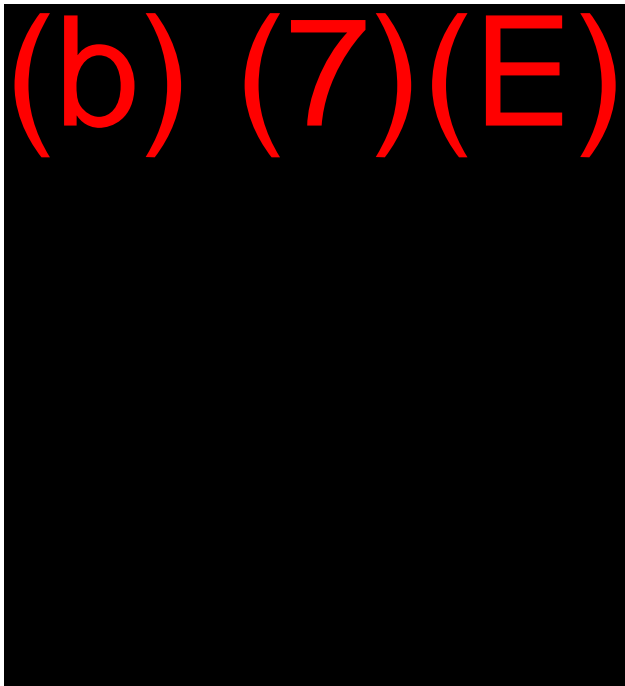
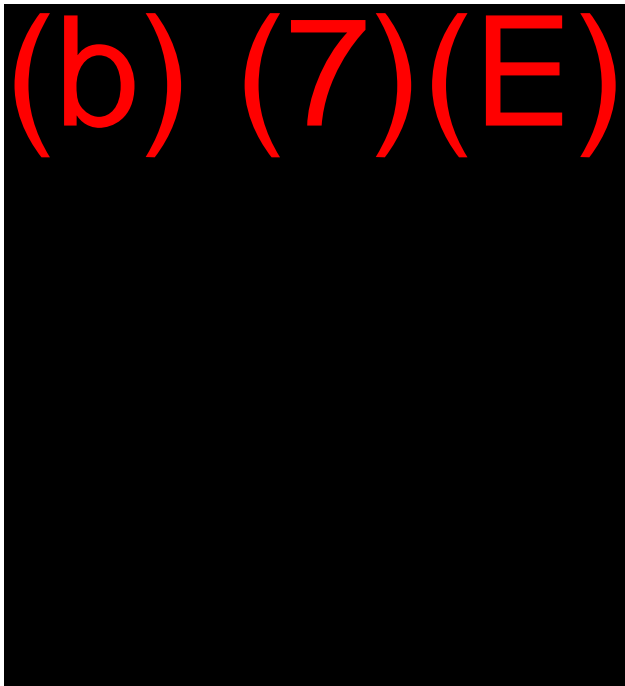
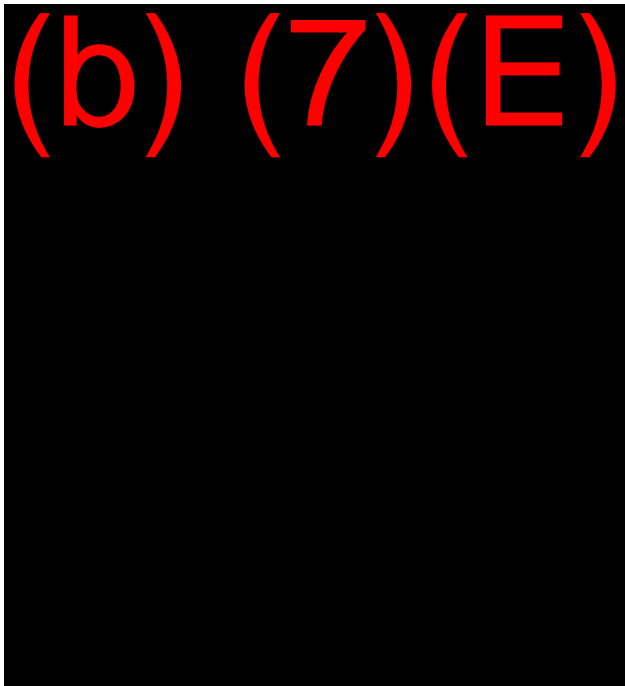
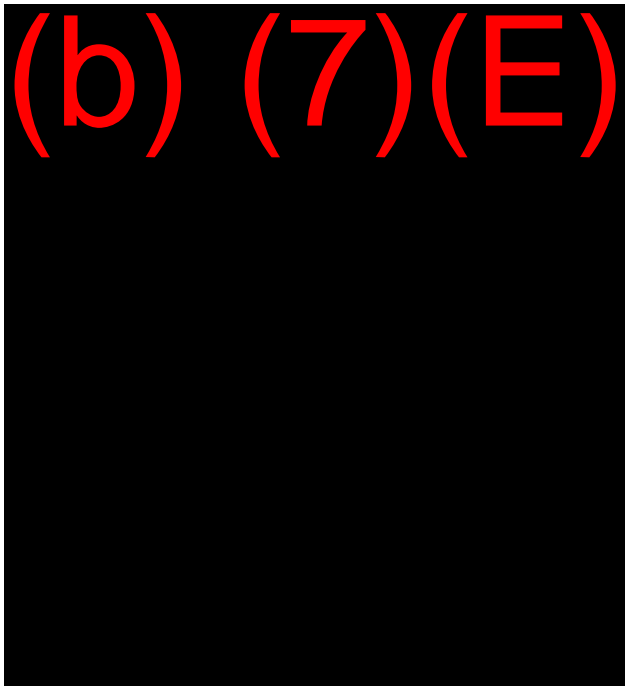
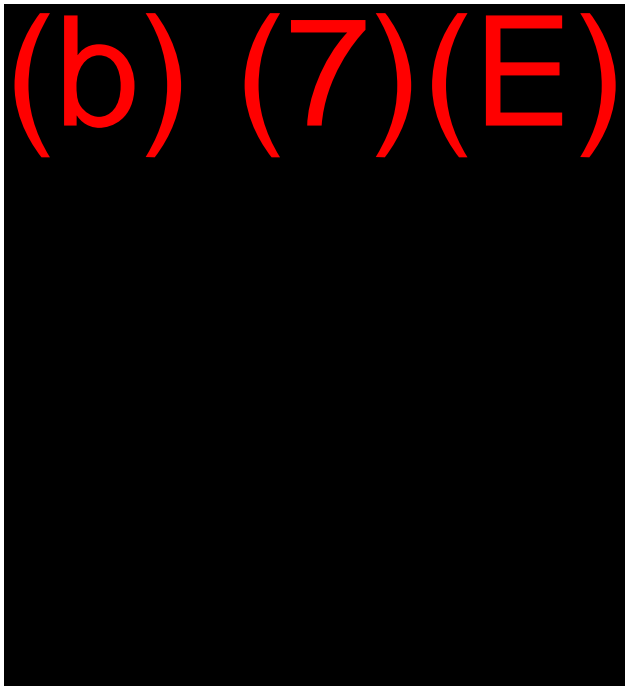
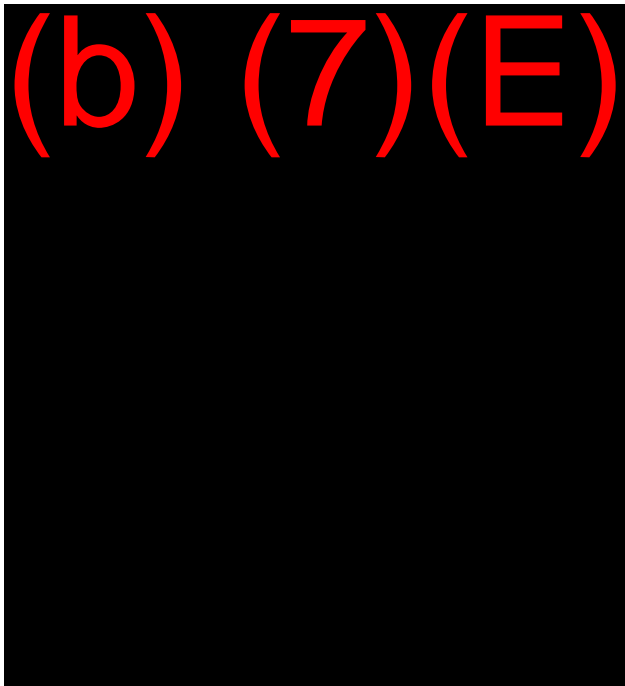
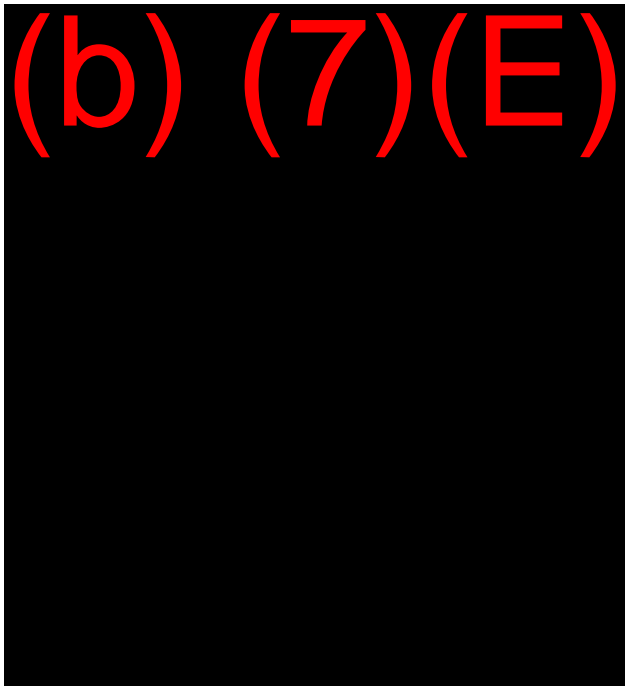
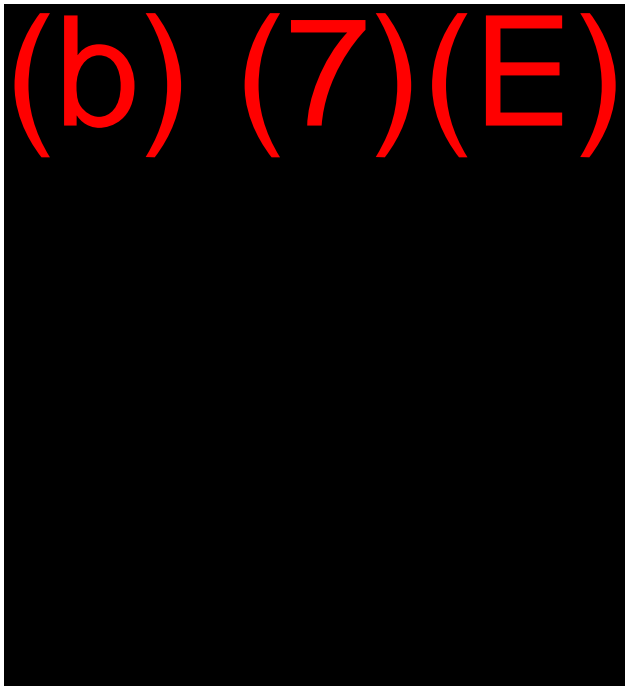
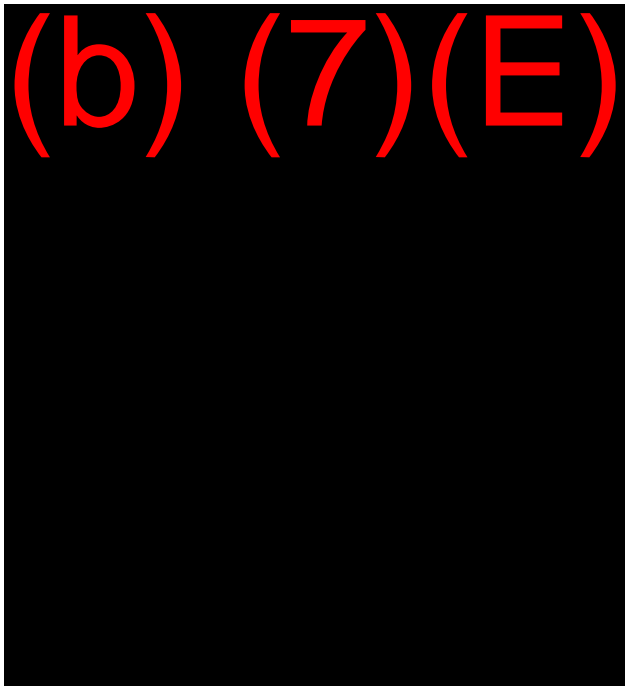
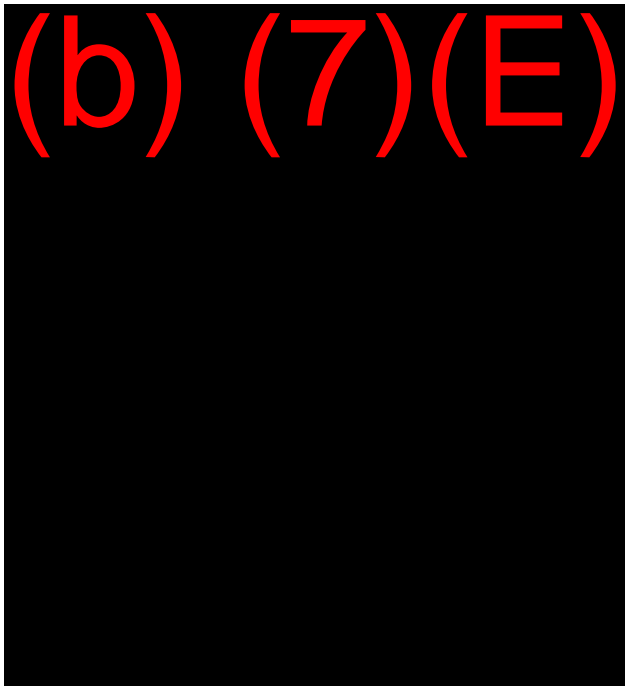
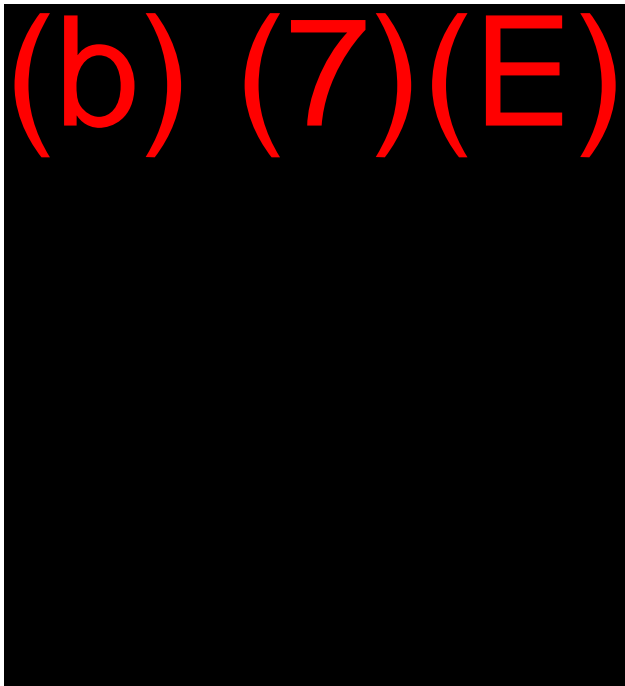
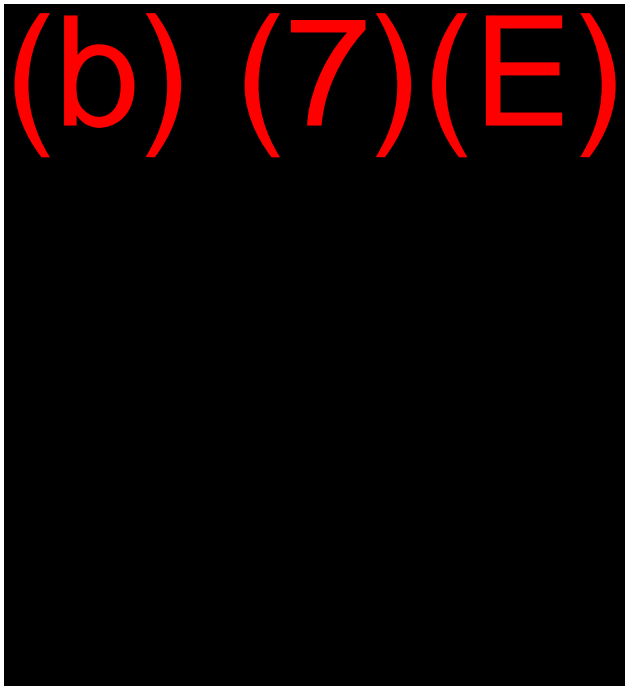
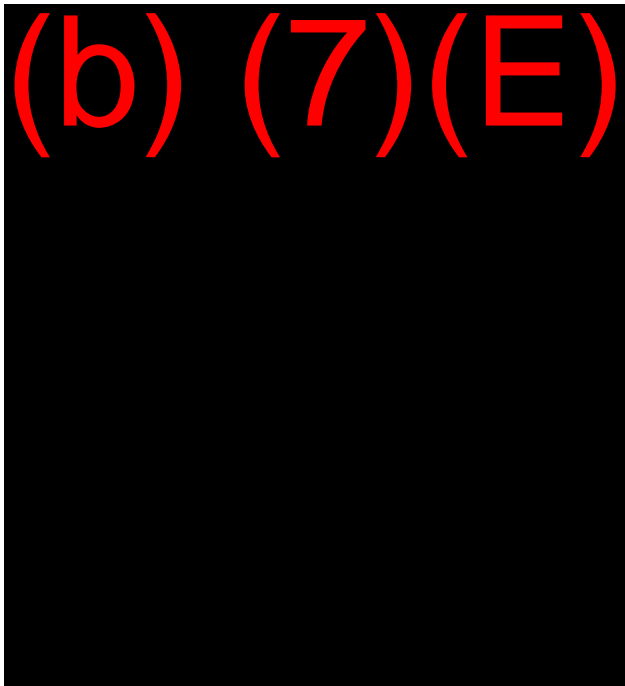
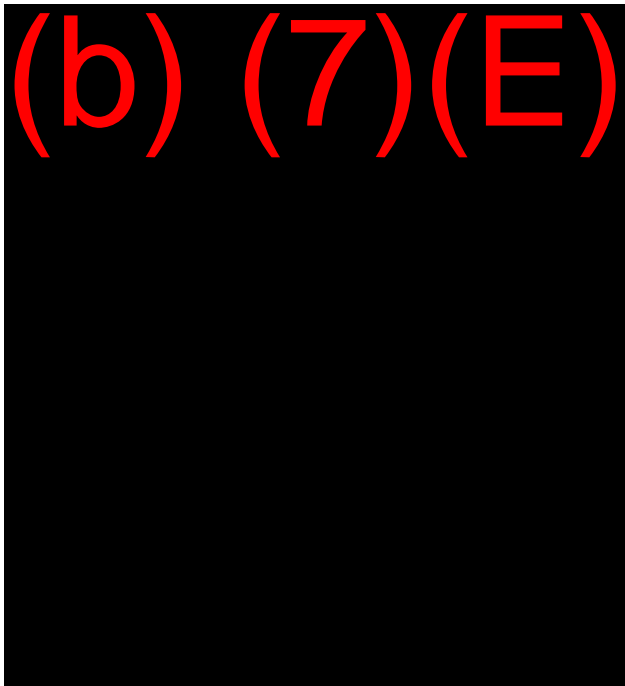
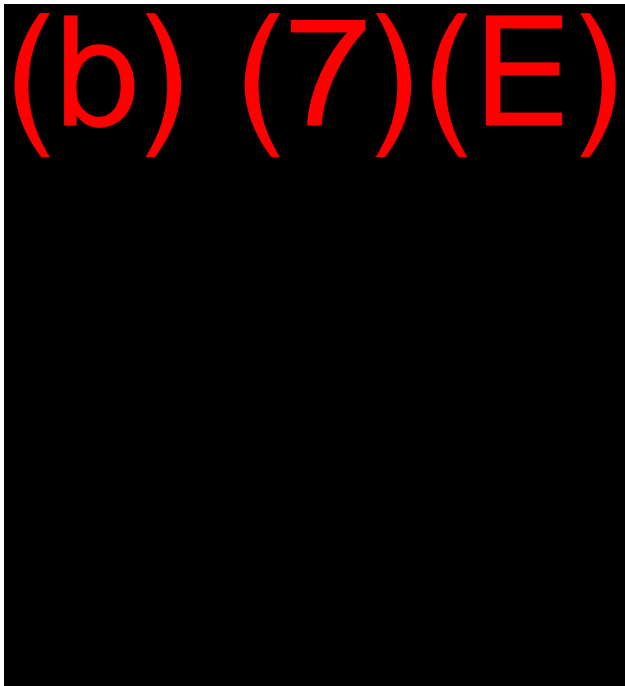
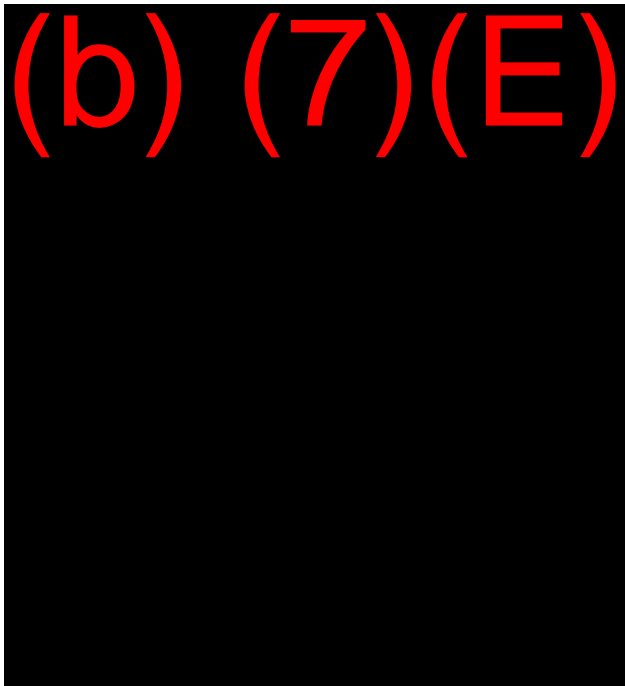
**Chapter 11. INTERNAL REVENUE SERVICE SAFEGUARDS .....60**

**Chapter 12. MONETARY INSTRUMENTS.....61**

- 12.1 Monetary and Negotiable Instruments.....61
- 12.2 Currency.....61
- 12.3 Bearer Form .....62

- 12.4 Traveler’s Checks .....62
- 12.5 Money Orders .....62
- 12.6 Investment Securities .....62
- 12.6.1 Bearer Bonds.....63
- 12.6.2 Registered Bonds .....63
- 12.6.3 Stock Certificate.....63
- 12.6.4 Negotiable Instruments .....63
- 12.6.5 Bank Checks .....63
- 12.7 Notification of Seizure to Issuing Company.....64
- 12.8 Prepaid/Stored Value Cards and Devices .....65
- 12.9 Prepaid Industry – Overview .....66
- 12.10 Prepaid Card System.....66

**Chapter 13. SOURCES OF FINANCIAL INFORMATION .....67**

- 13.1  .....67
- 13.2  .....68
- 13.3  .....69
- 13.3.1  .....69
- 13.3.2  .....69
- 13.3.3  .....69
- 13.3.4  .....70
- 13.3.5  .....70
- 13.3.6  .....70
- 13.3.7  .....71
- 13.3.8  .....71
- 13.4  .....72
- 13.5  .....72
- 13.6  .....72
- 13.7  .....73
- 13.8  .....73
- 13.9  .....73
- 13.10 Retention of Records.....74
- 13.11 HSI Forensic Laboratory.....75

**Chapter 14. OBTAINING FINANCIAL RECORDS AND INFORMATION .....75**

- 14.1 Right to Financial Privacy Act.....75
- 14.2 Financial Institutions.....75
- 14.2.1 Customer Authorization.....76
- 14.2.2 Administrative Subpoena or Summons .....76
- 14.2.3 Search Warrant.....76
- 14.2.4 Judicial Subpoena .....76
- 14.2.5 Formal Written Request.....76



- 14.3 Exceptions to the Right to Financial Privacy Act.....77
- 14.4 Suspicious Activity Report Supporting Documentation.....77
- 14.5 Grand Jury Subpoena.....77
- 14.6 Rule 6(e).....78
- 14.7 Subpoena *Duces Tecum* .....78
- 14.8 Financial Crimes Enforcement Network .....78
- 14.9 Dissemination of Bank Secrecy Act Information.....79
- 14.10 Suspicious Activity Reports.....81
- 14.11 Section 314(a) Program .....81
- 14.11.1 Protocol for Submission.....82
- 14.11.2 Deconfliction.....83
- 14.11.3 Feedback .....83
- 14.12 Joint Vetting Unit.....83
- 14.13 Bulk Cash Smuggling Center.....83
- 14.14 TECS.....84
- 14.15 FinCEN Query .....84
- 14.16 Data Analysis and Research for Trade Transparency System .....85
- 14.17 Asset Identification and Removal Groups .....85
- 14.18 Money Laundering Coordination Center .....86
- 14.19 Special Operations Unit .....86
- 14.20 Organized Crime Drug Enforcement Task Force Fusion Center.....87
- 14.21 International Organized Crime Intelligence and Operations Center.....87
- 14.22 Internal Revenue Service Criminal Investigations. ....87
- 14.23 (b) (7)(E) .....87
- 14.23.1 (b) (7)(E) .....88
- 14.23.2 Encrypted Subpoenas with Personally Identifiable Information .....88
- 14.23.3 Collateral Request.....88
- 14.23.4 Subpoena Response .....89
- 14.23.5 SAR Support.....89
- 14.23.6 Dissemination of Western Union Suspicious Activity Reports.....89
- 14.23.7 Urgent Requests .....89
- 14.24 International Criminal Police Organization .....89
- 14.25 Financial Action Task Force .....90
- 14.26 Federal Reserve Bank .....90
- 14.27 Office of the Comptroller of the Currency .....90
- 14.28 Federal Deposit Insurance Corporation .....91
- 14.29 Federal Home Loan Bank Board .....91
- 14.30 National Credit Union Administration.....92
- 14.31 Securities and Exchange Commission.....93
- 14.31.1 Securities and Exchange Commission News Digest .....93
- 14.31.2 Securities Violations Files .....93
- 14.31.3 Securities and Exchange Commission Official Summary .....93
- 14.32 Dun & Bradstreet .....94

- 14.33 Credit Bureaus .....94
- 14.34 Public Records .....94
- 14.35 Illicit Finance Unit .....96

**Chapter 15. METHODS OF TRACING FUNDS.....97**

- 15.1 Overview .....97
- 15.2 Direct Method of Proving Income .....97
- 15.3 Indirect Methods of Proving Income .....97
- 15.4 (b) (7)(E) .....98
- 15.5 (b) (7)(E) .....99
- 15.6 (b) (7)(E) .....101
- 15.7 (b) (7)(E) .....102
- 15.8 (b) (7)(E) .....102

**APPENDICES**

- Appendix A Superseded Documents ..... A-i
- Appendix B Acronyms ..... B-i

# FINANCIAL INVESTIGATIONS HANDBOOK

## Chapter 1. PURPOSE AND SCOPE

The Financial Investigations Handbook establishes policy and procedures for U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) Special Agents (SAs) and Intelligence Research Specialists when conducting or supporting financial investigations. The Financial Investigations Handbook will assist in the execution of HSI's domestic and international programs and initiatives to combat vulnerabilities in U.S. financial, trade, and transportation sectors that can be exploited by terrorists and other criminal networks.

## Chapter 2. INTRODUCTION

HSI seeks to identify vulnerabilities that terrorists and other criminals use to generate, transfer, transport, deposit, and store illicit funds. HSI targets the movement of funds derived from criminal activity by identifying and investigating systems that are vulnerable to exploitation. The enactment of U.S. anti-money laundering laws and the implementation of stringent anti-money laundering compliance programs by traditional financial institutions have forced more criminal organizations to move their illicit proceeds outside the established financial industry structure.

Virtually all crimes, especially those investigated by HSI, are committed for monetary gain. HSI brings a unique assembly of historical expertise, powerful authorities, and innovative techniques to financial crime investigations. HSI has initiated major international money laundering investigations and is recognized as the premier federal law enforcement entity as it relates to conducting financial and money laundering investigations.

## Chapter 3. DEFINITIONS

The following definitions are provided for the purposes of this Handbook:

### 3.1 Air Loans

Air loans are a subset of mortgage fraud involving a nonexistent property loan where there is usually no collateral. Air loans may involve brokers who invent borrowers and properties, establish accounts for payments, and maintain custodial accounts for escrows. They may establish an office with a bank of telephones, each one used as the fake employer, appraiser, credit agency, etc., to fraudulently deceive creditors who attempt to verify information on loan applications.

### **3.2 Anti-Money Laundering Examiner**

Person or persons in the private sector charged with ensuring that a company is in compliance with anti-money laundering laws and regulations.

### **3.3 Advising Bank**

A bank facilitating a letter of credit transaction by directly or indirectly advising the beneficiary of that transaction that a letter of credit has been issued, confirmed, or amended. An advising bank provides additional assurance that a letter of credit is valid and authentic.

### **3.4 Bank**

A bank is an institution, including branches and offices, that maintains funds on deposit for individuals or organizations, makes loans, exchanges currencies, provides credit to businesses, and offers other financial services. A bank operates under the authority and supervision, and is subject to examination by, state, territorial, and/or federal oversight agencies; this creates legal responsibility under not only U.S. law but also potentially multinational arrangements. A bank may include, among other things, commercial and private institutions, credit unions, savings and loan associations, and trust organizations. A bank does not include money services businesses (MSBs).

### **3.5 Bank Cards**

Bank cards are issued by a financial institution and are used to access funds from an account, such as:

- A. Automatic Teller Machine (ATM) cards which are linked to one or many accounts, primarily for ATM usage;
- B. Credit cards, which are devices existing for the purpose of obtaining money, property, labor, or services, on credit;
- C. Debit cards, which are devices used to debit an individual's asset account; and
- D. Prepaid access devices (see generally Sections 3.62 and 3.63) issued by financial institutions.

### **3.6 Bank Frauds**

Banks invest in loans to entities that are based at least in part on reliance upon the financial statements and other financial information provided by the borrower. Thus, fraudulent financial statements may be used to defraud lenders just as they defraud equity investors, usually by overstating a company's financial condition and results of operations. Several additional forms of fraud may also affect lenders. They typically involve overstating the value of collateral, pledging fictitious collateral, multiple pledging of assets as security, and fraudulently conveying

assets – against which loans were made – to related parties, third parties, or other lending institutions.

### **3.7 Banking Services**

The business carried on by or with a bank.

### **3.8 Beneficial Ownership**

An entity or natural person who enjoys the benefits of ownership, or control, even though title is in another name. For example, when shares of a mutual fund are held by a custodian bank or when securities are held by a broker in street name, the real owner is the beneficial owner, even though, for safety or convenience, the bank or broker holds title.

### **3.9 Beneficiary**

Person or other legal entity for whose present or future interest and/or benefit an annuity, assignment (e.g., a letter of credit), contract, insurance policy, judgment, promise, trust, will, etc., is made.

### **3.10 Broker**

A broker generally is any person engaged in the business of effecting transactions for the benefit of others, including third party individuals or entities. For the purpose of HSI financial crimes investigations, brokers do not necessarily have to be registered; however, the Bank Secrecy Act (BSA) covers both registered brokers and dealers and those who simply deal in securities and commodities.

### **3.11 Broker Dealer or Dealer**

Unlike a broker who acts as an agent for another individual, a dealer generally is an individual, company, or other organization that engages in the business of buying and selling securities for its own account, through a broker or otherwise. A “dealer” does not mean the same thing as a “trader,” i.e., a person who buys and sells securities for his or her own account and not as part of a regular business. Although many dealers are “independent” firms solely involved in dealer services, many others are business units or subsidiaries of commercial banks, investment banks, or investment companies. When executing trade orders on behalf of a customer, the individual is said to be acting as a “broker.” When executing trades for the firm’s account, the individual is said to be acting as a “dealer.” Securities bought from clients or other firms in the capacity of a dealer may be sold to clients or other firms acting in the capacity of a dealer, or they may become a part of the firm’s holdings.

### **3.12 Builder Bailout/Condominium Conversion**

Builders facing rising inventory and declining demand for newly constructed homes employ bailout schemes to offset losses. Builders find buyers who obtain loans for the properties. The

buyers then allow the properties to go into foreclosure. In a condominium-conversion scheme, apartment complexes purchased by developers during a housing boom are converted into condominiums. When the market declines, developers have an excess inventory of condominiums. Developers recruit straw buyers with cash-back incentives to inflate the value of the condominiums to obtain a larger sales price at closing. In addition to failing to disclose the cash-back incentives to the lender, the straw buyers' income and asset information are often inflated for them to qualify for properties that they otherwise would be ineligible or unqualified to purchase.

### **3.13 Capital Market**

A capital market is a market for securities (debt or equity) where business enterprises (companies) and governments can raise long-term funds. It is defined as a market in which money is provided for periods lasting longer than a year; the raising of short-term funds takes place on other markets (e.g., the money market). The capital market includes the stock market (equity securities) and the bond market (debt).

### **3.14 Capital Market Banks**

Capital market banks are financial institutions that deal solely in capital markets.

### **3.15 Cash**

The term "cash" refers to money in the form of currency, such as banknotes and coins.

### **3.16 Commercial Bank**

A commercial bank is a type of financial intermediary. It is a bank that provides business customers, rather than personal customers, with checking accounts, savings accounts, and money market accounts, and that accepts time deposits. It refers to a bank, or a division of a bank, primarily dealing with deposits and loans from corporations or larger businesses. Commercial banking is also known as business banking.

### **3.17 Commercial Loan**

A renewable loan to finance the seasonal working capital needs of a business, such as purchase of inventory or production and distribution of goods.

### **3.18 Commercial Real Estate Loan Fraud**

Owners of distressed commercial real estate obtain financing by creating fraudulent leases and using these fraudulent leases to exaggerate the building's profitability, thus inflating their appraisal values using the income method approach. These fraudulent leases and appraisals trick lenders into extending loans to the owner. As cash flows are restricted to the borrower, property repairs are neglected. By the time the commercial real estate loans are in default, the lender is often left with dilapidated and unusable or difficult-to-rent commercial property. Many of the

methods of committing mortgage fraud that are found in residential real estate are also present in commercial real estate loan fraud.

### **3.19 Correspondent Banking**

Correspondent banking involves a corresponding account that is established by a domestic banking institution on behalf of a foreign bank for handling various financial transactions related to the foreign bank. Correspondent banking allows foreign banks to conduct business in the United States and provide services for their customers in areas where the bank does not maintain a physical presence. Foreign banks open correspondent accounts with U.S. banks to avoid the expense of operating an office in the United States. Correspondent banking is also a relationship between a small bank and a big bank in which the big bank provides a number of deposit, lending, and other services to the small bank.

### **3.20 Credit Card Machine Services and Networks**

Credit card machine services and networks are provided by merchant card and/or account providers to businesses in order to accept debit and credit cards in payment for goods and services. These can be face-to-face, via telephone, or through an Internet Service Provider.

### **3.21 Currency**

An item, such as a coin, government note, or banknote, that circulates as a medium of exchange.

### **3.22 Digital or Virtual Currency**

An alternative value system involving the exchange of funds to purchase a given amount of a commodity or other value base that can later be used in exchange for products and services. Primarily operating offshore, the digital currency networks consist of two distinct types of Internet systems: 1) Centralized systems operated by a business enterprise with a central operating computer system and 2) Decentralized systems operating on a peer-to-peer basis with no central computer system or website. Regardless of the system utilized, users will most often utilize a third-party digital currency exchange service to convert digital or virtual currency to a real world currency.

### **3.23 Domestic Bank**

Any bank or trust company incorporated under the banking laws of the United States or of any state, territory, or district of the United States; or any private bank or banker subject to supervision and examination under the banking laws of the United States, or of any state, territory, or district of the United States.

### **3.24 Equity Skimming**

An investor may use a straw buyer, false income documents, and false credit reports to obtain a mortgage loan in the straw buyer's name. Subsequent to closing, the straw buyer signs the

property over to the investor in a quit claim deed which relinquishes all rights to the property and provides no guaranty to title. The investor does not make any mortgage payments and rents the property until foreclosure takes place several months later.

### **3.25 Financial Fraud**

This term relates to fraud or embezzlement occurring within or through one or more financial institutions.

### **3.26 Financial Institution**

A financial institution can encompass a variety of entities, including (among others) banks, brokers, dealers, MSBs, and certain companies and individuals. See Title 31, United States Code (U.S.C.), Section 5312(a)(2) and Title 31, Code of Federal Regulations (C.F.R.), Section 1010.100(t) for a complete list of persons and entities qualifying as “financial institutions.” There are three major types of financial institutions: 1) deposit-taking institutions that accept and manage deposits and make loans, including banks, credit unions, trust companies, and mortgage loan companies; 2) insurance companies and pension funds; and 3) brokers, underwriters, and investment funds.

### **3.27 Financial Record**

A financial record is an original of, a copy of, or information known to have been derived from any record held by a financial institution pertaining to a customer’s relationship with the financial institution.

### **3.28 Financial Services**

Financial services are services provided by the finance industry, which encompasses a broad range of organizations that deal with the management of money. Among these organizations are banks, credit card companies, insurance companies, consumer finance companies, stock brokerages, investment funds, and some government sponsored enterprises.

### **3.29 Financial Transaction**

A financial transaction includes any transaction, in domestic or foreign commerce, which involves the movement of funds; a monetary instrument or instruments; or the transfer of title to real property, a vehicle, a vessel, or aircraft. A financial transaction also includes any transaction involving the use of a financial institution.

### **3.30 Float**

In banking, a float is the time between the deposit of a check in a bank and payment. In investments, a float is the number of shares of a corporation that are outstanding and available for trading to the public.



### **3.31 Foreclosure Rescue Schemes**

The perpetrators identify homeowners who are in foreclosure or at risk of defaulting on their mortgage loan. The perpetrators then mislead the homeowners into believing they can save their homes by transferring the deed or putting the property in the name of an investor. The perpetrators profit by selling the property to an investor or straw borrower, creating equity using a fraudulent appraisal, and stealing the seller proceeds or fees paid by the homeowners. The homeowners are sometimes told they can pay rent for at least a year and repurchase the property once their credit has been reestablished. However, the perpetrators fail to make the mortgage payments and usually the property goes into foreclosure.

### **3.32 Foreign Exchange Services**

The process of making international monetary transactions, specifically the conversion of one currency to that of a different country.

### **3.33 Futures Contract**

A futures contract is a standardized contract between two parties to buy or sell a specified asset of standardized quantity and quality at a specified future date at a price agreed to today (the futures price).

### **3.34 General Partner**

A person who joins with at least one other person to form a business. A general partner has responsibility for the actions of the business, can legally bind the business, and is personally liable for all the business' debts and obligations.

### **3.35 Hawala**

Hawala means "transfer" in Arabic. A hawala is an ancient informal value transfer system based on the performance and honor of a large network of money brokers, or hawaladars, who are primarily located in the Middle East, North Africa, the Horn of Africa, and South Asia. It is also known as Fei-Ch'ien (China), Padala (Philippines), Hundi (India), Hui Kuan (Hong Kong), and Phei Kwan (Thailand). Hawalas also qualify as MSBs under the BSA and, as a result, are subject to the provisions of Title 31 of the United States Code. *See* 31 U.S.C. § 5312(a)(1)(R).

### **3.36 Hedge Fund**

A hedge fund is an investment fund open to a limited range of investors that undertakes a wider range of investment and trading activities in addition to traditional long-term investment funds and that, in general, pays a performance fee to its investment manager. Hedge funds, as a class, invest in a broad range of investments including shares, debt, and commodities.

### **3.37 Home Equity Conversion Mortgage Fraud**

A Home Equity Conversion Mortgage (HECM) is a reverse mortgage loan product insured by the Federal Housing Administration to borrowers who are 62 years or older, own their property (or have a small mortgage balance), occupy the property as their primary residence, and participate in HECM counseling. An HECM provides homeowners access to equity in their homes, usually in a lump sum payment. Perpetrators recruit seniors through local churches, investment seminars, and television, radio, billboard, and mailer advertisements. The perpetrators then obtain an HECM in the name of the recruited homeowner to convert equity in the homes into cash. The perpetrator keeps the cash and pays a fee to the senior citizen or takes the full amount unbeknownst to the senior citizen. No loan payment or repayment is required until the borrower no longer uses the house as a primary residence. In the scheme, the appraisals on the home are vastly inflated and the lender does not detect the fraud until the homeowner dies and the true value of the property is discovered.

### **3.38 Illegal Property Flipping**

Property is purchased, falsely appraised at a higher value, and then quickly sold. What makes property flipping illegal is when the appraisal information is fraudulent. The schemes typically involve one or more of the following: fraudulent appraisals; falsified loan documentation; inflated buyer income; and/or kickbacks to buyers, investors, property/loan brokers, appraisers, and title company employees.

### **3.39 Income Method Approach**

A real estate appraisal method that allows investors to estimate the value of the property based on the income produced. The income produced is computed by taking the net operating income of the rent collected and dividing it by the capitalization rate (the investor's rate of return). It is most typically used for the income producing properties and the formula is:  $\text{Market Value} = \text{Net Operating Income} / \text{Capitalization Rate}$ .

### **3.40 Informal Value Transfer System**

An informal value transfer system (IVTS) refers to any system, mechanism, or network of people that receives money for the purpose of making the funds or an equivalent value payable to a third party in another geographic location, whether or not in the same form. The transfers generally take place outside the conventional banking system through non-bank financial institutions or other business entities whose primary business activity may not be the transmission of money. IVTS transactions occasionally interconnect with formal banking systems (for example, through the use of bank accounts held by the IVTS operator.)

IVTS operations are found in most countries; however, depending on the location of ethnic group, IVTSs have a variety of names including Hawala, Black Market Peso Exchange (BMPE) in Latin America, and Doleiro in Brazil. (See also Chapter 10, Money Laundering Methods.)

### **3.41 Integration**

Integration is the third and final phase of the money laundering process. It is the process of introducing funds into the legitimate economy that were successfully layered and are no longer easily traceable to their criminal origin. This can be done by spending (e.g., purchase of jewelry and other goods), investing (e.g., purchase of real estate and works of art), or storing (depositing into a financial institution) the proceeds.

### **3.42 International Business Company/International Business Corporation**

An international business company or international business corporation (IBC) is an offshore company formed under the laws of some jurisdictions as an untaxed company which is not permitted to engage in business within the jurisdiction in which it is incorporated. Characteristics of an IBC vary by jurisdiction, but will usually include: 1) exemption from local corporate taxation and stamp duty, provided that the company engages in no local business (annual agent's fees and company registration taxes are still payable, which are normally a few hundred U.S. dollars per year); 2) preservation of confidentiality of the beneficial owner of the company; 3) wide corporate powers to engage in different businesses and activities; 4) abrogation or restriction of the requirement to demonstrate corporate benefit; 5) the ability to issue shares in either registered or bearer form; 6) an abrogation of any requirements to appoint local directors or officers; and 7) provision for a local registered agent (i.e., a person or entity designated by a corporation to receive any lawsuit or other official communication on its behalf. A registered agent may or may not be an owner, shareholder, or officer of the corporation. Corporations commonly use attorneys or accountants in this capacity).

### **3.43 Investment Banks**

Investment banks are financial institutions that assist corporations and governments in raising capital by underwriting and acting as the agent in the issuance of securities. An investment bank also assists companies involved in mergers, acquisitions, derivatives, etc.

### **3.44 Investment Companies**

Investment companies are companies who hold securities of other companies for investment purposes. They invest money on behalf of shareholders who in turn share the profits and losses.

### **3.45 Investment Services**

Banks or advisers who, for pay, advise others in asset or hedge fund management, either directly or through publication or writings, about the value of assets or securities or the advisability of investing in, purchasing, or selling securities, or who are in the business of issuing reports on assets or securities.

### **3.46 Issuing Bank**

A buyer's or importer's bank which opens or establishes a letter of credit in favor of a beneficiary (e.g., seller or exporter), forwards it to an advising bank for delivery to the beneficiary, and commits itself to honor demand drafts drawn by the beneficiary against the amount specified in the letter of credit. The term "Issuing Bank" is also synonymous with the term "Opening Bank."

### **3.47 Kiting**

Utilizing the time it takes a bank to clear a debt instrument as a method of depositing an insufficiently funded instrument and utilizing the value of that instrument before it is funded. An example is depositing and drawing checks between accounts at two or more banks and thereby taking advantage of the float, which is the time it takes the bank of deposit to collect from the paying bank.

### **3.48 Kleptocracy**

A term commonly used to describe large-scale corruption for financial gain by senior foreign political figures.

### **3.49 Kleptocrat**

A politically exposed person (see Section 3.60) who uses his or her position of public trust for personal gain.

### **3.50 Layering**

Layering is the second stage in the money laundering process and involves the movement of funds through a series of accounts in an attempt to hide the funds' true origins.

### **3.51 Limited Partner**

An investor in a limited partnership who has no voice in the management of the partnership.

### **3.52 Loan Modification Scheme**

Perpetrators purport to assist homeowners who are delinquent in their mortgage payments and are on the verge of losing their home by offering to renegotiate the terms of the homeowners' loan with the lender. The perpetrators, however, demand large fees up front and often negotiate unfavorable terms for the clients or do not negotiate at all. Usually, the homeowners ultimately lose their homes. This scheme is similar to a foreclosure rescue scheme.

### **3.53 Monetary Instrument**

Coin or currency of the United States or of any other country in circulation; travelers' checks in any form; all negotiable instruments in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title passes upon delivery; incomplete instruments signed but with the payee's name omitted; and securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery. (Note: Prepaid access devices will be designated as a monetary instrument when Financial Crimes Enforcement Network (FinCEN)'s rule revising 31 C.F.R. § 1010.100(dd) is finalized.) Monetary instruments do not include warehouse receipts or bills of lading.

### **3.54 Money Services Business**

In the United States, the term "money services business" includes any person (wherever located) doing business, whether or not on a regular basis or as an organized business concern, wholly or substantially in part within the United States, in one or more of the following capacities:

- A. Dealer in foreign exchange.
- B. Check casher.
- C. Issuer or seller of traveler's checks or money orders.
- D. Provider of prepaid access.
- E. Money transmitter.
- F. U.S. Postal Service.
- G. Seller of prepaid access.

For the complete regulatory definition of all business activities of an MSB, *see* 31 C.F.R. § 1010.100(ff).

(Note: Each MSB is a financial institution. For the regulatory definition of "financial institution," *see* 31 C.F.R. § 1010.100(t)).

### **3.55 Mortgage Fraud Schemes**

Mortgage fraud schemes employ some type of material misstatement, misrepresentation, or omission relating to a real estate transaction which is relied on by one or more parties to the transaction. These schemes include the following:

- A. Foreclosure rescue schemes;
- B. Loan modification schemes;

- C. Illegal property flipping;
- D. Builder bailout/condominium conversion;
- E. Equity skimming;
- F. Silent second;
- G. Home equity conversion mortgage fraud;
- H. Commercial real estate loan fraud; and
- I. Air loans.

### **3.56 Negotiable Instrument**

An unconditional order or promise to pay an amount of money, easily transferable from one person to another (e.g., check, promissory note, or draft). The Uniform Commercial Code (UCC) requires that, for an instrument to be negotiable, it must be signed by the maker or drawer, must contain an unconditional promise or order to pay a specific amount of money, must be payable on demand or at a specified future time, and must be payable to order or to the bearer.

### **3.57 Offshore Finance**

The provision of financial services by banks and other agents to non-residents. These services include the borrowing of money from non-residents and lending to non-residents. This can take the form of lending to corporations and other financial institutions funded by liabilities to offices of the lending bank, which is located elsewhere, or to market participants. It can also take the form of the taking of deposits from individuals and investing the proceeds in financial markets elsewhere.

### **3.58 Offshore Financial Centers**

A financial center where the bulk of financial sector activity is offshore on both sides of the transactions, i.e., where the transactions are initiated elsewhere and where the majority of the institutions involved are controlled by non-residents. These jurisdictions have relatively large numbers of financial institutions engaged primarily in business with non-residents and provide some or all of the following services: low or zero taxation, moderate or light financial regulation, and banking secrecy and anonymity. In addition to banking activities, other services provided by offshore centers include fund management, insurance, trust business, tax planning, and IBC activity.

### **3.59 Placement**

Placement is the first stage of the money laundering process and involves introducing illicit proceeds into the legitimate financial sector.

### **3.60 Politically Exposed Person**

This term describes an individual who performs important public functions for a state. The term includes persons whose current or former position can attract publicity beyond the borders of the country concerned and whose financial circumstances may be the subject of additional public interest, for example heads of state; government and cabinet ministers; influential functionaries in nationalized industries and government administration; senior judges; senior party functionaries; senior and/or influential officials; functionaries and military leaders and people with similar functions in international or supranational organizations; members of ruling royal families; and senior and/or influential representatives of religious organizations. This term also includes the political figure's immediate family members and close associates, including advisors, attorneys, and accountants, members of their entourage, or any other person who asserts influence over the official.

### **3.61 Ponzi Scheme**

A fraudulent investment operation that pays returns to its investors from their own money or the money paid by subsequent investors rather than from profit earned by the individual or organization running the operation. The Ponzi scheme usually entices new investors by offering higher returns than other investments in the form of short-term returns that are either abnormally high or unusually consistent. Perpetuation of the high returns requires an ever-increasing flow of money from new investors to keep the scheme going.

### **3.62 Prepaid Access**

Access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, a code, electronic serial number, mobile identification number, subscriber identification module (SIM) card, or personal identification number.

### **3.63 Prepaid Card**

The term "prepaid card" typically refers to a card with a magnetic strip similar to most credit and debit cards in circulation today. It is synonymous with the term "stored value card." (Note: When 31 C.F.R. § 1010.100(dd)(3) is finalized, actual credit and debit cards, as described in Section 3.5 (Bank Cards), will be considered monetary instruments for the purposes of the BSA.) The magnetic strip does not store the monetary value of the card; instead, it facilitates communication with a "host" or central computer system where the information resides. When a prepaid card is used for a purchase, an electronic message is routed from the merchant terminal to the host computer via a designated payment network which verifies the available balance associated with the card and sends an authorization or a declination to the merchant. Several types of prepaid cards—closed loop, semi-closed loop, semi-open loop, and open loop—are available in the United States:

- A. Closed loop prepaid cards are prepaid cards that can be used only for the purchase of goods or services from a single merchant.

- B. Semi-closed loop prepaid cards are similar to closed loop cards, but rather than being redeemable at only a single retailer, semi-closed loop prepaid cards can be used at multiple merchants, such as all merchants in a particular shopping mall.
- C. Semi-open loop cards are accepted by any merchant, in the United States or abroad, who accepts debit cards and/or credit cards operating on a corresponding payment network (i.e., MasterCard, Visa, American Express, etc.). These cards do not allow cardholders to obtain cash from ATMs; however, these cards can be re-loadable.
- D. Open loop cards are similar to semi-open system cards with the added benefit of always offering reloading and ATM access around the world.

### **3.64 Private Bank**

Private banks are not incorporated, which means that they are owned by an individual or by general partners with limited partners. In such cases, the creditors can file a claim on both the entirety of the bank's assets and the entirety of the sole proprietors or general partners' assets.

### **3.65 Private Banking**

Private banking is a term for banking, investment, and other financial services provided by banks to private individuals investing sizable assets. The term "private" refers to the customer service being rendered on a more personal basis than in mass market retail banking, usually via dedicated bank advisers. It should not be confused with a private bank, which is simply a non-incorporated banking institution.

### **3.66 Pyramid Scheme**

Similar to a Ponzi scheme in that both are based on using a new investor's funds to pay the earlier backers. One difference between the two schemes is that the Ponzi mastermind gathers all relevant funds from new investors and then distributes them. Pyramid schemes, on the other hand, allow each investor to benefit directly depending on how many new investors are recruited. In this case, the person on the top of the pyramid does not at any point have access to all the money in the system.

### **3.67 Quit Claim Deed**

A legal instrument used to release one person's right, title, or interest to another without providing a guarantee or warranty of title.

### **3.68 Securities**

Securities are negotiable financial instruments, broadly divided into debt instruments, such as bonds, and equity instruments, such as stocks.



### **3.69 Shell Banks**

Shell banks are financial institutions that do not have a physical presence in any country.

### **3.70 Silent Second**

The buyer of a property borrows the down payment from the seller through the issuance of a non-disclosed second mortgage. The primary lender believes the borrower has invested his or her own money in the down payment, when in fact, it is borrowed. The second mortgage may not be recorded to further conceal its status from the primary lender.

### **3.71 Smurfing**

Smurfing is another term for “structuring.” (*See* Section 3.73.)

### **3.72 Straw Buyer**

A straw buyer is a person who allows his or her name, identifiers, and credit rating to be used to fraudulently secure a mortgage for the purchase of any property. The straw buyer generally understands that he or she will neither occupy or use the property nor make payments on the loan. The straw buyer generally is paid a fee by the individual who either intends to flip the property or use the loan to launder illicit funds.

### **3.73 Structuring**

Structuring is the dividing of transactions involving amounts over \$10,000 into several transactions, each involving amounts smaller than \$10,000 to avoid certain recordkeeping and reporting requirements mandated by laws such as the BSA and/or 26 U.S.C. § 6050I.

### **3.74 Time Deposit**

Savings account or certificate of deposit held in a financial institution for a fixed term or with the understanding that the depositor can withdraw only by giving notice.

### **3.75 Trader**

A person who buys and sells securities for his or her own account and not as part of a regular business.

### **3.76 Underwriter**

An underwriter is a person or entity, especially an investment banker, who guarantees the sale of newly-issued securities by purchasing all or part of the shares for resale to the public.

## **Chapter 4. RESPONSIBILITIES**

### **4.1 Executive Associate Director, Homeland Security Investigations**

The Executive Associate Director (EAD) of HSI has the overall responsibility for the oversight of the policies and procedures set forth in this Handbook.

### **4.2 Unit Chief, Illicit Finance and Proceeds of Crime Unit**

The Unit Chief, Illicit Finance and Proceeds of Crime Unit (IFPCU), is responsible for the implementation of the provisions of this Handbook within HSI.

### **4.3 Special Agents in Charge and Attachés**

Special Agents in Charge (SACs) and Attachés are responsible for implementing the provisions of this Handbook within their respective areas of responsibility (AORs).

### **4.4 Special Agents and Intelligence Research Specialists**

SAs and, as applicable, Intelligence Research Specialists are responsible for complying with the provisions of this Handbook.

## **Chapter 5. AUTHORITIES/REFERENCES**

### **5.1. Authorities**

HSI's authority to conduct financial investigations is derived from a variety of laws including, but not limited to, the Tariff Act, the BSA of 1970, the Money Laundering Control Act (MLCA) of 1986, the Anti-Drug Abuse Act of 1988, and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001. These authorities are codified under Titles 18, 19, and 31 of the United States Code.

Since 1970, there have been several legislative acts that have enhanced law enforcement's ability to conduct financial investigations, specifically HSI's ability to investigate transnational criminal organizations involved in the movement of illicit funds.

The authority to enforce money laundering and anti-smuggling statutes was provided to HSI through the Transitional Provisions (codified as 6 U.S.C. § 551) and the Savings Provisions (codified as 6 U.S.C. § 552) of the Homeland Security Act of 2002. The Homeland Security Act of 2002, Public Law 107-296, Sections 1511 (Transitional Provisions) and 1512 (Savings Provision) authorize HSI to conduct the law enforcement and intelligence activities of the former U.S. Customs Service and the former U.S. Immigration and Naturalization Service.

After the terrorist events of September 11, 2001, the 107<sup>th</sup> U.S. Congress gave federal law enforcement, including HSI, additional laws and tools to combat the movement of money into and out of the United States. Title III of the USA PATRIOT Act, “The International Money Laundering Abatement and Financial Anti-Terrorism Act,” added Bulk Cash Smuggling (BCS), codified at 31 U.S.C. § 5332, for which HSI has primary investigative jurisdiction. In addition, the USA PATRIOT Act expanded the application of the prohibition on operating unlicensed money transmitting businesses (18 U.S.C. § 1960) to individuals who fail to register with state regulatory agencies and/or FinCEN and to individuals involved in the transportation or transmission of funds that they know are derived from illicit activity.

HSI SAs have broad investigative authority as customs officers under 19 U.S.C. § 1589a to pursue complex banking and financial misconduct cases and seize assets of criminal enterprises engaged in customs violations. Monetary instruments also qualify as “merchandise” under 19 U.S.C. § 1401(c). In addition, HSI SAs have Title 8 authority to make arrests without warrant for immigration violations.

The melding of these customs and immigration law authorities allows HSI SAs to pursue both avenues with unique efficiency and thoroughness, making cases stronger and more likely to be accepted for prosecution with more significant penalties.

### **5.1.1 Annunzio-Wylie Anti-Money Laundering Act**

The Annunzio-Wylie Anti-Money Laundering Act of 1992 strengthened the sanctions for BSA violations, required the filing of Suspicious Activity Reports (SARs), and eliminated previously used Criminal Referral Forms. This Act also required verification of the identity of individuals involved in a face-to-face wire transaction as well as recordkeeping for non-face-to-face wire transfers. It also established the BSA Advisory Group.

### **5.1.2 Anti-Drug Abuse Act**

The Anti-Drug Abuse Act (ADAA) of 1988 expanded the definition of “financial institution” to include businesses such as car dealers and real estate closing personnel and required them to file reports on large currency transactions. The ADAA also required the verification of the identity of purchasers of monetary instruments over \$10,000. In addition, the ADAA required the completion of a Report of Cash Payments Over \$10,000 Received in a Trade or Business (FinCEN Form 8300). This form is also known as the Internal Revenue Service (IRS) Form 8300.

### **5.1.3 Asset Sharing**

The authority of the Secretary of the Treasury to share federally forfeited property with participating federal, state, and local law enforcement agencies is established by federal law in 18 U.S.C. § 981(e), 19 U.S.C. § 1616a(c), and 31 U.S.C. §§ 9703 (a)(1)(G) and 9703(h). The exercise of this authority is discretionary. The Secretary of the Treasury is not required to share property in any case. Requests for equitable shares are filed in the form prescribed by the Director of the Treasury Executive Office for Asset Forfeiture. The intent of Congress in the

sharing of forfeited property is to ensure that any property shared with a law enforcement agency:

- A. Has a value that bears a reasonable relationship to the degree of direct participation of the law enforcement effort resulting in the forfeiture, taking into account the total value of all property forfeited and the total law enforcement effort with respect to the violation of law on which forfeiture is based; and
- B. Will serve to encourage further cooperation between the recipient agency and federal law enforcement agencies.

Participating state and local agencies in the United States must submit an equitable request within 60 days from the date of the seizure. Policies and procedures related to asset sharing can be obtained from the Asset Forfeiture Unit at HSI Headquarters (HQ). (See the Asset Forfeiture Handbook (HSI HB 10-04), dated June 30, 2010, or as updated or superseded.)

HSI strongly encourages international asset sharing to promote cooperation between HSI SAs and their foreign counterparts. Foreign governments are not bound by this requirement; however, it is strongly advised that foreign governments submit requests in a timely manner. All requests should be prepared on the agency's letterhead, detailing the agency's level of participation in the investigation to ensure that reviewing and approving officials have all the pertinent information. Once completed, the request should be submitted to the appropriate HSI Attaché(s).

#### **5.1.4 Bank Secrecy Act**

The BSA of 1970, otherwise known as the Currency and Foreign Transactions Reporting Act or Public Law 91-508, requires private individuals, banks, and financial institutions to assist U.S. Government agencies in detecting and preventing money laundering. Specifically, the BSA requires that private individuals, banks, and financial institutions keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. The BSA is sometimes referred to as an anti-money laundering law or, jointly, as "BSA/AML." Several anti-money laundering acts, including provisions in Title III of the USA PATRIOT Act, have been enacted to amend the BSA. (See 31 U.S.C. §§ 5311-5330.)

#### **5.1.5 Bulk Cash Smuggling**

Section 371 of the USA PATRIOT Act created 31 U.S.C. § 5332, which makes it a crime for anyone to knowingly conceal more than \$10,000 in currency or other monetary instruments on their person or in any conveyance, article of luggage, merchandise, or other container, and to transport or transfer or attempt to transport or transfer such currency or monetary instruments from a location within the United States to a location outside the United States, or from a location outside the United States to a location within the United States for the purposes of evading the Report of International Transportation of Currency or Monetary Instruments (CMIR) reporting requirement.

SAs should investigate 31 U.S.C. § 5332 violations, in addition to 31 U.S.C. § 5316 violations, where the investigation demonstrates that the violator concealed the money in order to avoid a reporting requirement. 31 U.S.C. § 5332 can also be used to avoid challenges under *U.S. v. Bajakajian*, which considered full forfeiture of the unreported currency for merely failing to report to violate the Excessive Fines Clause of the Eighth Amendment. 524 U.S. 321 (1998). As a result of the *Bajakajian* decision, currency seizures for 31 U.S.C. § 5316 violations are often mitigated to a penalty instead of total forfeiture of the funds seized unless the currency is proven to be derived from illegal activity to include narcotics trafficking, money laundering, or tax evasion.

SAs should consider BCS violations (31 U.S.C. § 5332) when investigating inbound/ outbound currency infringements. A 31 U.S.C. § 5332 violation is similar to a 31 U.S.C. § 5316, Failure to Report, violation, with the added burden of showing concealment. However, the money does not have to be linked to criminal activity. The act of smuggling, rather than the source of the funds, is the crime. Particular attention should be paid to how the currency was packaged in these types of investigations. The manner in which currency is bundled may be good evidence of an intent to violate 31 U.S.C. § 5332.

### **5.1.6 Civil Administrative Forfeiture**

Civil administrative forfeiture is an *in rem* (against the property) action that permits the seizing federal agency to forfeit the property without judicial involvement. The authority for a seizing agency to start an administrative forfeiture action is found at 19 U.S.C. § 1607. Property that can be administratively forfeited includes: 1) merchandise whose importation is prohibited; 2) a conveyance used to import, transport, or store a controlled substance; 3) a monetary instrument; or 4) other property that does not exceed \$500,000 in value.

### **5.1.7 Civil Judicial Forfeiture**

Civil judicial forfeiture is an *in rem* action brought in court against the property. The property is the defendant and no criminal charge against the owner is necessary, nor is the acquittal on criminal charges a defense to the forfeiture. Civil forfeiture provisions can be found in 18 U.S.C. § 981.

### **5.1.8 Criminal Forfeiture**

Criminal forfeiture is an action brought as part of the criminal prosecution of a defendant. It is an *in personam* (against the person) action and requires that the government indict (charge) the property used or derived from the crime along with the defendant. If the jury finds the property forfeitable, the court issues an order of forfeiture. Criminal forfeiture provisions can be found in 18 U.S.C. § 982.

For forfeitures pursuant to the Controlled Substances Act and the Racketeer Influenced and Corrupt Organizations Act, as well as money laundering and obscenity statutes, there is an ancillary hearing for third parties to assert their interest in the property. Once the interests of third parties are addressed, the court issues a final order of forfeiture.

### **5.1.9 Edge Act (Foreign Banking)**

The Edge Act (12 U.S.C. § 611, *et seq.*), which was first enacted in 1919, allows national banks to conduct foreign lending operations through federal or state chartered subsidiaries, called Edge Act corporations. The Act is named after Walter Evans Edge, a U.S. Senator from New Jersey, who sponsored the original legislation for these types of subsidiaries. Any national banking association possessing a capital and surplus of \$1 million or more may file an application with the Board of Governors of the Federal Reserve System (FRS) for permission to establish an Edge Act corporation. Such corporations can be chartered by other states and are allowed, unlike domestic banks, to own banks in foreign countries and to invest in foreign commercial and industrial firms.

Edge Act corporations benefited further from the 1978 International Banking Act, which instructs the Board of Governors of the FRS to strike any regulations putting U.S. banks at a disadvantage compared with U.S. operations of foreign banks. The Edge Act also permitted the FRS to set reserve requirements on foreign banks that do business in the United States.

### **5.1.10 Intelligence Reform and Terrorism Prevention Act**

The Intelligence Reform and Terrorism Prevention Act of 2004 amended the BSA to require the Secretary of the Treasury to prescribe regulations requiring certain financial institutions to report cross-border electronic transmittals of funds where such reporting is “reasonably necessary” to aid in the fight against money laundering and terrorist financing. This Act also established the 314(a) provision.

### **5.1.11 Money Laundering and Financial Crimes Strategy Act**

The Money Laundering and Financial Crimes Strategy Act of 1988 required banking agencies to develop anti-money laundering training for their anti-money laundering examiners. This Act also required the Department of the Treasury and other agencies to develop a National Money Laundering Strategy and created the High Intensity Financial Crimes Areas (HIFCAs), also referred to as High-Risk Money Laundering and Related Financial Crimes Area Task Forces, to concentrate law enforcement efforts at the federal, state, and local levels in zones where money laundering is prevalent. HIFCAs may be defined geographically or can be created to address money laundering in an industry sector, a financial institution, or a group of financial institutions.

### **5.1.12 Money Laundering Control Act**

The MLCA of 1986 established money laundering as a federal crime. (*See* 18 U.S.C. §§ 1956 and 1957.) The MLCA also prohibited structuring transactions to evade BSA reporting requirements, introduced criminal and civil forfeiture for BSA violations, and directed banks to establish and maintain procedures to ensure and monitor compliance with the reporting and recordkeeping requirements of the BSA.

### **5.1.13 Money Laundering Suppression Act**

The Money Laundering Suppression Act (MLSA) of 1994 required banking agencies to review and enhance training and develop anti-money laundering examination procedures. The MLSA also required banking agencies to review and enhance procedures for referring cases to appropriate law enforcement agencies and to streamline the Currency Transaction Report (CTR) exemption process. Moreover, the MLSA required each MSB to be registered by an owner or controlling person of the MSB and every MSB to maintain a list of businesses authorized to act as agents in connection with the financial services offered by the MSB. The MLSA also made operating an unregistered MSB a federal crime and recommended that states adopt uniform laws applicable to MSBs.

### **5.1.14 Reporting of Cash by Trades or Business**

The filing of a Report of Cash Payments Over \$10,000 Received in a Trade or Business (FinCEN Form 8300) is required under 31 U.S.C. § 5331. It is the responsibility of the business owner (car dealer, jeweler, etc.) to file the report on behalf of the customer. The business owner is required to inform the customer of the FinCEN Form 8300 requirement. Although SAs should investigate FinCEN Form 8300 infringements with the goal of proving a money laundering violation, such investigations can also be used to prove a domestic structuring violation pursuant to 31 U.S.C. § 5324(b).

### **5.1.15 Structuring Transactions to Evade Domestic Reporting Requirements**

31 U.S.C. § 5324(a) makes it a violation of law to cause or attempt to cause a financial institution to fail to file a CTR, file a false CTR, or structure a transaction to avoid a CTR being filed. HSI SAs conducting financial/money laundering investigations often encounter domestic structuring violations. When identifying a particular transaction as a “structuring” charge, SAs should be able to circumstantially show that the target conducted the transaction to evade the reporting requirement and had knowledge of the reporting requirement. An additional requirement needed is that the violator was in possession of more than \$10,000 during the transaction. This can be proved circumstantially in a variety of ways. First, an interview of the bank teller could reveal that, at the time of the transaction, the violator was in possession of over \$10,000 and that, after notification of the CTR requirement, the violator declined to deposit over \$10,000. Secondly, surveillance of the target may indicate that the target visited several banks or bank branches, depositing under \$10,000 at each institution. The purchase of numerous money orders by the target in one calendar day (24 hours) in an amount of over \$10,000 could show that the target of the investigation was in control of over \$10,000. CTR information (in addition to CMIR and Report of Foreign Bank and Financial Accounts (FBAR) information) can be retrieved via a TECS financial query using the SQTf function or via the Currency and Bank Retrieval System. It should be noted that some of the elements in proving a domestic structuring violation are similar to those in international structuring violations. (*See* Section 5.1.12.)

### **5.1.16 Structuring Transactions to Evade International Reporting Requirements**

31 U.S.C. § 5324(c) makes it a violation of law to cause anyone to fail to file a CMIR; to file a false CMIR; and/or to structure, assist in structuring, or attempt to structure the importation or exportation of monetary instruments. When conducting an investigation when there has been a 31 U.S.C. § 5324(c) violation, SAs must show that the violator had knowledge of the reporting requirement. This can be accomplished in a variety of ways. For instance, when SAs respond to a call from a port of entry, they can interview U.S. Customs and Border Protection (CBP) Officers, review the Customs Declarations (CBP Form 6059) and CMIRs, if applicable, and conduct TECS checks to determine previous filings. In a situation where SAs have advanced information about a violator either entering or exiting the country without reporting cash or monetary instruments over \$10,000, the SAs should coordinate with CBP personnel to ensure that the appropriate warnings are given to the violator, i.e., if the violator was provided with CBP Publication 503, Currency Reporting, prior to the identification of a violation. This will satisfy the knowledge element of the statute. The other element required to prove a violation is the attempt to evade the reporting requirement.

### **5.1.17 USA PATRIOT Act**

The purpose of the USA PATRIOT Act is to deter and punish terrorist acts in the United States and around the world, enhance law enforcement investigatory tools, and address other purposes, some of which include:

- A. Strengthening U.S. measures to prevent, detect, and prosecute international money laundering and the financing of terrorism;
- B. Subjecting to special scrutiny foreign jurisdictions, foreign financial institutions, and classes of international transactions or types of accounts that are susceptible to criminal abuse;
- C. Requiring all appropriate elements of the financial services industry to report potential money laundering; and
- D. Strengthening measures to prevent use of the U.S. financial system for personal gain by corrupt foreign officials and facilitating the repatriation of stolen assets to the citizens of countries to whom such assets belong.

### **5.1.18 Utilizing Bank Secrecy Act Information in Financial Investigations**

The purpose of the BSA was to create a paper trail which would facilitate the tracking of cash into and out of financial institutions and across the borders of the United States. The BSA also imposed recordkeeping requirements on private individuals, banks, and financial institutions. The reporting provisions of the BSA are divided into three sections: domestic transactions, international transportation, and the reporting of foreign bank accounts. The BSA is codified at 31 U.S.C. § 5311 *et seq.*



#### A. Domestic Transactions

Financial institutions, defined in 31 U.S.C. § 5312(a)(2), must report all domestic cash transactions involving more than \$10,000 pursuant to 31 U.S.C. § 5313 and 31 C.F.R. § 1010.311. The CTR (FinCEN Form 104 – formerly IRS Form 4789) must be submitted to the IRS within 15 days. Casinos use the Currency Transaction Report by Casinos (CTR-C) (FinCEN Form 103) to report cash transactions over \$10,000. The Report of Cash Payments Over \$10,000 Received in a Trade or Business (FinCEN Form 8300) is required to be filed under 31 U.S.C. § 5331 and 31 C.F.R. § 1010.330. *See also* 26 U.S.C. § 6050I. FinCEN Form 8300 is used by businesses such as boat dealers, car dealers, jewelers, real estate closing agents, attorneys, and other businesses that receive \$10,000 or more in cash transactions. Required forms also include SARs filed by Depository Institutions (Treasury Department Form (TD F) 90-22.47), Securities and Futures Industries (FinCEN Form 101), Casinos and Card Clubs (FinCEN Form 102), and MSBs (FinCEN Form 109).

#### B. International Transactions

31 U.S.C. § 5316 requires any person transporting more than \$10,000 in currency or monetary instruments into or out of the United States to file with CBP or ICE a CMIR (FinCEN Form 105). *See also* 31 C.F.R. § 1010.340. With international mail shipments, the consignee has 15 days to file a CMIR. Monetary instruments include: 1) U.S. or foreign coins and currency; 2) travelers checks in any form; 3) negotiable instruments (including checks, promissory notes, and money orders) that are in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; 4) incomplete instruments (including checks, promissory notes, and money orders signed but with the payee's name omitted; and 5) securities and stock in bearer form or otherwise in such form that title thereto passes upon delivery. 31 U.S.C. § 5312; 31 C.F.R. § 1010.340. However, the term “monetary instruments” does not include: 1) checks or money orders made payable to the order of a named person that have not been endorsed or that bear restrictive endorsements; 2) warehouse receipts; or 3) bills of lading.

#### C. Reporting of Foreign Bank and Financial Accounts

31 U.S.C. § 5314 requires residents of the United States or persons doing business in the United States to keep records and/or file reports concerning transactions with a foreign financial institution. A violation of the FBAR (TD F 90-22.1) reporting requirement could involve a hidden offshore account established as a result of some unlawful activity. The reporting of foreign bank accounts is accomplished via the filing of an FBAR, a two-step process. The first step is to check a box on the income tax return (IRS Form 1040); the second step is to fill out the FBAR. (Note: If the income tax filer checks “yes” in the appropriate box on IRS Form 1040, he or she is then directed to fill out the FBAR.)

## 5.2. References

- A. Department of Homeland Security (DHS) Handbook, “Handbook for Safeguarding Sensitive Personally Identifiable Information,” dated March 2012, or as updated or superseded.
- B. “Memorandum of Agreement between the Department of Justice and the Department of Homeland Security Concerning Terrorist Financing Investigations,” dated May 13, 2003, or as updated or superseded.
- C. Computer Forensics Handbook (HSI HB 11-01), dated April 27, 2011, or as updated or superseded.
- D. Asset Forfeiture Handbook (HSI HB 10-04), dated June 30, 2010, or as updated or superseded.
- E. Undercover Operations Handbook (Office of Investigations (OI) HB 08-04), dated April 14, 2008, or as updated or superseded.
- F. Seized Asset Management and Enforcement Procedures Handbook (SAMEPH) (CBP HB 4400-01B), dated July 1, 2011, or as updated or superseded.

## Chapter 6. GENERAL FINANCIAL OVERVIEW

### 6.1 Financial Services

The term “financial services” became more prevalent in the United States partly as a result of the Gramm-Leach-Bliley Act of 1999 (Pub. L. 106-102), also known as the Financial Services Modernization Act of 1999, which enabled various companies operating in the U.S. financial services industry at that time to merge. Companies usually have two distinct approaches to this new type of business. One approach would be a bank which simply buys an insurance company or an investment bank, keeps the original brands of the acquired firm, and adds the acquisition to its holding company simply to diversify its earnings. Outside the United States, non-financial services companies are permitted within the holding company. In this scenario, each company still looks independent and has its own customers, etc. In the second approach, a bank would simply create its own brokerage division or insurance division and attempt to sell those products to its own existing customers, with incentives for combining all things within one company.

### 6.2 Banks

A “commercial bank” is what is commonly referred to simply as a “bank” (see Section 3.4). The term “commercial” is used to distinguish it from an “investment bank,” a type of financial services entity which, instead of lending money directly to a business, helps businesses raise money from other firms in the form of bonds (debt) or stock (equity).

### **6.3 Banking Services**

The primary operations of banks include:

- A. Keeping money safe while also allowing withdrawals when needed;
- B. Issuing checkbooks so that bills can be paid and other kinds of payments can be delivered by post;
- C. Providing personal loans, commercial loans, and mortgage loans (typically loans to purchase a home, property, or business);
- D. Issuing credit cards and processing credit card transactions and billing;
- E. Issuing debit cards for use as a substitute for checks;
- F. Allowing financial transactions at branches or by using ATMs;
- G. Providing wire transfers of funds and Electronic Funds Transfers (EFTs) between banks;
- H. Facilitating standing orders and direct debits so that payments for bills can be made automatically;
- I. Providing overdraft agreements for the temporary advancement of the bank's own money to meet monthly spending commitments of a customer in his or her current account;
- J. Providing charge card advances of the bank's own money for customers wishing to settle credit advances on a monthly basis;
- K. Providing a check guaranteed by the bank itself and prepaid by the customer, such as a cashier's check or certified check;
- L. Providing notary services for financial and other documents; and
- M. Processing Automated Clearing House (ACH) payments.

### **6.4 Online Banking**

Online banking (or Internet banking) allows customers to conduct financial transactions on a secure website operated by their retail or virtual bank, credit union, or building society. Online banking solutions have many features and capabilities in common, but traditionally also have some that are application specific. The common features fall broadly into several categories such as transactional (e.g., performing a financial transaction such as an account-to-account transfer, paying a bill, wire transfer, applying for a loan, opening a new account, etc.) as well as

non-transactional (e.g., online statements, profile updates, check links, co-browsing, chat, etc.). Some online banking platforms support account aggregation to allow customers to monitor all their accounts in one place regardless of whether they are with their main bank or with other institutions.

Regarding digital or virtual banking methods, a user can open and control an account online to conduct purchases of products or services, including sending funds to other users. This is ordinarily accomplished through either a centralized or de-centralized system. A centralized system operates from a central technology platform (i.e., a maintained Internet website) whereas a de-centralized system operates through peer-to-peer system. The virtual currency banking ecosystem consists of the issuer, exchange maker, and user. In the centralized system, a user cannot fund his or her account directly through the issuer's website. The issuer requires users to transfer funds into or withdraw funds from a third party exchange. In the decentralized system, a user will purchase a type of "virtual" currency (e.g., Bitcoins) through a third-party exchange maker. The user will send funds to the exchange maker via an online payment system (e.g., Western Union) for the equivalent value of the virtual currency minus any commissions. The user can then use the balance to make purchases online or transfer funds to other users.

## **6.5 Other Types of Banking Services**

- A. Private banking provides banking services exclusively to high net worth individuals. Many financial services firms require a person or family to have a certain minimum net worth to qualify for private banking services. Private banks often provide more personal services, such as wealth management and tax planning, than normal retail banks.
- B. Capital market banks underwrite debt and equity, assist company deals (advisory services, underwriting, and advisory fees), and restructure debt into structured finance products.
- C. Bank cards are issued by a bank and used to access funds from an account, such as:
  - 1) ATM cards, which are linked to one or many accounts, primarily for ATM usage;
  - 2) Credit cards, which are attached to a revolving credit line; and
  - 3) Debit cards, which are linked to a bank account.
- D. Credit card machine services and network companies that provide credit card machine and payment networks call themselves "merchant card providers."

## **6.6 Foreign Exchange Services**

Foreign exchange services are provided by many banks around the world. Foreign exchange services include:

- A. Currency Exchange – where clients can purchase and sell foreign currency banknotes;
- B. Wire Transfer – by means of which clients can send funds to international banks abroad; and
- C. Foreign Currency Banking – where banking transactions are conducted in foreign currency.

## 6.7 Investment Services

- A. Asset management – the term usually given to describe companies that manage a customer’s assets such as bank accounts (savings and checking), brokerage accounts (stocks, bonds, mutual funds, buying securities, making loans on margin, and other investments), and loans into one collective account. A benefit of this service is the convenience of having all financial transactions listed in one monthly statement. Such accounts are also termed central asset accounts and are known by such proprietary names as the Cash Management Account (Merrill Lynch), Active Assets Account (Morgan Stanley Dean Witter), and Schwab One Account (Charles Schwab).
- B. Hedge fund management – Hedge funds are aggressively managed portfolios of investments that use advanced investment strategies, such as leveraged, long, short, and derivative positions, in both domestic and international markets, with the goal of generating high returns. They often employ the services of “prime brokerage” divisions at major investment banks to execute their trades.
- C. Custody services – Custody and securities servicing solutions are a kind of administrative function for financial services, which are normally not directly involved in the operations of a business.

## 6.8 Insurance

- A. Insurance broker – Independent insurance brokers shop for insurance (generally corporate property and casualty insurance) on behalf of customers. Insurance brokers do not work for insurance companies; rather, they work for the buyers of insurance products. They constantly compare the merits of competing insurance companies to find the best deal for their customers. A number of websites have been created to give consumers basic price comparisons for services such as insurance, causing controversy within the industry.
- B. Insurance underwriting – The insurance underwriter is a company that assumes the cost risk of death, fire, theft, illness, etc., in exchange for payments called premiums. This service is still offered primarily through agents, insurance brokers, and stock brokers. Underwriters may also offer similar commercial lines of coverage for businesses. Activities include insurance and annuities, life insurance, retirement insurance, health insurance, and property and casualty insurance. Another part of insurance underwriting is risk evaluation. The underwriters decide if the risk is

worthwhile, how much premium to charge, and what types of coverage are acceptable.

- C. Reinsurance – Reinsurance is insurance sold to insurers themselves to protect them from catastrophic losses. Both the insurer and the reinsurer enter into a reinsurance agreement which details the conditions upon which the reinsurer will compensate the insurers for their losses. In return for this coverage, the insurer pays a premium to the reinsurer. There are two basic methods of reinsurance: 1) single risk, also known as facultative reinsurance; and 2) multiple policies covering the scope of the contract, also known as treaty reinsurance.

## 6.9 Other Financial Services

- A. Intermediation or advisory services – These services involve stock brokers (private client services) and discount brokers. Stock brokers assist investors in buying or selling shares. Primarily Internet-based companies are often referred to as discount brokerages, although many have branch offices to assist clients. These brokerages primarily target individual investors. Full service and private client firms primarily assist in executing trades for clients with large amounts of capital to invest, such as large companies, wealthy individuals, and investment management funds.
- B. Private equity – Private equity consists of investors and funds that make investments directly into private companies or conduct buyouts of public companies that result in a de-listing of public equity. Capital for private equity is raised from retail and institutional investors and can be used to fund new technologies, expand working capital within an owned company, make acquisitions, or strengthen a balance sheet. Private equity funds are limited partnership controlled by a private equity firm that acts as the general partner and that gets specific dollar commitments from qualified institutional investors and individual accredited investors. These passive limited partners fund prorated portions of their commitments when the general partner has identified an appropriate opportunity.
- C. Venture capital – Venture capital is a type of private equity capital typically provided by professional outside investors to new high-potential-growth companies in the interest of taking the company to an initial public offering or trade sale of the business (sale of one firm to another, the common exit route for venture capital investments).
- D. Angel investment – An angel investor or angel (known as a business angel or informal investor in Europe) is an affluent individual who provides capital for a business start-up, usually in exchange for convertible debt (a security which can be exchanged for a specified amount of another, related security, at the option of the issuer and/or the holder), or ownership equity. A small but increasing number of angel investors organize themselves into angel groups or angel networks to share research and pool their investment capital. These types of investors normally seek higher return than they would normally seek from traditional investments.

- E. Conglomerate – A financial services conglomerate is a financial services firm that is active in more than one, or in a combination of, financial service industries. These industries can be banking, credit cards, property and casualty insurance, investment, and a variety of other financial services to several customers.

## **6.10 Letters of Credit**

A letter of credit is a letter from a bank guaranteeing that a buyer's payment to a seller will be received on time and for the correct amount upon the completion of certain stated terms and conditions. In the event that the buyer is unable to make payment on the purchase, the bank will be required to cover the full or remaining amount of the purchase. There are many types of letters of credit; however, commercial and standby letters of credit are the most commonly encountered. The commercial letter of credit is the primary payment mechanism for a transaction, whereas the standby letter of credit is a secondary payment mechanism.

Letters of credit used in international transactions are governed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits. The general provisions and definitions of the International Chamber of Commerce are binding on all parties. Domestic collections in the United States are governed by the UCC.

A commercial letter of credit is a contractual agreement between a bank, known as the issuing bank, on behalf of one of its customers, authorizing another bank, known as the advising or confirming bank, to make payment to the beneficiary. The issuing bank, on the request of its customer, opens the letter of credit. The issuing bank makes a commitment to honor drawings made under the credit. The beneficiary is normally the provider of goods and/or services. Essentially, the issuing bank replaces the bank's customer as the payee.

Letters of credit have no intrinsic value. Instead they are solely a method of facilitating payment between two parties involved in a trade transaction. For example, in the context of international financial investigations, it is common to encounter illicit actors who will attempt to fraudulently sell letters of credit or describe them as an investment vehicle.

### **6.10.1 Elements of a Letter of Credit**

A letter of credit has the following elements (Note: Letters of credit deal in documents, not goods.):

- A. Issuing bank (and amounts).
- B. Identification of buyer and applicant.
- C. Identification of seller of beneficiary.
- D. Is valid upon presentation of specified documents representing the supply of goods.
- E. Has specified time limits.

- F. Documents must comply with the terms and conditions set out in the letter of credit.
- G. Documents must be presented at a specified place.
- H. Typically, the documents requested will include a commercial invoice, a transport document such as a bill of lading or airway bill, and an insurance document; but there are many others.

### **6.10.2 Characteristics of a Letter of Credit**

A letter of credit has the following characteristics:

#### **A. Negotiability**

Letters of credit are usually negotiable. The issuing bank is obligated to pay not only the beneficiary, but also any bank nominated by the beneficiary. Negotiable instruments are passed freely from one party to another almost in the same way as money. To be negotiable, the letter of credit must include an unconditional promise to pay, on demand or at a definite time. The nominated bank becomes a holder in due course. As a holder in due course, the holder takes the letter of credit for value, in good faith, without notice of any claims against it. A holder in due course is treated favorably under the UCC.

The transaction is considered a straight negotiation if the issuing bank's payment obligation extends only to the beneficiary of the credit. If a letter of credit is a straight negotiation, it is referenced on its face by "we engage with you" or "available with ourselves." Under these conditions, the promise does not pass to a purchaser of the draft as a holder in due course.

#### **B. Revocability**

Letters of credit may be either revocable or irrevocable. A revocable letter of credit may be revoked or modified for any reason and at any time by the issuing bank without notification. A revocable letter of credit cannot be confirmed. If a correspondent bank is engaged in a transaction that involves a revocable letter of credit, it serves as the advising bank.

Once the documents have been presented and meet the terms and conditions in the letter of credit and the draft is honored, the letter of credit cannot be revoked. The revocable letter of credit is not a commonly used instrument. It is generally used to provide guidelines for shipment. If a letter of credit is revocable, it would be referenced on its face.

The irrevocable letter of credit may not be revoked or amended without the agreement of the issuing bank, the confirming bank, and the beneficiary. An irrevocable letter of credit from the issuing bank assures the beneficiary that, if the



required documents are presented and the terms and conditions are complied with, payment will be made. If a letter of credit is irrevocable, it is referenced on its face.

#### C. Transfer and Assignment

The beneficiary has the right to transfer or assign the right to draw funds, under credit only, when the credit states that it is transferable or assignable. Credits governed by the UCC (domestic) may be transferred an unlimited number of times. Under the Uniform Customs Practice for Documentary Credits (international), the credit may be transferred only once. However, even if the credit specifies that it is nontransferable or nonassignable, the beneficiary may transfer its rights prior to performance of conditions of the credit.

#### D. Sight and Time Drafts

All letters of credit require the beneficiary to present a draft and specified documents in order to receive payment. A draft is a written order by which the party creating it orders another party to pay money to a third party. A draft is also called a bill of exchange.

There are two types of drafts: sight and time drafts. A sight draft is payable as soon as it is presented for payment. The bank is allowed a reasonable time to review the documents before making payment.

A time draft is not payable until the lapse of a particular time period stated on the draft. The bank is required to accept the draft as soon as the documents comply with credit terms. The issuing bank has a reasonable time to examine those documents. The issuing bank is obligated to accept drafts and pay them at maturity.

### **6.10.3 Role of Advising Bank**

An advising bank will advise the beneficiary that a letter of credit has been issued, confirmed or amended. Generally, the beneficiary would want to use a local bank to ensure that the letter of credit is valid. In addition, the advising bank would be responsible for sending the documents to the issuing bank. The advising bank has no other obligation under the letter of credit. If the issuing bank does not pay the beneficiary, the advising bank is not obligated to pay.

#### A. Role of Confirming Bank

The correspondent bank may confirm the letter of credit for the beneficiary. At the request of the issuing bank, the correspondent obligates itself to ensure payment under the letter of credit. The confirming bank would not confirm the credit until it evaluated the country and bank where the letter of credit originates. The confirming bank is usually the advising bank.

## B. Standby Letter of Credit

The standby letter of credit serves a different function from that of the commercial letter of credit. The commercial letter of credit is the primary payment mechanism for a transaction. The standby letter of credit serves as a secondary payment mechanism. A bank will issue a standby letter of credit on behalf of a customer to provide assurances of his or her ability to perform under the terms of a contract between the beneficiaries. The parties involved with the transaction do not expect that the letter of credit will ever be drawn upon.

The standby letter of credit assures the beneficiary of the performance of the customer's obligation. The beneficiary is able to draw under the credit by presenting a draft and copies of invoices with evidence that the customer has not performed its obligation. The bank is obligated to make payment if the documents presented comply with the terms of the letter of credit.

Standby letters of credit are issued by banks to stand behind monetary obligations, ensure the refund of advance payment, support performance and bid obligations, and ensure the completion of a sales contract. The credit has an expiration date.

The standby letter of credit is often used to guarantee performance or to strengthen the creditworthiness of a customer. In the above example, the letter of credit is issued by the bank and held by the supplier. The customer is provided open account terms. If payments are made in accordance with the suppliers' terms, the letter of credit would not be drawn on. The seller pursues the customer for payment directly. If the customer is unable to pay, the seller presents a draft and copies of invoices to the bank for payment.

The domestic standby letter of credit is governed by the UCC. Under these provisions, the bank is given until the close of the third banking day after receipt of the documents to honor the draft.

## C. Standard Forms of Documentation

When making payment for product on behalf of its customer, the issuing bank must verify that all documents and drafts conform precisely to the terms and conditions of the letter of credit. Although the letter of credit can require an array of documents, the most common documents that must accompany the draft include:

- 1) Commercial Invoice – A commercial invoice is the billing for the goods and services. It includes a description of merchandise, price, free on board origin, and name and address of buyer and seller. The buyer and seller information must correspond exactly to the description in the letter of credit. Unless the letter of credit specifically states otherwise, a generic description of the merchandise is usually acceptable in the other accompanying documents.

- 2) Bill of Lading – A document evidencing the receipt of goods for shipment and issued by a freight carrier engaged in the business of forwarding or transporting goods. The documents evidence control of goods. They also serve as a receipt for the merchandise shipped and as evidence of the carrier’s obligation to transport the goods to their proper destination.
- 3) Warranty of Title – Warranty given by a seller to a buyer of goods that states that the title being conveyed is good and that the transfer is rightful. This is a method of certifying clear title to the transferred product. It is generally issued to the purchaser and issuing bank expressing an agreement to indemnify and hold both parties harmless.
- 4) Letter of Indemnity – Specifically indemnifies the purchaser against a certain stated circumstance. Indemnification is generally used to guarantee that shipping documents will be provided in good order when available.

#### **6.10.4 Step-by-Step Process**

The step-by-step process of using a letter of credit includes the following:

- A. The buyer and seller agree to conduct business. The seller wants a letter of credit to guarantee payment.
- B. The buyer applies to his or her bank for a letter of credit in favor of the seller.
- C. The buyer’s bank approves the credit risk of the buyer and issues and forwards the credit to its correspondent bank (advising or confirming). The correspondent bank is usually located in the same geographical location as the seller (beneficiary).
- D. The advising bank will authenticate the credit and forward the original credit to the seller (beneficiary).
- E. The seller (beneficiary) ships the goods, then verifies and develops the documentary requirements to support the letter of credit. Documentary requirements may vary greatly depending on the perceived risk involved in dealing with a particular company.
- F. The seller presents the required documents to the advising or confirming bank to be processed for payment.
- G. The advising or confirming bank examines the documents for compliance with the terms and conditions of the letter of credit.
- H. If the documents are correct, the advising or confirming bank will claim the funds by:
  - 1) Debiting the account of the issuing bank.

- 2) Waiting until the issuing bank remits, after receiving the documents.
- 3) Reimbursing another bank as required in the credit.
- 4) The advising or confirming bank will forward the documents to the issuing bank.
- 5) The issuing bank will examine the documents for compliance. If they are in order, the issuing bank will debit the buyer's account.
- 6) The issuing bank will then forward the documents to the buyer.

### **6.10.5 Business Services**

Collecting accounts receivable and handling accounts payable are among the services provided to businesses. Services vary from bank to bank and range from collection only to the complete preparation of all records. If the subject is using such a service, SAs will have to check with the individual bank as to what services were provided and what records were retained.

Other business services performed by banks are: 1) analyzing and reconciling corporate bank accounts; 2) lock box banking, under which the bank acts as a collection agent; 3) billing and collection services for utilities; 4) health, welfare, and pension fund accounting; 5) insurance brokerage accounting; 6) retail store accounting (refers to the inventory cost vs. sales price and management of profits and debits); and 7) retail store credit accounting (refers to the management of credit cards services). If any of these services have been used by the subject, SAs will have to inquire at the individual's bank as to what records were retained.

A bank service of particular interest is the bookkeeping service performed for doctors and dentists. The bank sends bills and keeps books for doctors and dentists and makes up monthly and annual financial statements. All these systems rely upon prompt, daily transmittal of information from the doctor's office. One system does this by setting up an electronic transmitter in the doctor's office, which is tied into regular telephone lines. The patient's ledger card, which always remains with the doctor, serves as input to the transmitter so that information received at the bank's service center is always obtained from original records.

After the bank receives the information, it provides the doctor with a journal showing receipts and billings by type of service. At the end of each billing period, a detailed statement is prepared and mailed to each patient and a copy is sent to the doctor. The bank can also serve as a collection agent under this arrangement.

### **6.10.6 Collection Departments**

The collection department handles all non-cash items which vary greatly in kind and in collection methods. This latitude makes bank collection services most convenient for transactions requiring specialized handling. The principal kinds of collection items are:

- A. Drafts, bills of lading, warehouse receipts, or other documents;

- B. Notes and acceptances;
- C. Real estate contracts or mortgages;
- D. Stock certificates; and
- E. Bonds and coupons.

The bank's copy of the collection letter fully identifies the item collected and tells how to dispose of the proceeds. Not until an item has been collected is it credited to the customer's account.

The usefulness of collection records is illustrated in the case of an automobile dealer who used a bank's collection department to collect sales and then diverted the proceeds to another bank account in a different name in another city.

Because many collection service functions are not standardized, they are not easily adaptable to Automated Data Processing (ADP). However, ADP is being used by some large banks to control and trace the flow of collection items. The basic collection documents have not changed and ADP does not affect tracing and investigating them. Payments to an individual from this department may be made by check but frequently are made by interdepartmental credits.

### **6.10.7 Trust Departments**

It is important to know the nature of activities in the trust department. Past cases have disclosed that unreported income has come to individuals through trust departments from such sources as oil royalties and a variety of trusts. A checking account may show deposits or advances of credit from the proceeds of some trust department activity. Farmers, oil well drillers, and various entrepreneurs have been known to give notes, securing them with trust instruments on future income, and authorizing direct payment to banks for the notes. Although the money obtained on the notes was used and properly charged to expenses, the income payments were never credited on the books of the individuals who earned them. Trust services of banks come under three main headings:

- A. Settling estates – The trust department frequently is appointed by a court or named in a will to perform this service.
- B. Trusts and Guardianships – A trust exists when one person holds legal title to property and another person is entitled to its benefits.
- C. Agency Services – The bank acts as an agent for a person or corporation in one of the following capacities:
  - 1) Safekeeping;
  - 2) Custodian;

- 3) Managing;
- 4) Escrow;
- 5) Transfer Agent;
- 6) Registrar;
- 7) Depository; and/or
- 8) Paying agent or dividend disbursing agent.

Trust departments keep complete and accurate records of their service and are therefore a valuable source of information about any individual who receives funds from that department. Essential records and reports can be obtained from the trust officer who supervises the account. Because of a bank's fiduciary responsibility, these files give an extensive history of the trust and the transactions affecting it.

### **6.10.8 Loans**

This function of a bank is often an important source of information regarding a subject. In keeping records of the loans, the collateral that secures them, and the results of (bank) credit investigations, a bank has a wealth of information that can prove to be very important to an investigation involving a subject's affairs.

When a bank makes a commercial loan to an individual, it requires a detailed statement of the assets and liabilities of the borrower. The loan file also includes the results of credit inquiries, which shows paying habits, amounts of loans, and present unpaid balances. Basic records maintained by a bank credit department are:

- A. Credit (or loan) files – contain the loan application, financial statement, and general economic history of the subject. In the liability ledger, loans to a customer are posted on one page to show the liability to the bank at both the present time and in the past. These sheets contain information such as the loan date, note number, amount of the loan, interest rate, due date, and payments.
- B. Collateral register – usually contains a complete description of the items pledged as securities for loans. Records of such collateral can provide valuable information about a subject's assets.
- C. ADP – has been used to keep collateral cards and to process commercial loan records. However, the underlying loan records and financial statements are basically the same as those in a manual system. In tracing transactions on an automated system, SAs must know the loan account number because all processing is done by reference to this number. To trace items in a particular bank, SAs should inquire about the system

used to process commercial loans. Because of detailed loan records in a bank, tracing loan transactions is easier than tracing transactions for checking and savings accounts.

### **6.11 Electronic Funds Transfer**

An EFT is a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. It includes point-of-sale transfers, direct deposits or withdrawals of funds, ATM transfers, and transfers initiated by telephone. The systems used to transfer funds (money) electronically include the Federal Reserve Banks' Fedwire Services, ACH, and other automated systems.

### **6.12 Credit Cards**

Most banks offering credit card plans are affiliated with a national credit card system. Credit card records that would be beneficial to SAs are the application for a card and the bank's copies of the monthly statements sent to the cardholder. In some banks, copies of the individual charges are also available. These monthly statements list the stores where the cardholder has made purchases and can furnish valuable leads to the spending habits of the subject. The first six digits on the card are known as the Bank Identification Number (BIN) or Issuer Identification Number (IIN). The number is used to identify the party who issued the card. BIN and IIN are generally the same thing, with the terms being interchangeable.

### **6.13 Securities and Commodities (General)**

Securities deal with the buying and selling of stocks and bonds; commodities involve the buying and selling of grain, livestock, etc. Both markets operate under similar structures although the terminologies may differ somewhat.

### **6.14 Securities**

There are two principal ways securities are held: 1) in the name of the account holder and 2) in the street name (also known as "Book Entry" or "Book Entry Only"). In the first instance, the securities owned simply reflect the name of the customer who maintains the account. In the second instance, when securities are held in the street name, or "book entry," they are registered in the name of the brokerage house or other custodian. This occurs when securities have been bought on margin or when a cash customer wishes the security to be held by the broker rather than in his or her own name. There are many different types of securities that are traded, but there are two methods of dealing in securities: 1) through an organized securities exchange such as the New York Stock Exchange or the American Stock Exchange; or 2) exchanged in an over-the-counter market. In securities, there are three entities that can be of great importance to SAs:

- A. Broker – A broker can be an important source of information to SAs during the investigation of financial violations. Brokers advise people or retail investors on

appropriate investments based on their needs and financial ability and maintain files containing the financial portfolios of their clients.

- B. Transfer agent – A transfer agent keeps a record of the name and address of each stockholder and the number of shares owned by each, and ensures that certificates presented for transfer are properly canceled and that new certificates are issued in the name of the transferee.
- C. Dividend disbursing agent – Most large corporations distribute their dividends through agents known as dividend disbursing agents, which are generally banks.

## **6.15 Commodities**

Where the stock market is involved with the buying and selling of shares (units) in corporations, the commodities market is generally involved with the buying and selling of commonly accepted quantities (units) of marketable materials. In the commodities market, the basic instrument of exchange is called a futures contract. A futures contract is a standardized contract between two parties to buy or sell a specified asset of standardized quantity and quality at a specified future date, at a price agreed today (the futures price). Futures contracts are bought and sold on commodities exchanges, which are similar to stock exchanges. Two major commodity exchanges are the Chicago Board of Trade and the Chicago Mercantile Exchange. Many brokerage firms have specialists called Account Executives who deal with commodities. The Account Executive at the brokerage firm is the most important source of information.

## **Chapter 7. FINANCIAL INVESTIGATIONS**

### **7.1 Objectives**

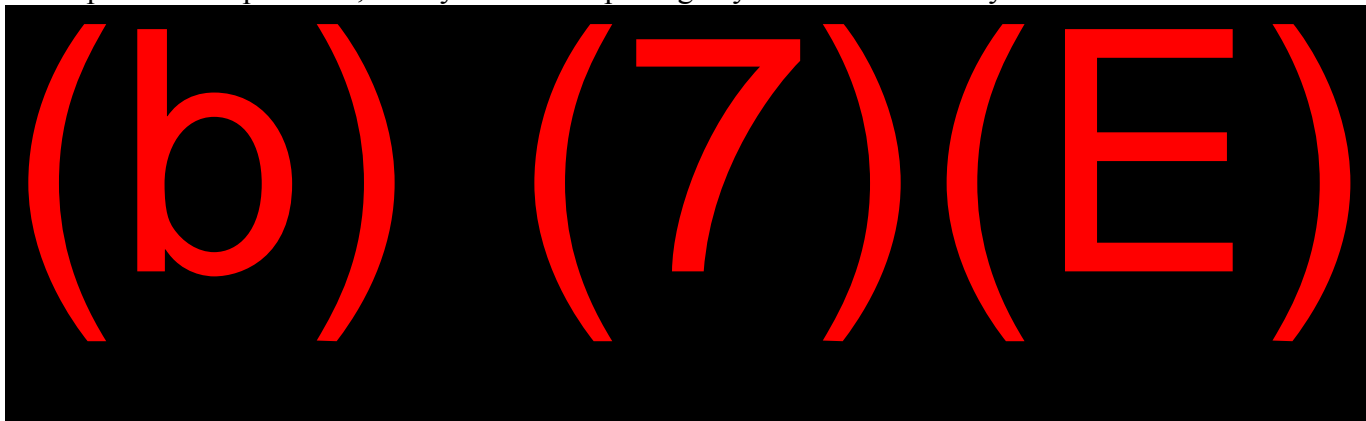
The objective of a financial investigation is to develop adequate credible evidence against violators of financial laws that will not only convince prosecutors that prosecution is warranted, but will also enable them to successfully present evidence to grand juries and to the court in both criminal and civil proceedings. SAs should exploit all possibilities, including foreign investigations, when significant amounts of currency are involved or when there is suspicion that the violation was committed in furtherance of any other violation of federal law. HSI's financial investigative objective is to detect and investigate cross-border financial crimes and money laundering violations. Investigations should develop information leading to the seizure of illicit currency and monetary instruments and/or currency and monetary instruments unlawfully entering, transiting, or leaving the United States. Seizures that appear to represent proceeds from illegal activity or the means to commit these activities should be thoroughly investigated.

### **7.2 Undercover Operations**

Undercover operations can be one of the most effective methods of identifying, disrupting, and dismantling a major money laundering organization. Properly planned and executed, an undercover approach provides first-hand knowledge of the illegal enterprise's activities. HSI



undercover financial investigations have led to the seizure and forfeiture of millions of dollars in currency, narcotics, property, conveyances, and the arrests of significant violators. Certain activities will require an undercover operation to obtain certification from the EAD of HSI. SAs should consult the Undercover Operations Handbook (OI HB 08-04), dated April 14, 2008, or as updated or superseded, if they are contemplating any undercover activity.



#### **7.4 Computer Forensics**

Many individuals store evidence of their crimes on computers, phones, and other electronic devices. Therefore, it is critical to involve a Computer Forensics Agent (CFA) in the investigation as early as possible. CFAs are responsible for the identification, preservation, acquisition, analysis, and presentation of electronic evidence and media. CFAs can also provide technical assistance with writing warrants to ensure that there is adequate justification to either seize or image digital evidence based on what will be achieved with the warrants.

If SAs believe that items sought are stored in a computer or on magnetic or digital storage devices, they must contact the local CFA. If a local CFA is not available, the Computer Forensics Unit in the HSI Cyber Crimes Center must be contacted immediately for interim support. SAs must seek the assistance of a CFA in searches of electronic devices; if necessary, they should consult the Criminal Law Section of the Office of the Principal Legal Advisor at HQ or the local Office of the Chief Counsel; outside of a border search or consent, such searches and/or seizures should be detailed in a warrant. (See the Computer Forensics Handbook (HSI HB 11-01), dated April 27, 2011, or as updated or superseded, for more information on this topic.)

#### **7.5 Evidence**

The seizing SA is responsible for the security and handling of seized currency and monetary instruments (CMIs). CMIs are considered high-risk property, therefore, must be transferred to the CBP Seized Property Specialist by close of business within 3 calendar days of the time of seizure. SAs are authorized to have temporary custody of the seized currency or monetary instruments for examination or for presentation as evidence in both criminal and civil cases. In order for the SA to have temporary custody, exceptions to the 3-day rule need to be obtained by the seizing SA's supervisor requesting a written waiver from the Asset Forfeiture Unit. The waiver (e.g., an email request) must be obtained before the expiration of the 3-day limit. (Note:

SAs should refer to the SAMEPH (CBP HB 4400-01B), dated July 2011, or as updated, for additional guidance.)

Following a seizure, SAs should consult with the local U.S. Attorney's Office (USAO) to establish whether the seized currency or monetary instruments are evidentiary or non-evidentiary. This determination must be obtained within 60 days after the seizure or 10 days after the indictment, whichever occurs first, and, upon such determination, must be reported by the SAC in writing to the Office of Fines, Penalties, and Forfeiture (FP&F) at CBP. SACs must advise FP&F immediately when currency and monetary instruments are no longer needed as evidence.

To ensure a timely decision regarding the evidentiary status of the seizure, FP&F will request the case agent to arrange for written authorization from the Assistant United States Attorney (AUSA) to retain the currency as evidence. If the seizure is less than \$5,000, written approval from the AUSA must be provided to HSI within 60 days of the seizure or within 10 days after the indictment. For amounts of \$5,000 and greater, the AUSA must also obtain written approval from the Chief, Asset Forfeiture and Money Laundering Section, Criminal Division, Department of Justice (DOJ). Unless the appropriate written permission from the AUSA is furnished, the seizure will be considered non-evidentiary and will be deposited.

## **Chapter 8. INTERNATIONAL INVESTIGATIONS AND RELATED RESOURCES**

### **8.1. Objectives**

HSI's ability to obtain financial information and documentation from foreign sources is crucial to the success of major international money laundering investigations and frequently critical to proving past violations of the BSA reporting requirements.

Foreign investigations should be requested of the appropriate HSI Attaché office(s) on currency cases whenever an SA and the first-line supervisor believe that the investigation is warranted. This decision should be based on the importance of the case to HSI's enforcement mission and must be carefully considered on a case-by-case basis.

When requested through proper channels, financial information may be obtained by the appropriate HSI Attaché(s) from selected foreign countries, depending on the specific foreign nation, the current political climate, and the existence of international agreements with that country.

### **8.2. International Operations**

HSI International Operations works with foreign counterparts in requesting assistance for HSI financial investigations or vice versa. Within the financial investigative realm, International Operations assists host country counterparts in the development and implementation of legislation and regulations, provides training to foreign officials, responds to government and

public requests for trade, travel, and business information, and supports the implementation of treaties, agreements, arrangements, and international cooperative programs.

### 8.3. Foreign Bank Secrecy Laws

Many nations and areas of the world have a legal climate that is optimal for the laundering of illegal proceeds. (b) (7)(E)

These laws generally prohibit banks from disclosing any information about their customers' bank accounts. Because failure to comply with foreign bank secrecy laws may subject the bank and bank personnel to criminal liability in their jurisdiction, U.S. investigators have had great difficulty in obtaining access to foreign bank accounts by issuing subpoenas or other means. To a great extent, these laws have made it difficult to learn about the actual operation of money launderers in these foreign financial institutions. What is known has been primarily learned by persons infiltrating the organizations that use these havens.

While it is unlikely that all operations are conducted in the same way, many utilize the same basic techniques. (b) (7)(E)

### 8.4. International Money Laundering Typologies

While criminals are constantly devising new schemes to accomplish their illicit goals, money launderers generally follow one of a few patterns:

(b) (7)(E)

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

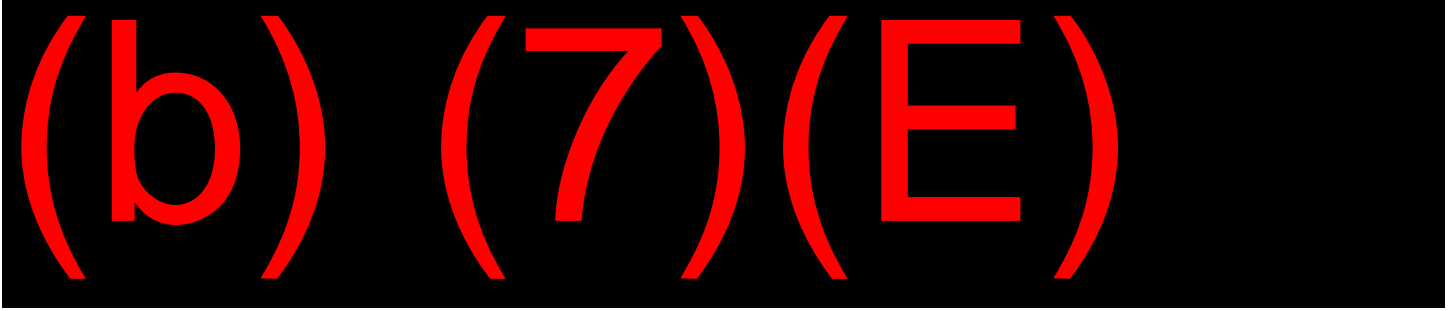
### **8.5. Foreign Bank Account Report**

The FBAR will provide investigative information on each person subject to the jurisdiction of the United States who has a financial interest in, or signature or other authority over, a bank account, securities, or other financial accounts in a foreign country exceeding \$10,000. Such persons are required to file an FBAR (TD F 90-22.1) on an annual basis.

### **8.6. International Department of a Bank**

The International Department of a bank serves its customers in dealing with persons in foreign countries. SAs should be alert to the possibility that the subject of the investigation may have used the services of this department. Both domestic and foreign letters of credit are usually issued by this department. Most banks keep records consisting of copies of the bank exchange used, correspondence files, and registers for letters of credit and bank exchanges. International banking is a specialized field. Therefore, few banks can afford the expense of a specialized department and properly trained personnel to run it. Some banks transfer credits of funds to or from larger banks with a letter of instructions for paying or receiving foreign funds for their customers.

## 8.7. Interbank Payment Networks



### 8.7.1 Clearing House Interbank Payment System

The Clearing House Interbank Payments System (CHIPS) is a privately operated multilateral payments electronic system typically used for large-value transactions in the United States, settling over trillions of dollars a day in around hundreds of thousands of interbank payments (as of the date of issuance of this Handbook). CHIPS is owned by financial institutions, and any banking organization with a regulated U.S. presence may become an owner and participate in the network. The payments transferred over CHIPS are often related to international interbank transactions, including the U.S. dollar payments resulting from foreign currency transactions and Euro placements and returns. Payment orders are also sent over CHIPS for the purpose of adjusting correspondent balances and making payments associated with commercial transactions, bank loans, and securities transactions.

### 8.7.2 Fedwire

Fedwire (also written as FedWire) is a high-speed, computerized communications network that connects all 12 Federal Reserve Banks (FRBs), their 24 branches, the offices of the Federal Reserve Board in Washington D.C. and Chicago, and the Washington D.C. office of the Commodity Credit Corporation. Fedwire has been called the central nervous system of money transfer in the United States. It enables banks to transfer reserve balances from one to another for immediate available credit and transfer balances for business customers. Using Fedwire, FRBs can settle inter-district transfers resulting from check collections, and the Department of the Treasury can shift balances from its accounts in different reserve banks quickly and without cost. It is also possible to transfer bearer short-term government securities within an hour at no cost. This is done through a procedure called Commissioner of Public Debt of the Treasury transfers, whereby one FRB retires a seller's security, while another FRB makes delivery of a like amount of the same security from its unissued stock to the buyer.

Subpoenas can be sent to the following address:



### 8.7.3 Society of Worldwide Interbank Financial Telecommunication

The Society for Worldwide Interbank Financial Telecommunication (SWIFT) is a member-owned cooperative through which financial organizations conduct business operations. SWIFT is a financial messaging service that is used by financial institutions and corporations (not natural persons) solely for sending and receiving messages; it does not transfer funds nor does it accept funds for transfer. More than 10,000 banking organizations, securities institutions, and corporate customers in more than 212 countries utilize SWIFT every day to exchange millions of standardized financial messages. SWIFT provides a proprietary communications platform, products, and services that allow customers to connect and exchange financial information securely and reliably. SWIFT enables its customers to automate and standardize financial transactions. SWIFT has its HQ in Belgium and offices in the world's major financial centers. SWIFT is solely a carrier of messages. (b) (7)(E)

(b) (7)(E)

### 8.7.4 Automated Clearing House

The ACH is an electronic network for financial transactions in the United States. ACH processes large volumes of both credit and debit transactions that are originated in batches. Rules and regulations governing the ACH network are established by the Electronic Payments Association (formerly the National Automated Clearing House Association) and the Federal Reserve.

ACH credit transfers include direct deposit payroll and vendor payments. ACH direct debit transfers include consumer payments on insurance premiums, mortgage loans, electronic check transactions, and other kinds of bills. Businesses also use ACH to collect from customers online rather than accepting credit or debit cards.

(b) (7)(E)

## 8.8 Office of Foreign Assets Control

The Department of the Treasury's Office of Foreign Assets Control (OFAC) administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals

against targeted foreign countries and regimes, terrorists, international narcotics traffickers, individuals engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy, or economy of the United States. OFAC acts under Presidential national emergency powers, as well as under authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.

Many HSI investigations pertaining to illegal imports and/or exports also involve violations of sanctions administered by OFAC and do not require any additional investigation for the establishment of OFAC charges. (b) (7)(E)

[REDACTED] This is an administrative process and, as a result, a lesser standard of proof is required.

## **8.9 Letters Rogatory**

In some cases, the USAO may wish to examine a witness in a foreign country through a procedure known as a letter rogatory. This is a formal communication, in writing, sent by a court in the United States to a court or judge of a foreign country, requesting that the testimony of a witness within the jurisdiction of the latter court be obtained under the direction of the foreign court and transmitted to the U.S. court for use in a pending action. SAs should coordinate their efforts with the appropriate HSI Attaché(s) and with DOJ Office of International Affairs (OIA) via their local AUSA.

## **8.10 Mutual Legal Assistance Treaties**

Since the first U.S. bilateral Mutual Legal Assistance Treaty (MLAT) entered into force with Switzerland in 1977, MLATs have become increasingly important for financial investigations. MLATs seek to improve the effectiveness of judicial assistance and to regulate and facilitate its procedures. Each country designates a central authority, generally the Departments of Justice of the two countries, for direct communication. MLATs generally include the authority to summon witnesses, compel the production of documents and other real evidence, issue search warrants, and assist with an investigation, prosecution, or prevention of offenses, as well as in proceedings related to criminal matters. (b) (7)(E)

(b) (7)(E)

## **8.11 Customs Mutual Assistance Agreements**

Customs Mutual Assistance Agreements (CMAAs) are “customs to customs” binding executive agreements that are negotiated and signed by the customs authorities in each country. On the U.S. side, CBP and ICE together enter into CMAAs. SAs can legally obtain information helpful to their investigations from other countries pursuant to these agreements. CMAAs allow for the exchange of information, intelligence, and documents that will ultimately assist countries in the prevention and investigation of customs offenses. This information can be used informally by the agencies; subject to certain constraints, information and records obtained under a CMAA can generally be used in domestic and foreign courts.

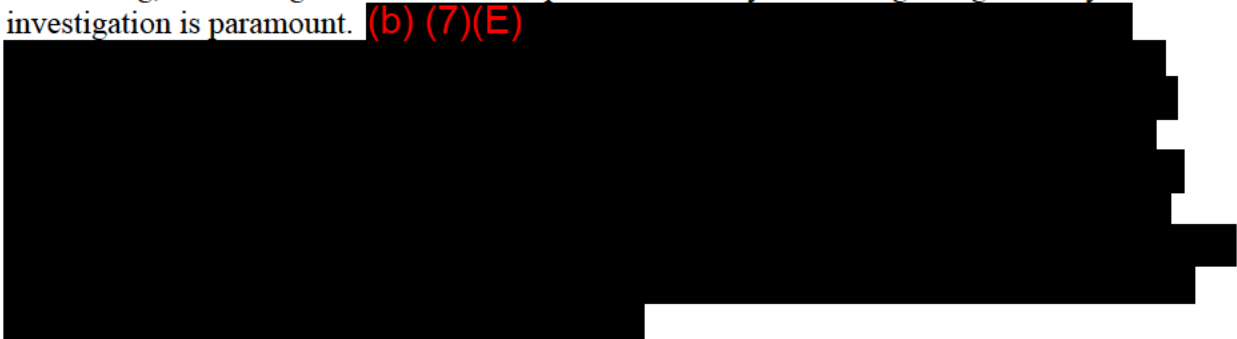
Cooperation under CMAAs is vital because of explosive growth in the volume and complexity of international trade. Great demands are being placed on customs administrations around the world. With government resources often not able to keep pace with this growing trade, customs administrations rely on mutual assistance as a powerful investigative tool. CMAAs are particularly helpful for HSI Attaché offices, and each agreement is tailored to the capacities and national policy of an individual country's customs administration.

In June 1967, the Customs Cooperation Council, later named the World Customs Organization (WCO), adopted a model bilateral convention on mutual administrative assistance for countries to implement as part of a national customs policy. The former U.S. Customs Service joined the WCO in 1970, and this model, as amended, has been the basis for U.S. negotiations of CMAAs with foreign customs administrations.

## Chapter 9. FINANCIAL CRIMES

### 9.1 Overview

The MLCA is divided into three sections: Domestic Money Laundering, International Money Laundering, and “Sting” Provisions. The pursuit of money laundering charges in any HSI investigation is paramount. (b) (7)(E)



### 9.2 Domestic Money Laundering

Domestic money laundering is codified under 18 U.S.C. § 1956(a)(1). The penalty for this violation is up to 20 years imprisonment and a \$500,000 fine. In order to prove a domestic money laundering violation, the following four elements need to be present:

A. Financial Transaction – 18 U.S.C. § 1956(c)(4) defines a financial transaction as:

(A) a transaction which in any way or degree affects interstate or foreign commerce (i) involving the movement of funds by wire or other means, or (ii) involving one or more monetary instruments, or (iii) involving the transfer of title to any real property, vehicle, vessel, or aircraft, or (B) a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree;



- B. Proceeds of an SUA – it is necessary to show that property involved in the financial transaction is derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity. 19 U.S.C. § 1956(c)(9).
- C. Knowledge – the person conducting the transaction knows that the proceeds are from a federal, state, or foreign felony.
- D. Intent/Design – either the intent of the transaction has to be to promote the SUA or evade income tax, or the violator must know that the transaction is designed in whole or in part to conceal the nature, location, source, ownership, or control of the funds.

### **9.3 International Money Laundering**

International money laundering is codified under 18 U.S.C. § 1956(a)(2). Where an individual transports, transmits, or transfers, or attempts to transport, transmit, or transfer, a monetary instrument or funds into or out of the United States, he or she may violate this statute in three cases, described below. The movement can be accomplished by any means, electronic or physical:

- A. If the intent is to promote an SUA, the investigation needs to demonstrate that the violator conducted the transaction to promote an SUA. The source of the funds is immaterial.
- B. If the intent is to conceal the nature, location, source, ownership, or control of the proceeds of an SUA, the investigation must show that the violator knew that the funds or monetary instruments represented the proceeds of some unlawful activity (not necessarily an SUA).
- C. If the intent is to avoid a transaction report under state or federal law, the investigation must show that the violator had knowledge that the funds or monetary instruments represented proceeds of some unlawful activity (not necessarily an SUA).

### **9.4 Sting Provision**

The sting provision is codified under 18 U.S.C. § 1956(a)(3). It allows for law enforcement to target individuals/organizations involved in money laundering by utilizing undercover activity. In order to prove an 18 U.S.C. § 1956(a)(3) violation, the investigation must demonstrate that the target conducted or attempted to conduct a financial transaction involving property represented (typically by an undercover SA or a confidential informant (CI)) to be the proceeds of an SUA and/or property used to facilitate an SUA. In addition, the financial transaction must be conducted or attempted with the intent to promote an SUA; conceal the nature, location, source, ownership, or control of property believed to be proceeds of an SUA; or avoid a state or federal transaction reporting requirement.

## **9.5 Monetary Transactions in Property Derived from a Specified Unlawful Activity**

18 U.S.C. § 1957 makes it a crime to knowingly engage or attempt to engage in a monetary transaction involving property derived from an SUA that has a value greater than \$10,000. The statute requires that the offense take place within the jurisdiction of the United States or that the violator is a U.S. person as defined in 18 U.S.C. § 3077. Unlike 18 U.S.C. § 1956, 18 U.S.C. § 1957 does not require knowledge that the transaction involves proceeds of an SUA; knowledge that the property is criminally derived is sufficient. For the purpose of this section of law, a monetary transaction means:

the deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument...by, through, or to a financial institution..., including any transaction that would be a financial transaction under 18 U.S.C. § 1956(c)(4)(B), but such term does not include any transaction necessary to preserve a person's right to representation as guaranteed by the sixth amendment to the Constitution. 18 U.S.C. § 1957(f)(1) is designed to target persons who accept SUA proceeds as payment, including corrupt bankers and car dealers.

## **9.6 Prohibition of Unlicensed Money Transmitting Business**

The USA PATRIOT Act amended 18 U.S.C. § 1960, Prohibition of Unlicensed Money Transmitting Businesses, in significant ways to allow for more successful prosecutions of illegal money transmitters, often referred to as MSBs. (Note: For a definition of MSBs, see Section 3.54.)

### **9.6.1. Elements of 18 U.S.C. § 1960**

There are three situations in which 18 U.S.C. § 1960 can be used to prosecute a money transmitter:

- A. When the money transmitter operates without a state license in any state where a license is required (Section 1960(b)(1)(A));
- B. When the money transmitter operates in violation of the Department of the Treasury regulations requiring that all MSBs register with FinCEN (Section 1960(b)(1)(B)); and
- C. When the money transmitter transfers or transmits funds known to be derived from a criminal offense or are intended to be used to promote or support unlawful activity (Section 1960(b) (1)(C)).

### **9.6.2. Money Laundering via Money Services Businesses**

Money laundering through the use of MSBs, also known as “non-bank financial institutions,” has become increasingly prevalent. The HSI-led multiagency El Dorado Task Force based in New

York City has conducted numerous successful investigations related to money laundering through MSBs. Generally, non-bank financial institutions include:

(b) (7) (E)

Many of these MSBs service certain ethnic enclaves within the United States. They are used by many law abiding citizens to send money back to the countries from which they emigrated. While in the United States, these citizens often send money back to relatives. This vulnerability has been taken advantage of by money launderers.

### 9.6.3. Determining Threshold Amounts for Money Services Businesses

(b) (7) (E)

(b) (7) (E)

### 9.7 Investigations Involving Movement and Smuggling of Bulk Currency

The financial investigative authorities and unique capabilities specifically given to and used by ICE enable HSI SAs to identify, dismantle, and disrupt the financial criminal enterprises that threaten the U.S. economy and national security. As a result of an increasingly effective anti-money laundering regime enacted by the U.S. banking industry, criminal and terrorist organizations are reluctant to use financial institutions to repatriate funds derived from illegal activity. They are forced to move and smuggle those funds out of the United States in cash.

HSI investigations have revealed that common money laundering methods such as BCS involve not only illicit proceeds earned from narcotics sales, but also illicit proceeds earned from all aspects of the HSI investigative mission, including alien smuggling, human trafficking, contraband smuggling, export violations, intellectual property rights violations, and more. ICE and CBP have primary jurisdiction over CMIR violations, which is expressly included as an element in the BCS statute. Therefore, the BCS statute, as an extension of the CMIR requirement, is enforced primarily by HSI and CBP.

(b) (7) (E)

(b) (7) (E)

## Chapter 10. MONEY LAUNDERING METHODS

### 10.1 Overview

Violators utilize a wide variety of money laundering methods. They are innovative and are constantly changing their methods. There are three stages of money laundering:

(b) (7) (E)

(b) (7)(E)

## 10.2 Merchandising

(b) (7)(E)

## 10.3 Commingling of Funds

(b) (7)(E)

## 10.4 Use of Corporations

(b) (7)(E)

Although the list below is not all-inclusive, SAs should know the following types of corporations:

- A. Limited Liability: In the Limited Partnership in the United States and the Limited Company in the United Kingdom, liability is limited to the investor's original investment.
- B. Limited Partnership: An organization made up of a general partner who manages a project, and limited partners who invest money but have limited liability, are not involved in the day-to-day management, and usually cannot lose more than their capital contribution.
- C. Shell Company: A company that is incorporated but has little or no significant assets or operational activity. Such corporations may be formed to obtain financing prior to starting operations, in which case an investment in them is highly risky. The term is also used to identify a corporation established by fraudulent operators as fronts to conceal tax evasion schemes.
- D. Shelf Company: This is a term used for SEC Rule 415 adopted in the 1980s, which allows a corporation to comply with registration requirements up to 2 years prior to a public offering of securities. With the registration on the shelf, the corporation, by simply updating regularly filed annual, quarterly, and related reports to the SEC, can go to the market as conditions become favorable with a minimum of administration preparations. The flexibility corporate issuers enjoy as the result of shelf registration translates into substantial savings of time and expense.
- E. Trust Company: Organization usually combined with a commercial bank, which is engaged as a trustee, fiduciary, or agent for individuals or businesses in the administration of trust funds, estates, custodial arrangements, stock transfers and registration, and other related services. Trust companies also engage in fiduciary investment management functions, estate planning, and are regulated by state law.
- F. Holding Company: Corporation that owns enough voting stock in another corporation to influence its board of directors and therefore to control its policies and management. A holding company need not own a majority of the shares of its subsidiaries or be engaged in similar activities.

## 10.5 Invoicing Schemes



**10.6 Trade-Based Money Laundering**

(b) (7) (E)

**10.7 Black Market Peso Exchange**

(b) (7) (E)

**10.8 Alternative Remittance Systems**

(b) (7) (E)

**10.8.1 Virtual Currency and Non-Traditional Banking Methods**

(b) (7) (E)



(b) (7) (E)

### 10.8.2 Bitcoin

(b) (7) (E)

### 10.8.3 Emerging Technologies in Financial Transactions

(b) (7) (E)

### 10.9 Hawala

(b) (7) (E)

(b) (7) (E)

**10.10 Doleiro**

(b) (7) (E)

**10.11 Mass Marketing Fraud**

(b) (7) (E)

(b) (7) (E)

(b) (7)(E)

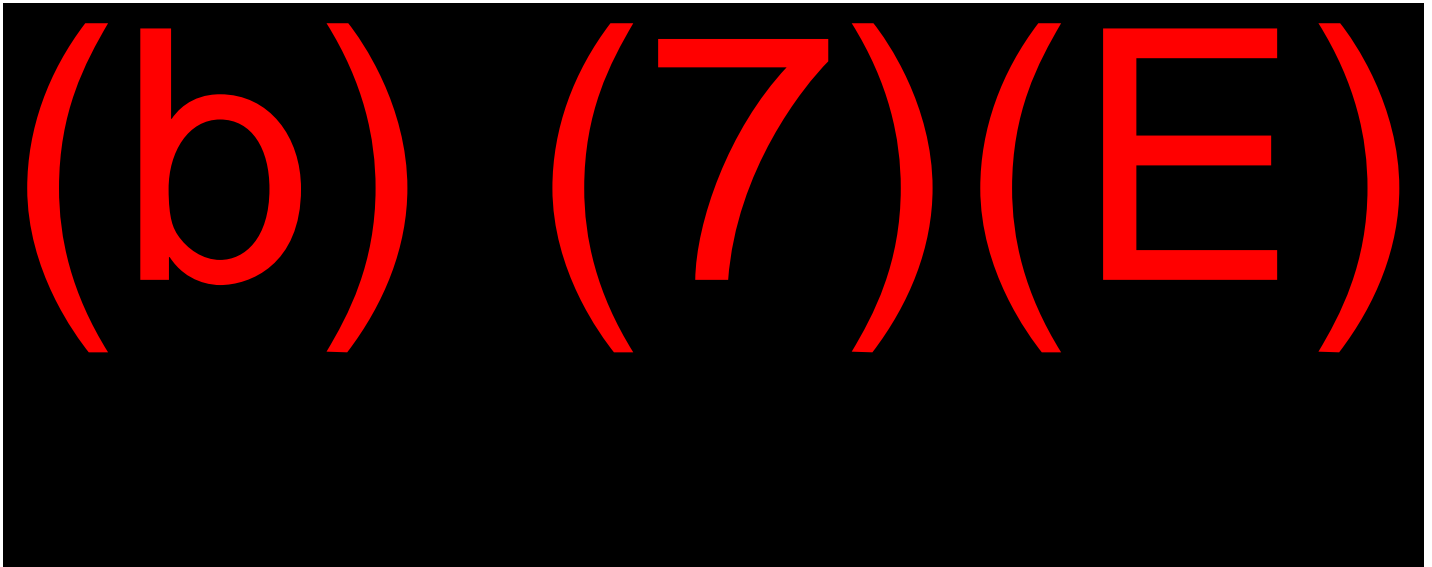
The following statutes related to telemarketing fraud are enforced by HSI:

- A. 18 U.S.C. § 371, Conspiracy to commit offense or to defraud the United States;
- B. 18 U.S.C. § 506, Seals of departments or agencies (Counterfeiting and Forgery).
- C. 18 U.S.C. § 1341, Frauds and swindles (Mail Fraud);
- D. 18 U.S.C. § 1343, Fraud by wire, radio, or television;
- E. 18 U.S.C. § 1956, Laundering of monetary instruments;
- F. 18 U.S.C. § 1961, Racketeer Influenced and Corrupt Organizations

G. 18 U.S.C. § 2314, Transportation of stolen goods, securities, moneys, fraudulent State tax stamps, or articles used in counterfeiting; and

H. 18 U.S.C. § 2326, Enhanced Penalties (Telemarketing Fraud).

### 10.12 Financial Fraud



On November 17, 2009, President Obama established by Executive Order an interagency Financial Fraud Enforcement Task Force, whose purpose is to “investigate and prosecute significant financial crimes and other violations relating to the current financial crisis and economic recovery efforts, recover the proceeds of such crimes and violations, and ensure just and effective punishment of those who perpetrate financial crimes and violations.” One of the key missions of the Task Force is to “provide advice to the Attorney General for the investigation and prosecution of cases of bank, mortgage, loan, and lending fraud; securities and commodities fraud; retirement plan fraud; mail and wire fraud; tax crimes; money laundering; False Claims Act violations; unfair competition; discrimination; and other financial crimes and violations (hereinafter financial crimes and violations).” HSI is a key member of this Task Force.

### 10.13 Check Purchasing Schemes (Smurfing)



(b) (7) (E)

(b) (7) (E)

## Chapter 11. INTERNAL REVENUE SERVICE SAFEGUARDS

IRS Publication 1075 entitled, “Tax Information Security Guidelines for Federal, State and Local Agencies,” provides guidance in ensuring that the policies, practices, controls, and safeguards employed by recipient agencies or agents and contractors adequately protect the confidentiality of the information they receive from the IRS. The guidelines outlined in Publication 1075 apply to all Federal Tax Information, no matter the amount or the media in which it is recorded. The IRS requires federal employees with access to *ex parte* tax information to receive an annual reminder of their responsibility to safeguard the information. Any unauthorized disclosure of *ex parte* tax information is prohibited by 26 U.S.C. § 6103(a).

Further information concerning the safeguard requirements is outlined in IRS Publication 1075, available at the following website address: <http://www.irs.gov/pub/irs-pdf/p1075.pdf>.

Additionally, the IRS instructional video “Protecting Federal Tax Information: A Message from the IRS” is posted on the IRS website at: <http://www.irsvideos.gov/Professional/ReturnPreparation/ProtectingTaxInformation> and is to be used as the training tool to meet the annual reminder requirement.

## **Chapter 12. MONETARY INSTRUMENTS**

### **12.1 Monetary and Negotiable Instruments**

Monetary instruments include the following: U.S. and foreign coins and currency, traveler's checks in any form, all negotiable instruments, incomplete instruments that are signed but have the payee's name omitted, and securities or stock in bearer form or otherwise in such form that title passes upon delivery. Pending finalization of FinCEN's proposed rule, monetary instruments will also include prepaid access devices for the purposes of the BSA. *See* 76 Fed. Reg. 64,049 (October 17, 2011). Monetary instruments are defined in 18 U.S.C. § 1956(c)(5), 31 U.S.C. § 5312(a)(3), and 31 C.F.R. 1010.100(dd).

Negotiable instruments are defined as personal checks, business checks, official bank checks, cashier's checks, third party checks, promissory notes, and money orders. Negotiable instruments are endorsed without restriction, made out to a fictitious payee (for the purposes of 31 C.F.R. § 1010.340), or otherwise in such form that title thereto passes upon delivery.

Incomplete instruments are negotiable instruments in bearer form and include personal checks, business checks, official bank checks, cashier's checks, third-party checks, promissory notes, and money orders, which are signed but omit the payee's name.

### **12.2 Currency**

Currency is the coin and paper money of the United States or of any foreign country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. The currency of the United States is the U.S. dollar and it includes U.S. silver certificates, U.S. bank notes, and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country. *See* 31 C.F.R. § 1010.100(m). It does not, however, include bank checks or other negotiable instruments not customarily accepted as money.

In addition to U.S. coin and currency, all foreign coin and currency which circulate and are customarily used and accepted as money in the issuing country must be reported when the amount being transported into or out of the United States exceeds \$10,000. Gold and silver bullion (such as ingots and bars) does not circulate as money anywhere in the world and is not included in the definition of a "monetary instrument" set forth by 31 C.F.R. § 1010.100(dd); therefore, bullion is not required to be reported under 31 C.F.R. § 1010.340.

Gold coins and other coins imported for non-monetary purposes also must be declared and are subject to CBP's entry requirements as merchandise. Commercial shipments exported from the United States should be accompanied by the filing of a Shipper's Export Declaration (Department of Commerce Form 7525V).

### **12.3 Bearer Form**

The term “in bearer form” can be the source of some confusion. Title to valuable papers (checks, bonds, coupons, etc.) can be transferred by delivery or by endorsement. As a general rule, if title to an instrument is transferable by delivery, it is a bearer instrument. Investment securities and other negotiable instruments in bearer form are similar to cash, i.e., anyone in possession of the instrument could negotiate it.

### **12.4 Traveler’s Checks**

Traveler’s checks (see Section 13.3.8 (C)) are issued in predetermined denominations (e.g., \$10, \$20, \$50, \$100, \$500, and \$1,000) by financial institutions. A traveler’s check is a modified form of a letter of credit. Traveler’s checks are payable at most banks throughout the world and are guaranteed by the issuing institution.

Traveler’s checks are obtained from the issuing company’s selling agent or from local banks that purchase them from issuing companies or banks and then sell them to the public. They furnish a convenient and safe currency for travelers. The signature of the payer (usually also the buyer) is written on the face of the check at the time of purchase. Space is reserved for the payer’s countersignature in the presence of the person agreeing to cash the check. The signature written in the presence of the paying bank or other institution must correspond to the signature written at the time of the purchase. Agreement of the two signatures is regarded as sufficient identification for payment of the money. The absence of this second signature does not exclude traveler’s checks from the reporting requirements. Traveler’s checks are encountered in various forms, but in any form are considered monetary instruments. 31 C.F.R. § 1010.100(dd)(ii).

### **12.5 Money Orders**

A money order is a form of credit instrument calling for the payment of money to the named payee. There are three parties to a money order: the remitter (payer), the payee, and the drawee. Money orders are issued by the U.S. Postal Service, banks, and various other private organizations. Money orders are purchased at numerous retail establishments, including convenience stores, grocery stores, and large retailers. Money orders are similar to traveler’s checks but are usually for smaller amounts. Unless restrictively endorsed or payable to a person, money orders are to be reported in accordance with the requirements of 31 C.F.R. § 1010.340.

### **12.6 Investment Securities**

The term “investment securities” has come to be indiscriminately applied to all classes of stocks and bonds, regardless of quality. Investment securities in bearer form, or otherwise in such form that title thereto passes upon delivery, are subject to the currency reporting requirements. Examples of investment securities are:



### **12.6.1 Bearer Bonds**

A bearer bond is a negotiable instrument under which a person or corporation guarantees to pay a stated sum of money on or before a specified day. It is also known as a certificate of ownership of a specified portion of a debt due by the government or a corporation to individual holders, usually bearing a fixed rate of interest. A bearer bond is presumed to be owned by the person who holds it. Thus, the owner's name is not on record with the issuer. Such bonds usually carry detachable interest coupons. Interest is collected by presentation of a coupon to the issuer's agent or the bondholder's bank. The detachable certificate of interest due is also a "negotiable instrument."

### **12.6.2 Registered Bonds**

A bond may be registered in the name of the owner as to principal or interest or both. A bond registered as to principal can be transferred only with the endorsement of the registered owner, but interest is paid by presentation of the appropriate coupon. Registered bonds are not in bearer form unless assigned in blank.

Assignment in blank is a formal transfer of title in which the space for the insertion of the new owner is left blank so that the name may be written in at any subsequent time. The assignment form will be found on the reverse side of registered bonds. Registered bonds assigned in blank become "bearer" instruments in that title passes by mere delivery.

### **12.6.3 Stock Certificate**

A stock certificate is a certificate evidencing ownership of one or more shares of a corporation's stock. These certificates are usually registered to a principal and, as such, are not subject to the reporting requirements. A share of stock differs from a bond in that a bond is a contract to pay a certain sum of money with definite stipulations as to the amount and maturity of interest payments, whereas a stock contains no promise to repay the purchase price or any amount whatsoever. The shareholder is an owner; a bondholder is a creditor. A stock certificate may be assigned in blank. (Note: The signature of this assignment must correspond with the name as written on the face of this certificate in every particular, without alteration or enlargement, or any change whatsoever.)

### **12.6.4 Negotiable Instruments**

Negotiable instruments in "bearer" form, or in such form that title thereto passes upon delivery, are subject to the reporting requirements of 31 C.F.R. § 1010.340. In addition to stock certificates (in bearer form) and bearer bonds, bank checks and gambling markers must be reported if they are in "bearer" form.

### **12.6.5 Bank Checks**

As defined by the Board of Governors of the FRS, "[a] check is generally defined as a draft, or order, upon a bank or banking house, purporting to be drawn upon a deposit of funds, for the

payment at all events of a certain sum of money, to the order of a certain person therein named, or to him or his order, or to the bearer, and payable on demand.” Checks are encountered in various forms. Some are monetary instruments (in bearer form) within the definition of 31 C.F.R. § 1010.100(dd); others are excluded from the reporting requirements set forth by 31 C.F.R. § 1010.340.

- A. Endorsed Checks: A check made payable to the order of a named person and endorsed by that person is a negotiable instrument in “bearer” form and is subject to the currency reporting requirements.
- B. “Bearer” Checks: Checks are sometimes made payable to “Currency,” “Bearer,” or “Cash,” which makes them payable to the bearer. Checks of this nature could be negotiated by anyone possessing them and, therefore, must be reported if in excess of \$10,000 or if, in combination with other monetary instruments and/or currency, exceed \$10,000. Under the UCC, when the “payee” is left blank, a check is determined to be an incomplete bearer instrument. As a practical matter, checks payable in blank are readily negotiable and can usually be cashed by anyone who fills in his or her name as the payee. Therefore, for the purposes of 31 C.F.R. § 1010.340, these checks are to be considered bearer instruments.
- C. Reporting: A check made payable to two or more persons in the alternative (“to the order of A or B”) which has been endorsed by any payee must be reported.
- D. Restrictively endorsed checks: Checks that bear restrictive endorsements such as “pay any Bank or Banker, First City Bank,” need not be reported.

The following are additional examples of restrictive endorsements:

- A. Payable to a named person: The term “monetary instrument” does not include bank checks made payable to the order of a named person that have not been endorsed or that bear restrictive endorsements.
- B. Split endorsements: A check made payable to two or more persons in the conjunctive (“to the order of A and B”) which has not been endorsed by all payees is excluded from the reporting requirements.

## **12.7 Notification of Seizure to Issuing Company**

If any of the seized monetary instruments are traveler’s checks, the seizing officer shall immediately notify the issuing company. Notification is necessary to prevent the violator/owner of the checks from cancelling or claiming the items as having been lost or stolen, thereby obtaining a refund or replacement of the checks under seizure by HSI. The date, time, and name of the person notified shall be included in the narrative of the seizure report.

The information provided to the traveler’s check company should be limited to the:

- A. Serial number of the seized checks;
- B. Quantity of checks by denomination;
- C. Date and place of purchase;
- D. Name of the SA as the point of contact; and
- E. Statute(s) violated.

The name of the check purchaser and/or violator should not be revealed. A person's reputation could be easily damaged before due process has taken its course. Should the identity of the purchaser and/or violator be revealed, such revelation could involve HSI in unnecessary litigation.

Written confirmation by the seizing officer to the issuing company should confirm the contact, name of the person contacted, etc. (excluding the check purchaser's or violator's name).

Subsequent conversion of the traveler's checks is to be coordinated with the local CBP FP&F office.

## **12.8 Prepaid/Stored Value Cards and Devices**

The terms "stored value" and "prepaid" are often used interchangeably. Although there is a distinction between the terms, "stored value" generally refers to a specific type of prepaid card or device that actually "stores" the value of the funds on a computer microchip embedded in the card. After the finalization of FinCEN's rule amending 31 C.F.R. § 1010.100(dd)(2) to include "prepaid access devices" within the definition of monetary instruments, HSI will need to determine whether the device is a "tangible prepaid access device" within the meaning of that regulation. *See* 76 Fed. Reg. 64,049 (Oct. 17, 2011).

The term "prepaid" typically refers to a card with a magnetic strip (like most credit and debit cards). The magnetic strip does not store the monetary value of the card. That information is stored in a "host" or central computer system. When a prepaid card is used for a purchase, an electronic message is routed from the merchant terminal to the host computer via a payment network, which checks the available balance and then sends an authorization or a declination to the merchant. After the finalization of FinCEN's proposed amendment to 31 C.F.R. § 1010.100(dd)(2), "tangible prepaid access device" means any physical item that can be transported, mailed, or shipped into or out of the United States and whose use is dedicated to obtaining access to prepaid funds or the value of funds by the possessor of the device in any matter regardless of to whom the access device is issued. These devices will not include credit or debit cards.

Although many different types of prepaid products exist in the market today, the largest category is retailer gift cards. These "closed-loop" cards have experienced widespread adoption, and today nearly all major merchants – from supermarkets to department stores to coffee shops –

offer some form of gift card. While it is unlikely that the value of a gift card will trigger the currency and monetary instrument reporting requirements, HSI SAs nevertheless should be aware that gift cards, like any other tangible items, can be purchased as a mechanism to launder money.

A number of financial institutions have also entered the prepaid card industry by issuing branded “open-loop” prepaid cards, which bear logos such as Visa, MasterCard, American Express, or EFT network logos. These open-loop cards are not limited to specific retailers or to the point of sale and can be tailored to suit an increasing variety of purposes, including being utilized to withdraw cash at ATMs in the United States and abroad and to conduct transactions at a physical point of sale or online. Depository institutions are subject to a full slate of anti-money laundering obligations, including a customer identification program rule pursuant to 31 C.F.R. § 1020.220.

## **12.9 Prepaid Industry – Overview**

As explained in Section 3.63, several types of prepaid or stored value cards and products – closed loop, semi-closed loop, semi-open loop, and open loop – are available in the United States:

- A. Closed loop prepaid cards can be used only for the purchase of goods or services from a single merchant.
- B. Semi-closed loop prepaid cards are similar to closed loop cards. Rather than being redeemable at only a single retailer, semi-closed loop prepaid cards can be used at multiple establishments. An example would be a card issued by a shopping mall that can be used at all businesses within the mall.
- C. Semi-open loop prepaid cards are accepted by any merchant who accepts cards corresponding to a specific payment network (i.e., MasterCard, Visa, American Express, etc.). The most significant limitation of semi-open loop cards is that they do not allow cardholders to obtain cash from ATMs; however, these cards are often reloadable.
- D. Open loop prepaid cards broadly are the same as semi-open loop cards with the added benefit of worldwide ATM functionality.

## **12.10 Prepaid Card System**

The infrastructure of the prepaid card system is comprised of a program manager, processor, issuer, card brand, and distributor. The following statements identify each level in the stored value card system:

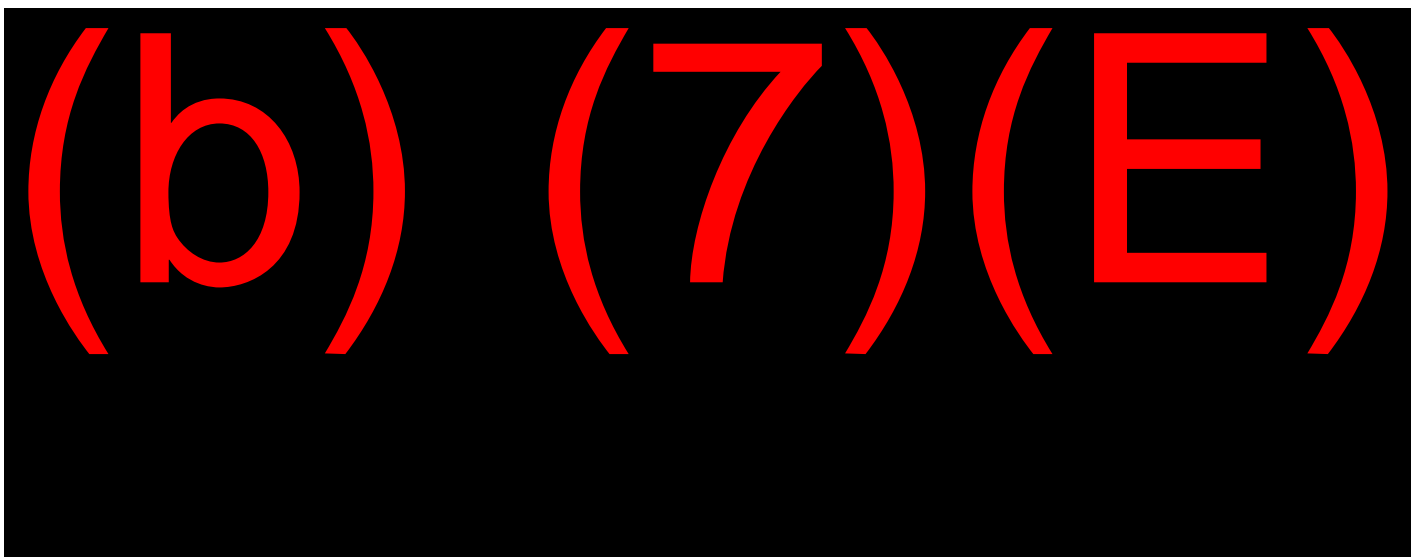
- A. Program Manager – A program manager is the owner of a prepaid card program that contracts with an issuer to establish, market, and operate prepaid card programs. Typically, program managers are responsible for establishing relationships with

processors, issuers, payments networks, and distributors; they are also responsible for establishing pooled account(s) at issuing banks. In some cases, issuers may choose to function as their own program managers.

- B. Processor – A processor facilitates payment transactions for prepaid card programs and tracks and distributes funds in pooled accounts. Although this function is generally outsourced, some issuers and program managers may choose to function as their own processors. A processor may provide one or more of the following services related to a prepaid card program: 1) card account set-up and card activation; 2) provision of authorizations for card transactions; 3) value load and reload processing; and 4) security or fraud control and reporting.
- C. Issuer – An issuer is an entity, typically a bank, which maintains pooled accounts and issues prepaid cards to a cardholder. The issuer is also called the issuing bank. The issuer must be licensed by the card brand to participate in its card programs.
- D. Card Brand – A card brand is a payment network such as American Express, Discover, MasterCard, Visa, and others that act as gateways between acquirers and issuers for authorizing and funding transactions made using prepaid cards bearing their brand. The card brands issue rules and regulations applicable to acquiring (merchant) banks and issuers that participate in their card programs.
- E. Distributor – A distributor is an organization that markets and distributes prepaid cards. The distributor typically has a contract with an issuer or a program manager.

### **Chapter 13. SOURCES OF FINANCIAL INFORMATION**

The following is a list of sources of financial information that SAs could utilize in order to further investigative goals.



(b) (7) (E)

(b) (7) (E)

(b) (7) (E)



(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

### 13.10 Retention of Records

(b) (7) (E)

### **13.11 HSI Forensic Laboratory**

During the course of a financial investigation, SAs may utilize the multiple services of the HSI Forensic Laboratory (HSI-FL). Since its creation in 1978 as part of the former U.S. Immigration and Naturalization Service, the HSI-FL has been the only U.S. crime laboratory specializing in the scientific authentication and research of travel documents and related issues. The HSI-FL provides a broad range of forensic, intelligence, and investigative support services for HSI SAs. Central to the HSI-FL's operation is its Reference Library, which contains exemplars of genuine documents, altered and counterfeit documents, prototypes, intelligence alerts, training documents, and reference material.

The HSI-FL conducts forensic examinations of virtually any document, including passports, visas, identification cards, border crossing cards, envelopes, handwritten documents, letters, vital records, and typewritten documents. Examiners attempt to determine authenticity, authorship, and any alterations to the original document.

The HSI-FL also provides support to investigators by applying scientific expertise in the full range of fingerprint services across all investigative disciplines. These services include latent print processing, examinations, expert testimony, and crime scene response.

## **Chapter 14. OBTAINING FINANCIAL RECORDS AND INFORMATION**

### **14.1 Right to Financial Privacy Act**

The Right to Financial Privacy Act (RFPA) established procedures for the government's access to, and a financial institution's disclosure of, the financial records of its customers. A financial institution can be a bank, savings and loan association, institution or holding company, a credit company, or other entity. A record is described as an original, copy, or information known to have been derived from any record held by a financial institution pertaining to a customer's relationship. Customers do not include corporations or partnerships of six or more members. The RFPA also provides for notice to the customer (see Section 14.3 for a discussion of exceptions) and affords the customer the opportunity to challenge government access except in specific situations where a delay of customer notice is authorized. The RFPA generally prohibits the government's transfer of records obtained under the RFPA to another government agency or department without meeting certain requirements and following certain procedures. Access to financial information may also be restricted or prohibited by state or other laws. RFPA can be found at 12 U.S.C. § 3401.

### **14.2 Financial Institutions**

The categories that fall under the protection of the RFPA are individuals and partnerships of five or fewer members. Large partnerships and corporations are not protected.

For the purposes of the RFPA, a financial institution is one of the following: 1) a bank or lending institution; 2) a credit card issuer; or 3) a consumer finance business.

There are five methods for obtaining financial records from a financial institution, as listed below:

#### **14.2.1 Customer Authorization**

In this case, the customer authorizes the financial institution to give the financial records to the government. The authorization must be in writing, is revocable, and has time limitations spelled out in the RFPA. An obvious problem with using this method of obtaining financial records is that the customer is put on notice that the government is looking into his or her account activity.

#### **14.2.2 Administrative Subpoena or Summons**

In order to utilize an administrative subpoena or summons, there have to be a) reasonable records relevant to legitimate law enforcement inquiry; b) a copy of the subpoena or summons, along with a statutory notice of how to challenge access, served on the customer on or before the date served on the institution; c) a notice that states, with reasonable specificity, the nature of the investigation pursuant to which the records are sought; and d) a 10-day waiting period from the date of service of the subpoena or summons (14 days if mailed) is recommended before the SA contacts the institution. Notification requirements do not apply when SAs have a legitimate law enforcement inquiry and are only seeking the name, address, account number, and type of account of any customer or ascertainable group of customers associated with a financial transaction or class of financial transactions.

#### **14.2.3 Search Warrant**

A search warrant must show probable cause that the records are evidence of a crime. A notice of the search warrant must be given to the customer within 90 days (180 days if the delay is court-authorized).

#### **14.2.4 Judicial Subpoena**

With a judicial subpoena, there has to be a) a reasonable belief that the records are relevant to legitimate law enforcement inquiry; b) a copy of the subpoena, along with statutory notice of how to challenge access, served on the customer on or before the date served on the institution; c) a notice that states, with reasonable specificity, the nature of the investigation pursuant to which the records are sought; and d) a 10-day waiting period from the service of the summons (14 days if mailed) before SAs contact the institution.

#### **14.2.5 Formal Written Request**

A formal written request should be used only if a) an administrative subpoena or summons is unavailable; b) agency regulations authorize issuance; c) there is reasonable belief that the records are relevant to legitimate law enforcement inquiry; d) a copy of the request, along with statutory notice of how to challenge access, is served on the customer on or before the date the request is served on the institution; e) a notice that states, with reasonable specificity, the nature

of the investigation pursuant to which the records are sought; and f) a 10-day waiting period from the day of service (14 days from mailing) before SAs contact the institution.

### 14.3 Exceptions to the Right to Financial Privacy Act

Financial records obtained through the use of a grand jury subpoena are exempt from the notice provisions of the RFPA. The records must be destroyed or returned to the financial institution if an indictment is not issued, unless disclosure is otherwise authorized pursuant to Rule 6(e). No records or a description of those records may be maintained other than by the grand jury where an indictment has not been issued or where the records have been otherwise authorized for use by Rule 6(e) of the Federal Rules of Criminal Procedure.

CTRs, or the information contained therein, that are required to be filed by financial institutions pursuant to provisions of the BSA, may be released to SAs without regard to other provisions of the RFPA. There is typically much useful information contained on a CTR.

### 14.4 Suspicious Activity Report Supporting Documentation

The RFPA generally prohibits financial institutions from disclosing a customer's financial records to a government agency without service of the legal process, a notice to the customer, and an opportunity to challenge the disclosure. However, no such requirement applies when FinCEN or an appropriate law enforcement or regulatory agency requests either a copy of a SAR or underlying documentation supporting the SAR.

FinCEN has interpreted regulations under the BSA as requiring a financial institution to provide supporting documentation to a SAR even in the absence of legal process. FinCEN has established that supporting documentation is "deemed to have been filed with" the SAR. Thus, financial institutions must retain copies of the supporting documentation and provide the supporting documentation upon request. These supporting documents are retained by financial institutions for 5 years. (b) (7)(b) (7)(E)

### 14.5 Grand Jury Subpoena

When information is gathered using a grand jury subpoena, SAs must remember that a secrecy rule applies to matters occurring before the grand jury, which may preclude its use for other than criminal prosecution purposes. Grand jury subpoenas can be obtained through the U.S. Attorney. The evidence collected with them is generally admissible in court; however, the subpoena may present the targets with an opportunity to purge their files of any incriminating evidence. It should be noted that grand jury subpoenas are not simply issued upon request. (b) (7)(E)

(b) (7)(E)

#### 14.6 Rule 6(e)

When handling grand jury evidence, applicable secrecy rules (Federal Rule of Criminal Procedure 6(e)) must be followed. (b) (7)(E)

(b) (7)(E)

#### 14.7 Subpoena *Duces Tecum*

(b) (7)(E)

(b) (7)(E) a subpoena *duces tecum* can be issued by the U.S. District Court requiring the production of additional evidence at trial.

#### 14.8 Financial Crimes Enforcement Network

The Department of the Treasury established FinCEN in 1990 to provide a government-wide multisource financial intelligence and analysis network. FinCEN's mission was broadened in 1994 to include regulatory responsibilities for administering the BSA, one of the nation's most potent weapons for preventing corruption of the U.S. financial system. In 2002, the Secretary of the Treasury signed Treasury Order 180-01 (Financial Crimes Enforcement Network), reestablishing FinCEN as a bureau within the Department. The mission of FinCEN is to support law enforcement efforts and foster interagency and global cooperation against domestic and international financial crimes and to provide U.S. policymakers with strategic analyses of domestic and worldwide trends and patterns. FinCEN works towards those ends through information collection, analysis, and sharing, as well as technological assistance and innovative, cost-effective implementation of the BSA and other Treasury authorities assigned to FinCEN.

In addition to the duties and powers established by the USA PATRIOT Act of 2001, codified in part at 31 U.S.C. § 310(b), the Director of FinCEN is authorized to take all necessary and appropriate actions to implement and administer the provisions of the BSA; exercise authority for enforcement of, and compliance with, the regulations cited in 31 C.F.R. Part 1010; and design and implement programs of public outreach and communication to the financial community and the general public relating to the functions of FinCEN and the Department of the Treasury's efforts to prevent and detect money laundering and other financial crimes.

(b) (7)(E)



The FIU concept expanded over the years and is now a component of the international community's approach to combating money laundering and terrorist financing.) (b) (7)(E)



#### 14.9 Dissemination of Bank Secrecy Act Information

The BSA, enacted in 1970, authorizes the Secretary of the Department of the Treasury to require certain records or reports where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism. The authority of the Secretary to administer Title II of the BSA (codified at 31 U.S.C. §§ 5311-5332 with implementing regulations at 31 C.F.R. Part 1010) was delegated to the Director of FinCEN. The USA PATRIOT Act of 2001, enacted shortly after the 9/11 attacks in America, broadened the scope of the BSA to focus on terrorist financing as well as money laundering. The Act also gave FinCEN additional responsibilities and authorities in both important areas, and established the organization as a bureau within the Department of the Treasury. FinCEN administers the BSA, conducts outreach with representatives from a variety of industries that fall under BSA regulatory requirements, and ensures that disclosures are made consistently and in accordance with applicable legal requirements, such as those contained in the BSA and the RFPA.

In its role as the administrator of the BSA, FinCEN is the central point of dissemination of BSA information. In this role, FinCEN is responsible for ensuring that SARs are used appropriately and in a manner designed to respect the significant privacy interests that are at stake. In furtherance of this mission, in June 2004, FinCEN issued a memorandum entitled, "Re-dissemination Guidelines for Bank Secrecy Act Information," which established the procedures for the re-dissemination of BSA information by appropriate users of the data. FinCEN issued the "Revised Re-dissemination Guidelines for BSA Information" in December 2006 and then again on November 28, 2007. (Note: The November 2007 version kept intact the December 2006 version with the exception of two minor technical changes to Appendices I and II.)

Guidelines apply to the re-dissemination of BSA information in the possession of a federal, state, or local government agency. Because BSA information generally consists of personal and/or sensitive financial data, the dissemination of such information is subject to strict control.

An improper disclosure of BSA information could undermine the integrity of the BSA reporting system as a whole, raise questions about the continued operation of the system, and, ultimately, lead to all users of BSA information being deprived of such information.

"BSA information" means a report (and any information in such a report that might reveal its existence) that is filed with FinCEN pursuant to the BSA and its implementing regulations, including, but not limited to, CTRs, CTR-Cs, CMIRs, FBARs, SARs (including, but not limited

to, SARs filed by banks, MSBs, broker-dealers in securities, casinos, futures commission merchants, commodities brokers, insurance companies, and mutual funds), reports of currency transactions conducted by trades or businesses (FinCEN Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business), registration forms completed by MSB (MSB registration forms), and forms completed by banks to exempt certain transactions from CTR reporting (FinCEN Form 110, Designation of Exempt Person). For the purposes of these guidelines, BSA information includes the information in a SAR, as well as discussions between officials of a financial institution and law enforcement concerning the SAR if the disclosure of such information or discussions would reveal the existence of the SAR. BSA information does not include financial institution records and other underlying facts and documents on which a SAR is based, unless the disclosure of such information would reveal the existence of the SAR. SAs who are unsure whether the existence of a SAR would be revealed in the course of disclosing information should contact the ICE FinCEN Liaison for guidance prior to disclosure.

Subject to the conditions first published in the December 2006 version of the Re-Dissemination Guidelines, a federal, state, or local government agency may disclose BSA information to another federal, state, or local government agency in support of a financial institution examination, law enforcement investigation or prosecution, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism, without first obtaining the approval of FinCEN. (The FinCEN memorandum entitled, "Revised Re-dissemination Guidelines for BSA Information," dated November 28, 2007, may be found on

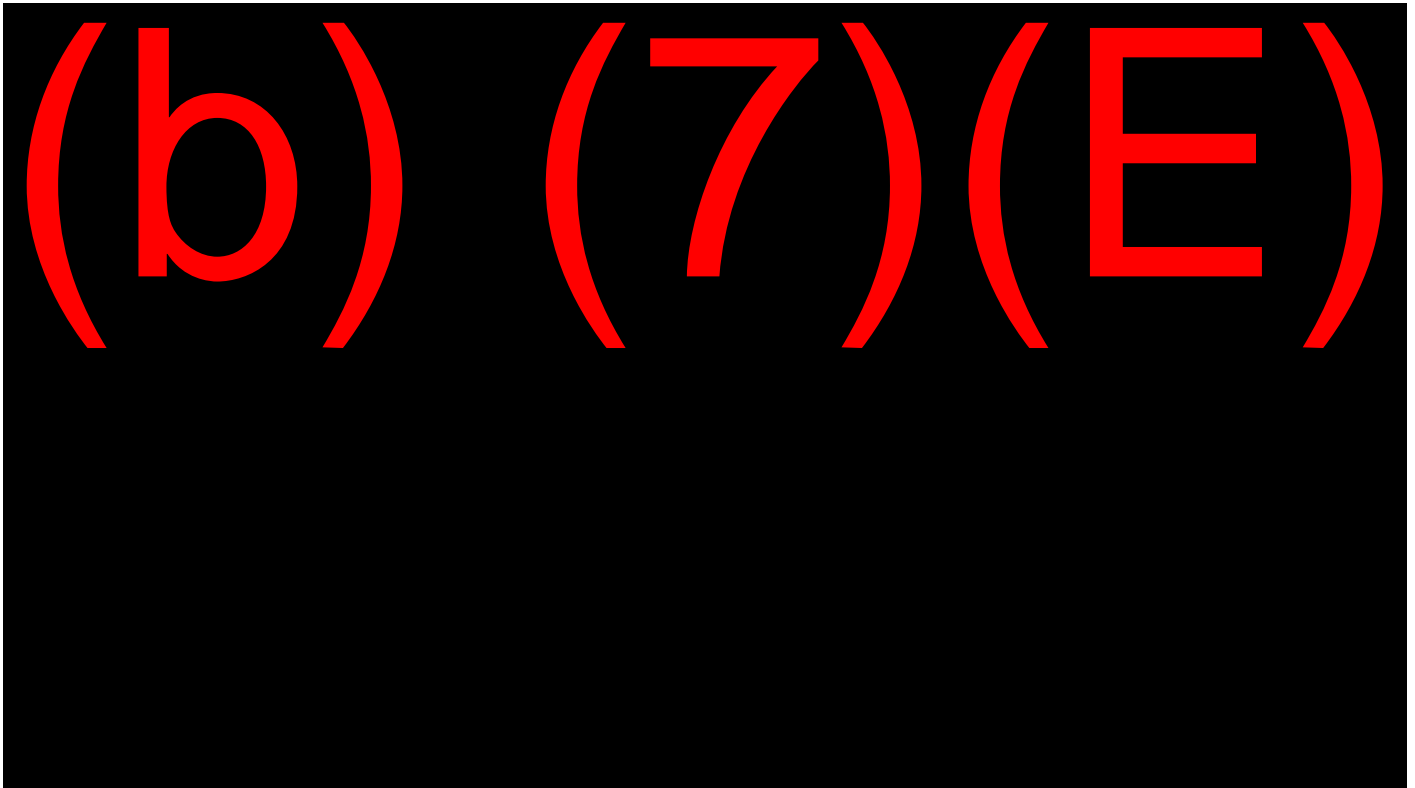
(b) (7)(E)  
(b) (7)(E)

The disclosing federal, state, or local government agency shall obtain, at the time of disclosure, the written acknowledgment of the receiving agency reflecting its understanding that the further dissemination of such information is prohibited without the prior approval of FinCEN. Copies of the acknowledgment form shall be maintained by both the disclosing and receiving agencies. The disclosing agency shall ensure that the completed acknowledgment form is mailed or faxed to FinCEN. This acknowledgment condition shall not apply when referencing BSA information in a report that is widely distributed to a number of different domestic agencies, such that obtaining acknowledgments would be impractical.

The disclosing federal, state, or local government agency shall ensure that each BSA report or item of BSA information shared contains the warning statement set forth in these guidelines pertaining to the use and further re-dissemination of BSA information, particularly when BSA information is referenced in a report that is widely distributed to a number of different domestic agencies.

The disclosing federal, state, or local government agency shall keep a record of each disclosure of BSA information. Records kept in the ordinary course of a financial institution examination (e.g., examination work papers), law enforcement investigation, prosecution, or intelligence analysis may be relied upon to comply with this requirement. In any event, such records must be maintained so that they can be provided to FinCEN within a reasonable period of time upon its request.

## 14.10 Suspicious Activity Reports



SAs must also be aware that 31 U.S.C. § 5318(g)(2) was amended by the USA PATRIOT Act to include a provision that makes it illegal for an officer or employee of the federal government or of any state, local, tribal, or territorial government within the United States who has any knowledge that a SAR was filed to disclose to any person involved in the transaction that the transaction has been reported other than as necessary to fulfill the official duties of such officer or employee.



FinCEN publishes guidelines for the re-dissemination of BSA information. The full version of the latest guidelines can be found on HSI Net. Nonetheless, prior to the disclosure of any SAR information, SAs should contact the ICE HSI Liaison to FinCEN.

## 14.11 Section 314(a) Program

This FinCEN program is in furtherance of Section 314(a) of the USA PATRIOT Act of 2001, and codified at 31 C.F.R. Part 1010.520. Through a coordinated process established by FinCEN, HSI SAs can request a search of financial institutions to ascertain if an individual, entity, or organization under investigation for terrorism or money laundering has an account or has

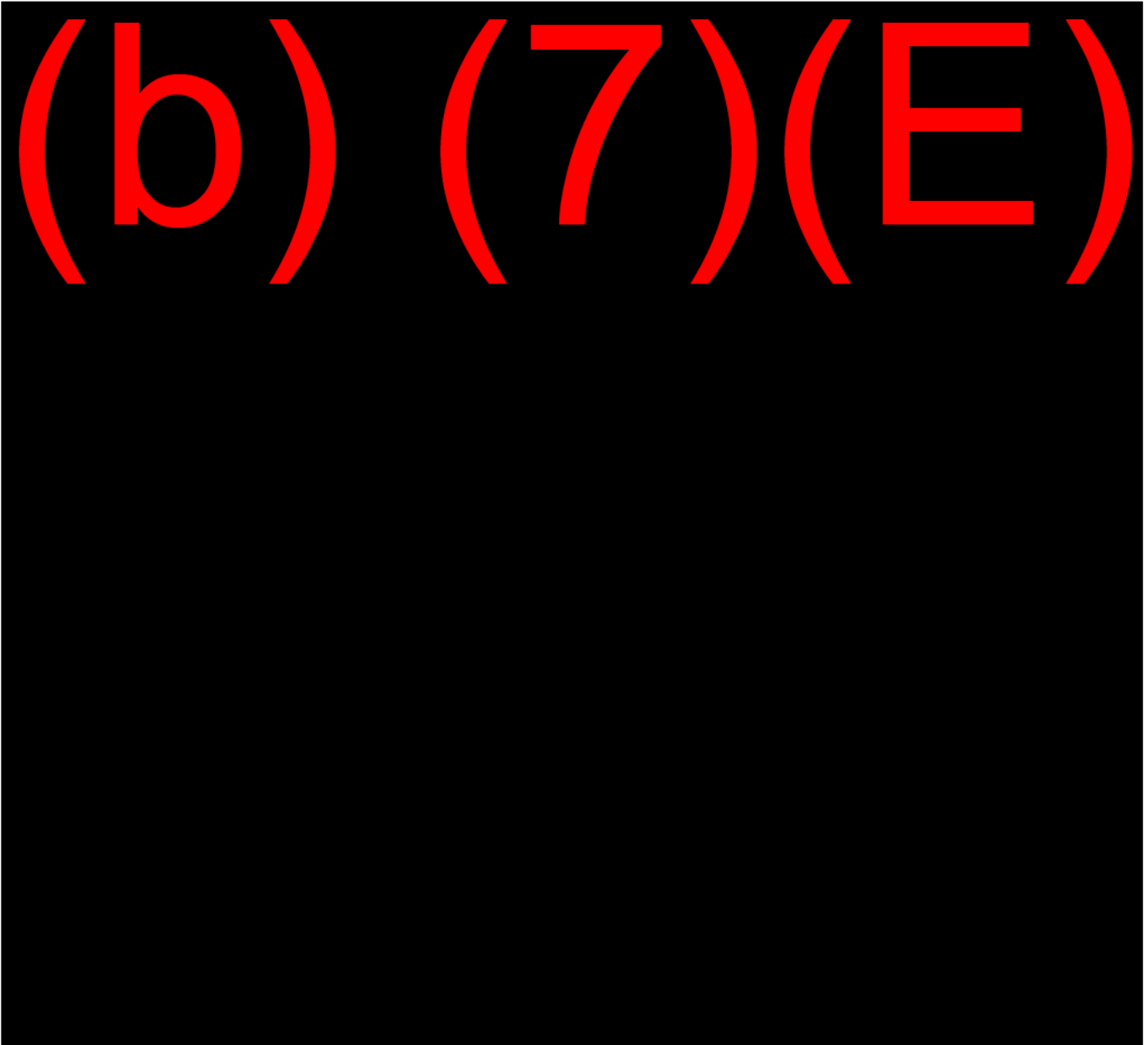
conducted transactions. The information requested under the 314(a) provision must be essential for the further development of a significant investigation and cannot be utilized as a routine investigative step. All other traditional investigative methods must have been exhausted and documented in an ROI prior to submitting a 314(a) request including, but not limited to, (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

It is important to note, however, that Section 314(a) provides pointer information only and is not a substitute for a grand jury subpoena or other legal process. Furthermore, 314(a) requests are not to be submitted for the sole purpose of asset identification in support of asset forfeiture investigations or submitted on behalf of a foreign government.

#### 14.11.1 Protocol for Submission



### 14.11.2 Deconfliction

(b) (7)(E)

### 14.11.3 Feedback

(b) (7)(E)

### 14.12 Joint Vetting Unit

(b) (7)(E)

### 14.13 Bulk Cash Smuggling Center

The national Bulk Cash Smuggling Center (BCSC) enhances HSI's ability to identify, disrupt, and dismantle criminal organizations exploiting BCS to move their illicit funds. The BCSC bolsters HSI's enforcement efforts with respect to violations of 31 U.S.C. § 5332, bulk cash smuggling into or out of the United States, over which HSI has investigative jurisdiction. The BCSC also strengthens the enforcement of 18 U.S.C. § 1960 violations (Unlicensed MSBs), as well as other financial crimes investigated by HSI.

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

BCSC

personnel also coordinate BCS training activities for HSI.

#### 14.14 TECS

TECS is an automated enforcement system that supports DHS, the Department of the Treasury, and other federal agency users. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

A working

knowledge of the system and its capabilities of querying financial data will assist SAs in conducting their investigations.

#### 14.15 FinCEN Query

FinCEN finalized the modernization of its computer systems and transitioned the responsibility of processing and storing BSA data from the IRS to FinCEN. FinCEN Query will serve as the successor systems and replace Secure Outreach and the Web Currency and Banking Retrieval System (WebCBRS). (b) (7)(E)

(b) (7)(E)

(b) (7) (E)

#### 14.16 Data Analysis and Research for Trade Transparency System

DARTTS is an HSI proprietary system that helps SAs analyze foreign and domestic trade data and BSA information. (b) (7)(E)

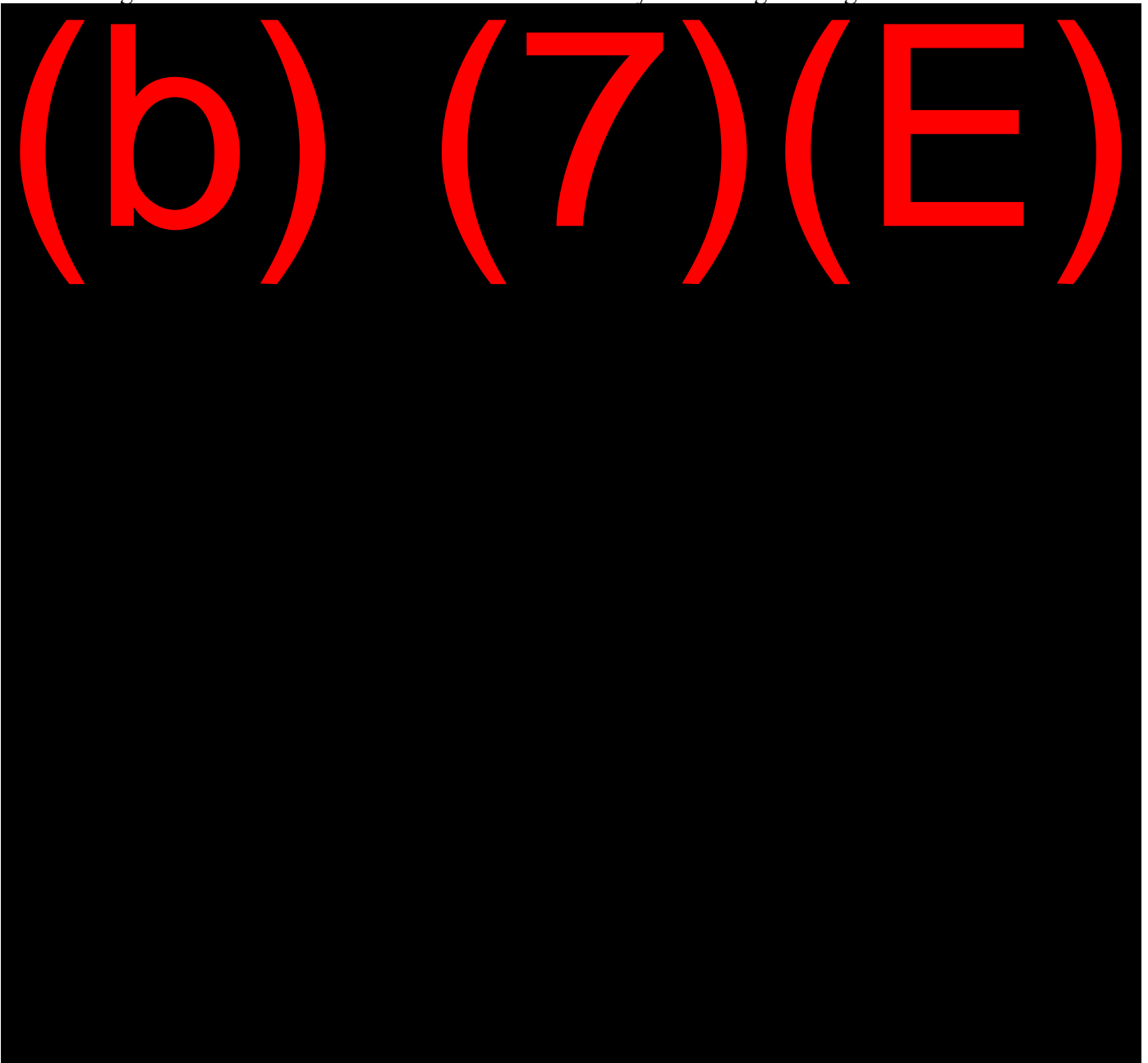
(b) (7) (E)

#### 14.17 Asset Identification and Removal Groups

(b) (7) (E)

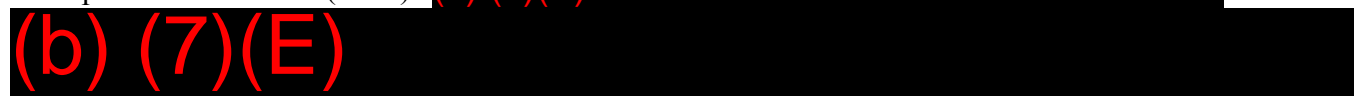
#### 14.18 Money Laundering Coordination Center

The Money Laundering Coordination Center (MLCC) previously served as the central clearinghouse for both domestic and international money laundering investigations within HSI.



#### 14.19 Special Operations Unit

The Special Operations Unit (SOU) is an HSI HQ Unit located in the multi-agency Special Operations Division (SOD). (b) (7)(E)





(b) (7) (E)

#### 14.20 Organized Crime Drug Enforcement Task Force Fusion Center

(b) (7) (E)

#### 14.21 International Organized Crime Intelligence and Operations Center

(b) (7) (E)

#### 14.22 Internal Revenue Service Criminal Investigations

In many financial investigations involving illicit funds, there is a chance that the violators are evading income tax, in addition to committing violations of laws enforced by ICE. The IRS Criminal Investigations Division is composed of SAs who are responsible for investigating IRS violations. Frequently, the investigations can be conducted jointly.

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

#### **14.24 International Criminal Police Organization**

The International Criminal Police Organization (INTERPOL) was created to foster mutual assistance between international law enforcement authorities. Its charter and mission have primarily been utilized as a police-to-police communications network between the current member countries. Each country has a National Central Bureau (NCB) where requests for investigations are processed and disseminated to the appropriate country or to the appropriate

police authority. Oversight responsibility for the U.S. NCB function alternates every 3 years between DHS and DOJ. HSI maintains a liaison at INTERPOL.

#### **14.25 Financial Action Task Force**

Since 1989, the Financial Action Task Force (FATF) has operated as an intergovernmental body whose purpose is the development and promotion of policies, both at the national and international levels, to combat money laundering and terrorism financing. FATF acts as a policy-making body that assists in the facilitation of crucial national legislative and regulatory reforms. FATF's 40+9 Recommendations are the international standard for combating money laundering and terrorist financing. The criteria set in the 40+9 Recommendations are applicable to all countries. HSI (representing ICE) is a key member of the U.S. delegation at FATF.

#### **14.26 Federal Reserve Bank**

Paper currency contains a seal showing the FRB city where the bill was originally issued. The FRB can trace paper currency to the first bank consignee if SAs have the serial numbers. Another way to identify currency used to purchase narcotics is through a random screening of U.S. dollars coming back into the United States through FRBs. Today, the U.S. Government is better able to gain intelligence on particular organizations that are smuggling currency out of the country instead of placing it in the domestic financial system as part of the money laundering process.

#### **14.27 Office of the Comptroller of the Currency**

OCC examines national banks to determine their financial position and whether they are in compliance with all applicable laws, rules, and regulations:

The following are examinations conducted by OCC:

- A. Adequacy and stability of capital;
- B. Quality of assets (primarily loans);
- C. Adequacy, competency, and integrity of management and ownership;
- D. Quality and level of earnings;
- E. Quality and level of liquidity;
- F. Records and/or reports produced;
- G. Examination reports;
- H. Working papers;

- I. Examiner interview;
- J. National Bank Surveillance System Information; and
- K. Information on foreign banks and fraudulent offshore shell banks.

#### **14.28 Federal Deposit Insurance Corporation**

The Federal Deposit Insurance Corporation (FDIC) supervises, regulates, and examines all member banks of the FRS, insured state chartered banks that are not members of the FRS, and insured state licensed branches of foreign banks.

The following are examinations conducted by the FDIC:

- A. Safety and soundness of bank operations;
- B. Compliance with Department of the Treasury currency reporting regulations; and
- C. Compliance with consumer protection and civil rights laws.

The FDIC examines bank trust departments and electronic data processing operations. It also conducts examinations in support of special investigations, as well as investigations in connection with bank applications to obtain insurance, establish branches, or merge or otherwise affect structure or ownership.

The FDIC produces:

- A. Reports of examination;
- B. Examiners' work papers;
- C. Correspondence files;
- D. Applications and change in control notices; and
- E. Reports of income and condition and uniform bank performance reports.

The FDIC has eight regional offices, each with a designated contact person for law enforcement inquiries. Some information is available to the public; other information requires a subpoena to obtain.

#### **14.29 Federal Home Loan Bank Board**

The Federal Home Loan Bank Board (FHLBB) supervises the Federal Home Loan Bank System. It also supervises the Federal Savings and Loan Insurance Corporation (FSLIC) and regulates

federally chartered savings and loan associations. The FHLBB supervises and regulates FSLIC-insured state chartered savings and loan associations.

The following are examinations conducted by the FHLBB:

- A. Compliance with insurance regulations; and
- B. Compliance with all applicable laws, rules, and regulations.

The FHLBB also conducts examinations in support of investigations in connection with savings and loan associations' applications to establish new charters or new branches or to merge.

The following are records/reports produced by the FHLBB:

- A. Examination reports;
- B. Financial income and condition data reports; and
- C. Investigatory files.

Information can be obtained through the Director, Office of Enforcement, FHLBB, in Washington, D.C., either through a written request or via a subpoena, depending on the type of information requested.

### **14.30 National Credit Union Administration**

The National Credit Union Administration (NCUA) has supervisory authority over federally chartered credit unions and state chartered, federally insured credit unions. Records obtained by the NCUA are handled by the Assistant General Counsel, Litigation and Liquidations, Washington, D.C.

The following are examinations conducted by the NCUA:

- A. Adequacy and stability of capital;
- B. Quality of assets (primarily loan portfolio);
- C. Adequacy, competency, and integrity of officers, directors, and management;
- D. Quality and level of earnings; and
- E. Quality and level of liquidity.

The following are records/reports produced by the NCUA:

- A. Examination reports;

- B. Working papers; and
- C. Interview of examiners.

### **14.31 Securities and Exchange Commission**

The SEC has records of corporate registrants of securities offered for public sale, which usually show:

- A. A description of the registrants' properties and businesses;
- B. A description of the significant provisions of the security to be offered for sale and its relationship to the registrants' other capital securities;
- C. Information as to the management of the registrants; and
- D. Certified financial statements of the registrants.

#### **14.31.1 Securities and Exchange Commission News Digest**

The SEC News Digest is a daily publication that gives a brief summary of financial proposals filed and the actions taken by the SEC.

#### **14.31.2 Securities Violations Files**

The Securities Violations Files maintain comprehensive files on individuals and firms who have been reported to the SEC as having violated federal or state securities laws. The information pertains to official actions taken against such persons, including denials, refusals, suspensions, and revocations of registrations; injunctions, fraud orders, stop orders, and cease and desist orders; and arrests, indictments, convictions, sentences, and other official actions. Information in these files with respect to any particular individual or firm is available upon request from the Director, Division of Trading and Exchanges, Securities and Exchange Commission, Washington, DC 20225.

#### **14.31.3 Securities and Exchange Commission Official Summary**

The SEC Official Summary lists the changes in beneficial ownership by officers, directors, and principal stockholders of securities listed and registered on a national securities exchange, or securities relating to public utility companies, and certain closed-end investment companies of the financial services market (e.g., life insurance, general insurance, health insurance, asset management, retail banking, wholesale banking, investment banking, etc.). A key rationale for the existence of such businesses is the existence of diversification benefits that are present when different types of businesses are aggregated (i.e., bad things do not always happen at the same time).

### 14.32 Dun & Bradstreet

Dun & Bradstreet is a national credit service company that provides financial information and analysis on foreign and U.S. companies. It provides a detailed spreadsheet presentation of a company's financial statements based on 14 Key Business Ratios, and includes a line-by-line comparison to the company's own industry for up to 3 years. It also provides background history on the company's principal officers and an overall picture of the company's operation. The Dun & Bradstreet report can be of great help to SAs; however, SAs should remember that all information provided to Dun & Bradstreet is submitted by the individual company.

### 14.33 Credit Bureaus

There are many local and national credit bureaus or credit reporting agencies. The three major credit bureaus are TransUnion, Equifax, and Experian. The information that each contains will vary from state to state, and SAs should become familiar with the ones in their area. Information from credit bureaus can include all known addresses, employers, creditors, any bankruptcy filings, lawsuits, spouses, outstanding loan balances, and any creditor inquiries concerning an individual.

The Fair Credit Reporting Act (FCRA) of 1971 restricts the availability of information from credit reporting agencies to government investigative agencies. The identifying information available under the FCRA is limited to a consumer's name, address, former addresses, places of employment, and former places of employment. Credit reports may be furnished to government investigative agencies only under the following circumstances:

- A. In response to the order of a court having the jurisdiction to issue such an order;
- B. Upon written request of the consumer; or
- C. To a person who has a legitimate business need for the information with respect to a business transaction involving the consumer, including but not limited to, credit, insurance, and employment purposes.

### 14.34 Public Records

Public records are generally records kept by local, county, state, or federal government that are accessible to the public. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

The records are useful in various investigations. The following are three ways in which they are used:

(b) (7)(E)



City or County Records include Property Records, Deeds, and Mortgages. Real estate records, which show the buying and selling of real estate, are usually called grantee/ grantor records or mortgagee/mortgagor records. The grantee or mortgagee is the buyer and the grantor or mortgagor is the seller or bank. These records are often maintained in county court houses. The transactions are recorded both chronologically and alphabetically in registers and, depending on the county, are maintained in hard copy, microfilm, microfiche, or electronic format. The indices are maintained by the seller (grantor) and the buyer (grantee).

Deeds and mortgages can be copied or transcribed. After obtaining the name of the mortgage company, a subpoena can be served on it to obtain financial statements and credit history.

- A. Tax Assessors Records – Records on property are recorded by street address, taxpayer’s name, and a legal description of the property. Some counties include personal property records (i.e., aircraft, boats, vehicles, etc.).
- B. County Engineer’s Office – Each county is mapped by county engineers. Every lot is marked on the plat maps. Information from these maps can be used for surveillance and directions to the property when executing search warrants.
- C. Building Inspector’s Office – Generally, each building permit must be obtained by filing an application, together with copies of the plans. Plans can be used for pre-raid briefings, etc.
- D. City/County Water Department Records – Records indicate the subscriber to water services which could lead to the identification of the bank used by the suspect. The records might reflect credit information or an occupation.

Civil Actions (Civil Index) are generally maintained by the Court Clerk’s office in every county. These records show:

- A. Judgments – A court order creating or affirming an obligation.
- B. Liens – The right to take and hold, or sell, property for a debtor as security for the payment of debt.
- C. Divorce – Ex-spouses may make good sources of information or witnesses.
- D. Probate – Legal establishment of the validity of wills.
- E. Business Licenses – City or county business licenses may include background data.

The County Registrar of Voters is a list of records that contain the applications completed by those persons who elect to register to vote. These applications generally show the registrant’s name, date of birth, address, driver’s license number, employer, etc.

State Corporation Commissions maintain the articles of incorporation that are filed within the respective states. Domestic corporations must incorporate under state law and must file their articles of incorporation with the Secretary of State. They may also be required to file a financial statement with the State Franchise Tax Board or other state agency responsible for collecting business/sales taxes. The following information is available:

- A. Name of the corporation;
- B. Corporate number;
- C. Date of incorporation; and
- D. Names and addresses of the president and the agent for service of process.

Most states allow law firms to file corporate documents listing the firm as officers until the report and/or minutes are filed for the first annual meeting, at which time the identity of the true corporate structure is required. This system permits true ownership identities to be unknown through name checks, names of corporate officers, original articles of incorporation, and current status and standing of the corporation. Foreign corporations need file only an application for a license with the Secretary of State, attesting to the fact that they are chartered in another state. They must also provide a name and address within the state where notice of legal action against that corporation can be served. Some states, such as California, may have a Department of Corporations which can supply information such as corporate permits, stock issuance, advertisements, and prospectuses. Most states will furnish the majority of information over the telephone.

### **14.35 Illicit Finance Unit**

Transnational criminal organizations require capital to further their illicit activity; therefore, attacking their proceeds is an effective and important tool to weaken and dismantle these organizations. The Illicit Finance Unit in the HSI Office of Intelligence utilizes innovative techniques and intelligence products in support of HSI investigations to identify anomalies within the U.S. financial system. The Illicit Finance Unit also provides all source intelligence support that focuses on the movement of illicit proceeds used by transnational criminal organizations in order to identify vulnerabilities currently exploited by criminal organizations.

The Illicit Finance Unit combines HSI law enforcement information, inter-agency partners' information, intelligence, and open-source reporting. The fusion of these information sources plays a vital role in supporting financial investigations. The goal of the Illicit Finance Unit is to provide finished analytic products that identify emerging trends in financial crimes, future patterns, and threats from criminal activity. Further, the Illicit Finance Unit assists investigators with prioritizing enforcement efforts, identifying potential systemic vulnerabilities while developing mitigating methods, and providing critical intelligence to law enforcement and intelligence community partners.

## Chapter 15. METHODS OF TRACING FUNDS

### 15.1 Overview

The large amounts of money generated by smuggling organizations, organized crime, and other criminal organizations leave a trail of financial and business records. If this paper trail is followed, it can tell a complete story, revealing the identity of major violators, and provide the principal or corroborative evidence of a criminal offense. It also forms the basis for civil proceedings to seize and forfeit bank accounts or property purchased with the proceeds of, or assets associated to, illegal activities.

When tracing funds or proving income, it may be difficult to find concealed money or hidden assets. Criminal organizations and individuals will try to disguise the money and make it appear legitimate. The methods of exchanging wealth are many and complex. SAs will be challenged to uncover hidden assets. If assistance is needed in tracing these hidden assets, FinCEN and SAs from other agencies with financial investigation jurisdiction, such as the IRS and auditors with CBP or other agencies, can be a valuable resource.

HSI SAs conduct a wide variety of investigations which very often require analyzing financial records. It is important to attempt to document the financial gain realized by a violator as a result of the illegal activity. Recognized techniques for doing so include the direct method and the indirect method of proving income. In some SAC offices, AIRGs include SAs or contractors with accounting backgrounds who are well versed in these methods. Case agents, however, may also choose to employ these methods on their own.

### 15.2 Direct Method of Proving Income



### 15.3 Indirect Methods of Proving Income



(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)



## SUPERSEDED DOCUMENTS

The Financial Investigations Handbook supersedes the following policy documents:

I. U.S. Customs Service (USCS) Office of Investigations Special Agent Handbook Chapters:

- 1) Chapter 24, Methods of Tracing Funds (January 14, 1991)
- 2) Chapter 32, Currency and Money Laundering Investigations (December 5, 1988)

II. ICE Office of Investigations Memoranda

- 1) 314(a) Requests in Support of Financial Investigations (March 3, 2009)
- 2) Access to Bank Secrecy Act Data via WebCBRS (October 1, 2006)
- 3) Access to Western Union Financial Records via the RAC Omaha (July 3, 2007)
- 4) Annual Reminder: Use and Disposition of Suspicious Activity Reports (June 2, 2009)
- 5) Annual Reminder of Internal Revenue Service Safeguard Requirements – IRS Publication 1075 (January 26, 2006)
- 6) Annual Reminder of IRS Safeguard Requirements (July 16, 2009)
- 7) Annual Reminder of Internal Revenue Service Safeguard Requirements – IRS Publication 1075 and Instructional Video” (March 23, 2010)
- 8) Annual Request for Information for IRS Safeguard Reports (January 24, 2007)
- 9) Annual Request for Information for IRS Safeguard Reports (July 15, 2008)
- 10) Annual Request for Information for IRS Safeguard Reports (February 2, 2009)
- 11) Capabilities and Use of Western Union Contract (January 31, 2009)
- 12) Disposition of Abandoned Currency (March 24, 2009)
- 13) ICE Investigations Targeting Securities and Investment Fraud (May 3, 2010)
- 14) Initiation of the ICE-led Bulk Cash Smuggling Center (August 25, 2009)

- 15) Office of Investigations Guidance on Domestic Structuring Investigations (December 2, 2009)
- 16) Operation Paycheck Annual Reminder (August 1, 2008)
- 17) Prepaid Devices/Stored Value (September 30, 2009)
- 18) Recent Money Laundering Decisions (July 25, 2008)
- 19) Source of Information for Developing Bulk Cash Investigations (December 14, 2009)
- 20) Use of 18 USC § 1952 in Combating Cash Couriers (January 21, 2010)
- 21) Usefulness of Bank Secrecy Act Information in ICE Investigations (February 14, 2009)

### III. ICE Homeland Security Investigations (HSI) Memoranda

- 1) Annual Reminder of Internal Revenue Service Safeguard Requirements – IRS Publication 1075 and Instructional Videos (June 9, 2011)
- 2) Capabilities and Use of Western Union Contract (August 1, 2012)
- 3) Coordination with HSI's Liaison to FinCEN (June 14, 2012)
- 4) Expansion of 314(a) Program (April 4, 2011)
- 5) Illicit Finance and Proceeds of Crime Unit (IFPCU) (August 10, 2010)
- 6) New HSI Liaison to FinCEN (February 5, 2013)
- 7) Use of General Financial Cases (August 6, 2010)
- 8) Web Currency & Banking Retrieval System (June 15, 2011)

**ACRONYMS**

ABA	American Bankers Association
ACH	Automated Clearing House
ADAA	Anti-Drug Abuse Act
ADP	Automated Data Processing
AIRG	Asset Identification and Removal Group
AOR	Area of Responsibility
ARS	Alternative Remittance System
ATM	Automatic Teller Machine
AUSA	Assistant United States Attorney
BCS	Bulk Cash Smuggling
BCSC	Bulk Cash Smuggling Center
BIN	Bank Identification Number
BMPE	Black Market Peso Exchange
BSA	Bank Secrecy Act
CBP	U.S. Customs and Border Protection
CFA	Computer Forensics Agent
C.F.R.	Code of Federal Regulations
CHIPS	Clearing House Interbank Payments System
CI	Confidential Informant
CMAA	Customs Mutual Assistance Agreement
CMI	Currency and Monetary Instruments
CMIR	Report of International Transportation of Currency or Monetary Instruments
CPA	Certified Public Accountant
CTR	Currency Transaction Report
CTR-C	Currency Transaction Report by Casinos
DARTTS	Data Analysis and Research for Trade Transparency System
DHS	Department of Homeland Security
DOJ	Department of Justice
EAD	Executive Associate Director
EFT	Electronic Funds Transfer
FATF	Financial Action Task Force
FBAR	Report of Foreign Bank and Financial Accounts
FBI	Federal Bureau of Investigation
FCRA	Fair Credit Reporting Act
FDIC	Federal Deposit Insurance Corporation
FHLBB	Federal Home Loan Bank Board
FinCEN	Financial Crimes Enforcement Network
FIU	Financial Intelligence Unit
FP&F	Fines, Penalties, and Forfeitures
FRB	Federal Reserve Bank
FRS	Federal Reserve System

FSLIC	Federal Savings and Loan Insurance Corporation
FTR	Financial Transaction Report
GQ	General Query
HB	Handbook
HECM	Home Equity Conversion Mortgage
HQ	Headquarters
HIFCA	High Intensity Financial Crime Area
HSI	Homeland Security Investigations
HSI-FL	Homeland Security Investigations Forensic Laboratory
HSIR	Homeland Security Intelligence Report
IBC	International Business Corporation
ICE	U.S. Immigration and Customs Enforcement
IFPCU	Illicit Finance and Proceeds of Crime Unit
IIN	Issuer Identification Number
INTERPOL	International Criminal Police Organization
IOC-2	International Organized Crime Intelligence and Operations Center
IRS	Internal Revenue Service
IVTS	Informal Value Transfer System
JVU	Joint Vetting Unit
MICR	Magnetic Ink Character Recognition
MLAT	Mutual Legal Assistance Treaty
MLCA	Money Laundering Control Act
MLCC	Money Laundering Coordination Center
MLSA	Money Laundering Suppression Act
MSB	Money Services Business
MTCN	Money Transaction Control Number
NCB	National Central Bureau
NCUA	National Credit Union Administration
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Assets Control
OFC	Organized Crime and Drug Enforcement Task Force Fusion Center
OI	Office of Investigations
OIA	Office of International Affairs
PNR	Pickup Notification Report
RFPA	Right to Financial Privacy Act
ROI	Report of Investigation
SA	Special Agent
SAC	Special Agent in Charge
SAMEPH	Seized Asset Management and Enforcement Procedures Handbook
SAR	Suspicious Activity Report
SEC	Securities and Exchange Commission
SIM	Subscriber Identification Module
SOD	Special Operations Division
SOU	Special Operations Unit
SPC	Seized Property Custodian
SUA	Specified Unlawful Activity

SWIFT	Society for Worldwide Interbank Financial Telecommunication
TBML	Trade-Based Money Laundering
TD F	Treasury Department Form
TOC	Transnational Organized Crime
UCC	Uniform Commercial Code
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act
USAO	United States Attorney's Office
U.S.C.	United States Code
USCS	U.S. Customs Service
VoIP	Voice Over Internet Protocol
WCO	World Customs Organization
WebCBRS	Web Currency and Banking Retrieval System