November 25, 2020

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551

Policy Division
Financial Crimes Enforcement Network
PO Box 39
Vienna, VA 22183

Re: Joint Notice of Proposed Rulemaking – FINCEN-2020-0002; RIN 1506-AB41

To Whom It May Concern:

I am writing in response to the above-referenced Joint Notice of Proposed Rulemaking ("Proposed Rulemaking"), entitled: "Threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittals of funds that begin or end outside the united states, and clarification of the requirement to collect, retain, and transmit information on transactions involving convertible virtual currencies and digital assets with legal tender status."

I serve as the founder and Chief Executive Officer of a registered money service business ("MSB"), specifically, a money transmitter engaged in the exchange of convertible virtual currencies, with Bank Secrecy Act ("BSA") anti-money laundering program and reporting requirements. With regard to the information seeking comment, below I provide some insight into the impact of the Proposed Rulemaking on MSBs:

1. Burden on financial institutions, including with respect to information technology implementation costs

The burdens to an MSB for amending the threshold from the statutory requirement of $3,000 includes the following:

- MSBs typically do not provide a full suite of products and services to consumers where costs, revenues, and profits can be shared, allocated, and, essentially, support one side of the business, in favor of another, rather, MSBs are usually transaction-based

businesses, not deposit-earning businesses flush with capital to absorb the costs, but also multiple customer streams to add fees to offset those costs. As such, any changes to the $3,000 requirement will have a direct downstream impact to the consumer to directly bear the costs of such changes to implement systems, processes, training, audits, etc.

- Certain MSBs have designed their businesses, including the customer journey, onboarding, or identifying information to execute a transaction based on the $3,000 requirement. Thus, any changes will impact the current engineering of systems, associated policies and procedures, monitoring, training, and audits. Moreover, loss of consumers would have a negative impact on the MSB. On the one hand, the MSB will be required to adjust and bear such cost. On the other hand, the cost will (a) be passed to the consumer increasing their cost of a transaction and (b) loss of consumers that will find an alternative method to perform the same or similar transaction at another business, which may result in pushing the consumer to areas outside of regulated financial institutions – something that should provide an ongoing concern for law enforcement officials.

2. Burden of a $250 threshold for financial institutions, however, nonbank financial institutions would not be required to collect an SSN or EIN for non-established customers engaging in transmittals of funds between $250 and $3,000 that begin or end outside the United States

The burdens to a nonbank financial institution, specifically an MSB, for not collecting SSN or EIN for non-established customers between $250 and $3,000 includes the following:

- The largest burden to an MSB is determining whether a customer is established or non-established. While this appears to be a beneficial exemption for nonbank financial institutions, rather, it increases the inconsistency of the application of the Proposed Rulemaking. An increasing number of MSBs, mainly due to financial technology companies engaging in financial services, are moving closer to a significant number of established customers vs. non-established customers. By default, as noted in the Proposed Rulemaking, financial institutions and nonbank financial institutions lean towards adopting the path of least resistance when there are broad or inconsistent rules or guidance to be applied. Furthermore, this becomes more apparent during regulatory examinations where rules and guidance collide with regulatory interpretation, examiner opinions, and industry best practices. Therefore, the distinction here is balancing different rules for different transactions, which impacts how a customer performs a single or multiple transaction.

3. Burden reduced if the Agencies issued specific guidance about appropriate forms of identification to be used in conjunction with identity verification

   - While guidance by the Agencies is very much appreciated to keep up to date of the latest trends, concerns, and illicit activities, on the specific matter of identity verification, Section 352 of the USA PATRIOT Act (the "Act"), establishing an anti-money laundering program, Section 326 of the Act, establishing a Customer Identification Program provide sufficient information for identity verification. Curiously, FinCEN recently had an opportunity to codify the customer identification requirements for MSBs in the CDD Rule (the "Rule"), however, MSBs are not considered covered financial institutions under the Rule. Thus, the requirements under the Rule do not apply to MSBs, yet, the regulated financial institutions determine from a risk-based approach on how to implement customer identification.

   - As FinCEN has already established, the appropriate forum for customer identification is to use the rulemaking process similar to the CDD Rule. Unfortunately, guidance from a regulatory agency such as FinCEN turns into de facto law in maintaining an AML program under the BSA when FinCEN routinely cites its own guidance in enforcement actions under the BSA for failing to maintain a compliant AML program. It appears FinCEN recognizes this based on its August 18, 2020 Statement on Enforcement of the Bank Secrecy Act stating "FinCEN will not treat noncompliance with a standard of conduct announced solely in a guidance document as itself a violation of law." Regulated financial institutions are charged with following the law, but also guidance that sometimes expands the reach of such law. MSB banking partners push down such guidance onto the MSBs to mitigate their own risk. Thus, the MSB must by default follow the requirements established by the banking partner, which were derived from such guidance.

4. Burden reduced if the Agencies included in the regulation funds transfers from $3,000 to $250 those that begin or end outside the US

   - Currently, there are limited reliable industry solutions to support the "reason to know" portion of the Proposed Rulemaking, thus, leaving financial institutions, especially those engaged in convertible virtual currencies, to internally develop such solutions and the burden of cost to do so or await a broader selection of industry solutions to be to meet the "reason to know" assertion.

   - The Proposed Rulemaking seeks to clarify the meaning of "money" specifically for the Recordkeeping Rule and Travel Rule. If the Agencies seek to clarify the meaning of "money" or "currency" and whether or not it lacks legal tender status, then the Agencies should seek rulemaking more broadly of these meanings that impact all rules, not just a select few isolated rules.

I appreciate your time and consideration in reviewing my comments on Proposed Rulemaking. I am available for any further dialogue from the Agencies directly.

Christopher McAlary

Chief Executive Officer
Cash Cloud Inc.