



1120 Connecticut Avenue, NW
Washington, DC 20036

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Richard R. Riese
Director
Center for Regulatory
Compliance
Phone: 202-663-5051
Riese@aba.com

April 21, 2006

Via Email

Financial Crimes Enforcement Network
Post Office Box 39
Vienna, VA 22183

Re: Cross-Border Survey
71 *Federal Register* 14289; March 21, 2006

Ladies and Gentlemen:

Thank you for the opportunity to provide input to your survey of cross border electronic transmittal (CBET) activity and to comment on the feasibility of adopting a reporting system for such transfers. To develop responses to the survey, ABA conducted conference calls with member representatives from the AML compliance and wire transfer operations departments of their institutions. In addition, some members provided, on a non-attribution basis, proprietary information about their cross-border wire transfer activity. However, ABA did not conduct a survey that enabled it to make membership-wide statements about their experience. Accordingly, we offer answers to the survey in the form of discrete observations or experiences submitted to us by a small, but diverse subset of our membership that we believe represent a variety of views characteristic of those held by the banking industry in general.

Background Information and Summary of Position

The American Bankers Association, on behalf of the more than two million men and women who work in the nation's banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

The US payment system is immensely complex, involving thousands of different institutions, operating across a wide variety of platforms, systems & payment methods. Daily volumes are massive and cannot in any way be compared with the experience in nations with existing CBET reporting requirements such as those in Australia & Canada. In most cases, the US payment system does not currently distinguish between domestic and cross-border transactions. Imposing a new requirement to include this type of information for all wire transfers would require substantial changes to US payment systems, as well as the internal systems of participating financial institutions.

ABA notes that US law enforcement agencies already have the ability to request relevant wire transfer data from financial institutions. However, in the banking industry's experience, this authority is not often used. In contrast to the current low level of law enforcement activity in this area, mandating a new reporting regime for CBET would impose substantial new compliance costs on financial institutions subject to the new rule far out of proportion with the law enforcement utility achieved. Combined with potential privacy concerns that the introduction of such a comprehensive cross border surveillance program would entail, these compliance burdens could provide an incentive to move business to offshore banks not subject to the reporting requirement.

ABA members remain unconvinced that FINCEN would be able to substantially benefit from the receipt of most of the reported information encompassed by a CBET reporting requirement. It is relevant to note in this regard that FINCEN already receives data from financial institutions on transactions of concern via the filings of SARs. As such, the ABA does not believe that the benefits to law enforcement associated with a virtually universal CBET reporting requirement would be worth the cost incurred by the American banking industry, nor the invasion of financial privacy suffered by US citizens and their businesses.

Responses to Survey Questions

Questions 3 & 4. ABA does not have a number that equates to a membership specific volume of funds transfer business activity conducted annually. However, our membership includes the industry's largest volume operations engaged in cross-border electronic transmittals (CBETs) and consequently accounts for the vast majority of transfers into and out of the United States every year.

A sample of the volume of overall funds activity reported by ABA members is quite diverse, and very impressive in terms of size. For instance, banks of less than \$10 billion in asset size reported low six figure transfers by number with a range of between 30 and 200 billion in dollar value. Larger institutions reported low seven figure transfers by number and between 2.5 and 15 trillion by dollar value—with the highest value reporter in this segment also being characterized as having several hundred billion dollars in assets under management. Finally, even those institutions generally considered among the nation's largest—but not necessarily leaders in CBETs—nonetheless reported tens of millions of wire transfers amounting to 50 to more than 150 trillion in dollar value annually.

Looking at CBETs alone, the larger institutions who are not among the banks usually identified as the industry's top leaders in CBETs, report in the range of 100 - 200 thousand cross border transfers a year valued at an even wider range of 8 billion to 2 trillion dollars. Several banks were not able to report numbers or volumes for all or parts of their international activity due to current system limitations. As a percentage of total fund transfer activity, CBETs represent somewhere between 5 and 50% of their total—but most were estimated at less than 20%.

Trying to apportion the volume of CBETs among those conducted on behalf of customers, as intermediaries, as internal settlements or as “last out, first in” institutions defies industry-wide conclusions. First some institutions do not have systems that allow them to make an accurate estimation of such a categorization of their activity. When an estimate can be ventured, the experience is diverse—but for most institutions the CBETs conducted for customers represents between 80 and 100% of their experience. Obviously leading institutions that hold themselves out as proficient in serving as correspondents for CBETs will estimate a larger volume of intermediary correspondent CBETs as well as transfers that qualify as “last out, first in.” An unscientific poll of bankers visiting ABA’s compliance web page revealed that only 1 in 4 respondents identified themselves as conducting “last out, first in” cross-border transfers.

Question 5. As suspected, many banks conduct their CBETs exclusively through a correspondent. Others conduct CBETs using both correspondents and in-house capabilities with varying percentage splits between the two. Fewer members conduct CBETs exclusively using in-house means.

This diversity of CBET experience is also reflected in the apportionment of transfers across systems used. Some members who transfer only through correspondents use exclusively Fedwire, whereas as others of this group report that they rely solely on SWIFT. Institutions that transfer using both in-house and correspondent accounts generally use both Fedwire and SWIFT—with many also using CHIPS and a few using a proprietary system. Some banks report that system choice is due to the fact that the receiving financial institution does not use a particular system, but this was not reported as a driver of their answers on the apportionment of use across systems.

Existing Record Maintenance and Compliance Process

Question 6. Responding to the question of funds transfer records systems illustrates another aspect of the diversity of the American banking industry—widely varied software solutions with differing capabilities. This variety of choice also represents differing degrees of investment and an election among record retention options. Many members reported having the capability of downloading CBETs to spreadsheets. Other institutions—including some of the largest—reported hurdles such as not being able to create reports for activity moved to their archive system or not being able to generate electronic reports from the system used for U.S dollar transfers.

Questions 7 & 8. Member experience with government subpoena of CBET information is generally characterized as rare. Most institutions reported fewer than 8 – 10 occasions a year on average. However, a report as high as 300 was also received. Costs attributed to these responses per institution varied with complexity of request and the member’s process for handling subpoenas generally. Members described research and retrieval effort, production staff time and supplies, compliance investigative unit involvement and legal office oversight. Given the infrequent occurrences, members did not translate this activity to cost figures of any confidence level. What is clear to all responding members is that a universal CBET

reporting regimen would be several orders of magnitude more expensive than the very limited subpoena process now applicable. It is also unlikely that CBET reporting requirement would eliminate subpoenas. Chances are that subpoenas would increase as reported CBETs are used to generate more investigative red flags that demand more in depth law enforcement inquiry to confirm or dismiss concerns.

Foreign transactions

Question 9. ABA members whose affiliates transmit or receive CBETs from locations in Australia or Canada have offered a few observations: Even with just two operating platforms, one bank stated that establishing the reporting process took over a year and considerable resources and coordination with existing IT partners as well as the purchase of additional third-party software. Because Canadian obligations require reporting aggregated CBETs within a 24 hour period totaling over \$10,000 for one originator, a bank will face more complicated IT logic to accomplish the aggregation function before reporting. Using a “last out, first in” reporting obligation leaves larger banks with the reporting burden, but for some it required less IT logic to be built into the reporting system. Banks with experience in Australia note that they are dealing with a couple thousand transfers a month versus millions a month coming out of the US market. This multiple orders of magnitude difference defies scalability between the Australian system and any prospective US reporting system.

Question 10. Generally, the steps each reporting institution would face to create a compliant reporting system would include evaluating the scope of the final reporting requirements and assessing gaps between new and old systems, having vendors modify their software, designing and creating new databases to keep data for reporting purposes, conducting significant training of staff, monitoring processes to assure compliance and engaging in audit reviews.

More specific member comments noted: a manual spreadsheet would have to be maintained for outgoing foreign wires, incoming wires from Fedwire are conducted as “straight through processing” and would need to be reviewed individually after receipt and a manual record be created—all requiring additional staff; some wire systems do not populate country code necessitating a vendor enhancement; a new program would be necessary to capture required data for reporting; existence of SWIFT messages is main method of separating domestic from cross-border transfers, but misses payments sent by Fedwire without SWIFT instructions, existing systems would need to be mapped to reporting format ultimately required by federal regulation.

Estimating the costs for these undertakings is very difficult, let alone trying to determine how they might vary depending on certain parameters. Real time and end of day reporting are not available from some existing systems. Thresholds—as long as there is no aggregation requirement—are not particularly complicating system wise—but distinctions can involve compliance monitoring challenges especially if the notion of structuring is applied to wire activity. Because system modifications compete for scheduling with core business demands and are budgeted over periods

of many quarters, a reporting regime cannot be implemented without long transition periods.

As for the cost impact on customers, some members believe that the expense of system changes and maintenance of reporting could affect transfer commissions. Some banks expressed the concern that U.S dollar transactions could be impacted adversely if customers saw off-shore banks offering dollar transfers. For institutions with limited cross-border traffic that they handle directly, costs of reporting could drive some banks, that have insufficient market share to implement efficiencies or price transfers effectively, out of the business and promote consolidation of traffic in fewer direct providers.

Potential Impact on Financial Institutions

Question 12. If reporting were required in a SWIFT or CHIPS format banks would still need to develop a reporting capacity to append to their business systems just to aggregate and pass along the information in existing systems to the government.

Question 13. The value of exemptions/exceptions from reporting depends on their being simple, voluntary and not subject to a qualification process, compliance requirements, supervisory criticism or government enforcement. For instance, excluding internal settlements from reporting may eliminate converting specialized proprietary systems in some banks. Exempting transfers to or from government entities may enable some banks to segregate entire segments of their business activity in a cost effective manner; provided we can all agree on what constitutes a “government entity.” However, subjecting banks to supervisory criticism for failing to parse the qualifications for exemptions can quickly complicate matters and incur associated costs or regulatory risk that would outweigh any benefit from using the exemptions.

Question 14. An answer to the question of whether the reporting requirement should be limited to certain banks is ultimately dependent on how CBETs are defined. If one seeks to capture the actual funds payment, then you are going to be focused on a Fedwire or CHIPS transfer. In this situation a “last out, first in” reporting obligation would suffice to capture the cross border transfer of funds and whatever information is attached to that transmittal. Although this method shifts much of the reporting burden to a smaller number of generally larger banks, many of the possess sufficient capacity to perform the reporting with greater efficiency than would be the case if the obligation rested with all originating or beneficiary’s institutions.

Nevertheless, if CBETs were defined to encompass only SWIFT MT 103 messages, then the reporting obligation would most likely require the originators or recipient’s bank to report. This approach contains all travel information, but simplifies reporting by eliminating correspondent transfers of the money involved and excludes bank to bank settlement transfers.

Question 15. Our sampling of banks’ capabilities to distinguish between domestic and cross border transfers through their existing automated systems reveals mixed

results. Some banks have this capacity for all means of transmittal. Other banks can only distinguish cross border transfers as those associated with SWIFT messages and those that are not—hardly a fail safe method. Banks relying on Fedwire advise us that the best solution for distinguishing between domestic and cross-border transfers would be having the Federal Reserve develop a new message type for transaction through its system. Most banks report a need to reprogram their proprietary systems or their vendors’ systems to make the distinction between domestic and cross-border transmittals.

Question 16. As noted in responding to question 14, how one defines CBETs will effect the ultimate reporting obligation. The FinCEN Survey suggests four variants that create differing operative terms and generate different categories of captured transmittals. This then leads to the idea of limiting the reporting obligation to “last out, first in.” Any all encompassing definition must deal with the variability of transmittal systems (e.g., Fedwire, CHIPS, SWIFT) that would be employed to achieve the conduct the transfer being captured. This in turn leads to a plethora of information systems, data formats, and compliance complications.

At this stage of evaluating the feasibility of instituting a cross-border wire reporting obligation, it is premature for ABA to recommend a single solution to the challenges faced. However, we suggest that implementing a comprehensive reporting program need not be the immediate objective. We should recognize that capturing only certain SWIFT messages, for instance, will generate terabytes of data not previously available to law enforcement—even if there would be information missed by selecting one channel to the exclusion of another. From a feasibility standpoint, ABA proposes for discussion whether piloting a single channel specific reporting requirement and then evaluating what has been achieved from a law enforcement perspective for what cost from an economic and privacy basis, isn’t a preferred alternative to attempting to implement a comprehensive definition-and-exception driven cross-border, cross-system regime.

In organizing this discussion, we suggest that law enforcement evaluate the information available from a particular channel as it is currently available in its existing format and consider the additional utility that would be garnered without imposing any more requirements on banks to alter their present data systems. In other words, ABA urges law enforcement to exhaust information available from established data collection formats, before creating new information elements that are not driven by present business necessity. We believe this step is a fundamental part of addressing CBET reporting feasibility.

In evaluating the single channel approach, ABA wants to stress that even a reporting obligation based on existing transaction activity and message formats will still compel some system enhancements to enable tapes or other reports to be created and filed. Furthermore, regardless of the nature of any imagined reporting requirement, the financial services industry’s responsibility should extend only to the simple transmittal of raw data, with FINCEN assuming full responsibility for the refinement and distillation of the data into a format useful to law enforcement agencies.

Conclusion

In summary, ABA contends that the prospect of mandating cross border electronic transmittal reporting will face substantial cost barriers for changing systems including the virtually prohibitive expenses in adding information elements to existing transaction information flows. In contrast to the current low level of law enforcement activity in this area, mandating a new reporting regime for CBET would impose substantial new compliance costs on financial institutions subject to the new rule far out of proportion with the law enforcement utility achieved and would incur unjustified government incursion into the financial privacy of U.S. citizens and their legitimate business conduct.

ABA and its members are available to participate in further discussions with regard to the prospects for cross border transfer reporting should there be future efforts to impose such an obligation.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Richard R. Riese".

Richard R. Riese
Director, Center for Regulatory Compliance