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Via Electronic Submission

January 4, 2021

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

RE: Docket Number 2020-0020; RIN 1506-AB47

Dear Sir or Madam:

The Independent Community Bankers of America (“ICBA”)¹ appreciates the opportunity to respond to the Financial Crimes Enforcement Network’s (“FinCEN”) proposed rulemaking. FinCEN seeks input on a proposal requiring banks and money service businesses (“MSBs”) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (“CVC”) or digital assets with legal tender status (“legal tender digital assets” or “LTDA”) held in unhosted wallets or held in wallets hosted in a jurisdiction identified by FinCEN. FinCEN is proposing to adopt these requirements pursuant to the Bank Secrecy Act (“BSA”).

Background

CVC is a medium of exchange, such as cryptocurrency, that has an equivalent value as currency or acts as a substitute for currency but lacks legal tender status. Blockchain-based CVCs (e.g., Bitcoin) are peer-to-peer systems that allow parties to transfer value directly, without the need for a centralized intermediary, such as a bank or MSB.

Some persons use the services of a bank to acquire or transact in CVC or to provide custody services for their CVC (“hosted wallets”). Other persons do not use a bank’s services, but they use a private key controlling the CVC to transact directly on a blockchain. Such persons may store the private key in a

¹*The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services. With nearly 50,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding more than \$5 trillion in assets, over \$4.4 trillion in deposits, and more than \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at www.icba.org.*

software program, or written record often referred to as an “unhosted wallet.” CVC wallets are a mechanism for storing and transferring CVC.

Hosted wallets are provided by account-based “money transmitters” or banks that receive, store, and transmit CVC on behalf of accountholders. Money transmitters doing business in the United States and U.S. banks that provide hosted wallets are already subject to the BSA’s anti-money laundering and counter-financial-terrorism program requirements and must conduct consumer due diligence with respect to accountholders and reporting suspicious activity. Users of unhosted wallets (i.e., individuals who execute a transaction to purchase goods or services on their own behalf) are not “money transmitters” and currently are not subject to those same BSA requirements.

The proposal would require banks and MSBs to submit reports of transactions involving CVC and LTDA over \$10,000. The reporting requirement would apply to a bank’s or MSB’s hosted wallet customer who engages in a transaction with an unhosted wallet or otherwise covered wallet. Further, the proposal would require banks and MSBs to keep records of a customer’s CVC and LTDA transactions and counterparties – including verifying the identity of their customers – if a counterparty uses an unhosted or otherwise covered wallet (i.e., a hosted wallet held in a foreign jurisdiction identified by FinCEN), and the transaction is greater than \$3,000.

ICBA’s Comments

ICBA recommends FinCEN allow sufficient time for financial institutions to thoroughly weigh the impact this rule will have on them. While this proposal may have merit, the manner in which it is being rushed through the rulemaking process is concerning. There are no circumstances in which a 15-day comment period on a proposed rule without knowing the implications on banks would be deemed reasonable or adequate.

ICBA is a staunch advocate for efficient BSA/anti-money laundering (“AML”) regulatory requirements that effectively support law enforcement. Community banks fully support the fight against terrorist financing and money laundering activities and are committed to supporting balanced, practical measures that will prohibit these offenders from using the financial system for illegal purposes. While banks are eager to do their part, community banks spend significant resources — in terms of both direct and indirect costs — complying with BSA and AML laws and regulations.

While most community banks do not currently provide transaction or custodial services for hosted or unhosted wallets, a 15-day comment period is insufficient for studying the impact of the proposal and providing an informed response. An abbreviated timeframe for comment that also coincides with national holidays, and COVID-19 surges make it significantly difficult for banks and other stakeholders to provide meaningful comments. The cumulative effect of an ill-informed or rushed process will preclude FinCEN from thoroughly assessing the costs, burdens, and benefits to all stakeholders by this proposed rule. In turn, this will materially hinder the implementation and the eventual examination process.

ICBA is equally concerned about language in the proposal, which indicates the agency will move swiftly to implement the proposed rule. Specifically, the agency states the “*undue delay in the implementation of the proposed rule would encourage movement of unreported or unrecorded assets implicated in illicit finance from hosted wallets at financial institutions to unhosted or otherwise covered wallets, such as by moving CVC to exchanges that do not comply with the [Anti-Money*

Laundering - Combating the Financing of Terrorism] (“AML/CFT”) requirements.”² Such a statement should not be construed as fact to justify a truncated comment period with a near-immediate effect.

Should these proposed rules go into effect, banks, especially community banks, will need a reasonable amount of time to:

- Evaluate the adequacy of their AML/CFT compliance programs to ensure they can effectively comply with these expanded requirements, including being able to identify and verify the character of their customer’s counterparty wallets, and checking the registration of a counterparty in a foreign jurisdiction identified on a future FinCEN list;
- Appraise the effectiveness of internal processes, and determine whether changes are needed; and,
- Determine if the bank should either block unhosted wallets or otherwise covered wallets, or cease offering services altogether to ensure customers and their counterparties do not engage in cryptocurrency transactions using unhosted or otherwise covered wallets.

FinCEN asserts “that there are significant national security imperatives that necessitate an efficient process for proposal and implementation of this rule.”³ An “efficient process” is not rushed but rather meticulous, careful, and deliberate. As such, ICBA recommends that FinCEN slow down this process to allow banks ample time to determine the impact this proposed rule will have on their institutions and communicate those results in a more informed response.

ICBA appreciates the opportunity to provide comments in response to this request. If you have any questions, please do not hesitate to contact me at Rhonda.Thomas-Whitley@icba.org or (202) 659-8111.

Sincerely,

/s/

Rhonda Thomas-Whitley
Vice President and Regulatory Counsel

² Notice of proposed rulemaking, Docket No. 2020-28437, P.4

³ Ibid, P.1