

RESCINDED

95-3

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Subject: Bank Secrecy Act --
Implications of Payable Through Accounts

TO: Chief Executive Officer of all National Banks, Federal Branches, and
Agencies of Foreign Banks, Department and Division Heads and Examining
Personnel

AL 1995-3 has been replaced by FFIEC BSA/AML Examination Manual.

PURPOSE

This advisory is being sent to make you aware of the potential problems connected with "payable through" accounts. These accounts, which are also known as "pass through" or "pass by" accounts, are marketed to foreign banks that would otherwise be unable to offer their customers access to the United States banking system. Although such accounts are not new, certain problems have occurred that national banks should be aware of. In response to these problems, outlined in this issuance, the OCC, working with the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the Office of Thrift Supervision, will begin monitoring such accounts more closely.

BACKGROUND

The payable through accounts have long been used in the United States by credit unions (e.g., for checking account services) and investment companies (e.g., for checking account services associated with money market management accounts) to offer their respective customers the full range of banking services that only a commercial bank has the ability to provide. The problems described in the following summary do not relate to these traditional uses of payable through account relationships.

SUMMARY

Recent use of payable through accounts as an account service being offered by national banks to foreign banks involves the U.S. banking entity opening a checking account for the foreign bank. The foreign bank then solicits customers who reside outside of the United States and who, for a fee, are provided with the means to conduct banking transactions in the United States through the foreign bank's account at the U.S. banking entity. Typically, the foreign bank will provide its customers, commonly referred to as "sub-account holders," with checks that enable the sub-account holder to draw on the foreign bank's account at the U.S. banking entity. The group of sub-account holders, which may number several hundred for one payable through account, all become signatories on the foreign bank's account at the U.S. banking entity. [Note: In a recent adaptation of the payable through account service, foreign banks have opened accounts at U.S. banking entities and then solicited other foreign banks, rather than individuals, to use their accounts at the U.S. banking entities. These second tier foreign banks then solicit individuals as customers. This has resulted in thousands, rather than hundreds, of individuals having signatory authority over a single account at a U.S. banking entity.] This results in individuals and businesses, who may not have been subject to the requirements imposed on U.S. citizens or residents for opening an account at a U.S. banking entity, possessing the ability to write checks and make deposits at a U.S. banking entity, as if such individuals and businesses were the actual account holders at the U.S. banking entity. [Note: Payable through account activities should not be confused with traditional correspondent banking relationships. Under typical correspondent banking arrangements, a smaller bank will enter into an agreement with a larger bank to process and complete transactions on behalf of the smaller bank's customers or the smaller bank itself. In such an arrangement, the smaller bank's customers are not aware of the correspondent banking relationships their bank has with other financial institutions. The smaller bank's customers certainly do not have access to their bank's account

at the larger correspondent bank. This differs significantly from the payable through account where the sub-account holders have direct control of the payable through account at the U.S. banking entity by virtue of their signatory authority over the foreign bank's account at the U.S. banking entity.]

It appears that some U.S. banking entities are not exercising the same care with respect to payable through accounts that they exercise for domestic customers who wish to open checking or other types of account relationships directly with the banking organizations. We have been advised that some U.S. banking entities simply collect signature cards that have been completed abroad and have them submitted to them in bulk by the foreign banks, and then proceed to process thousands of checks issued by the sub-account holders, as well as other banking transactions, through the foreign banks' accounts at the U.S. banking entities. These U.S. banking entities undertake little or no independent effort to obtain or verify information about the individuals and businesses who use their accounts. Possible Illegal or Improper Conduct Associated with Payable Through Accounts

The traditional use of payable through accounts by financial organizations in the United States (i.e. credit unions and investment companies) has not been a cause for concern by regulators. These organizations are regulated by federal or state agencies, or are otherwise subject to established industry standards. They also appear to have adopted adequate policies and procedures to establish the identity, and monitor the activity, of sub-account holders. In essence the credit union's depositor or the investment company's mutual fund account holders. The same types of safeguards do not appear to be present in some U.S. banking entities that provide payable through account services to foreign banks.

The OCC is concerned that the use of payable through accounts by foreign banks at U.S. banking entities may facilitate unsafe and unsound banking practices and other misconduct, including money laundering and related criminal activities. Unless a national bank is able to adequately identify and understand the transactions of the ultimate users of the foreign bank's account maintained at the national bank, all or most of whom are off shore, there is a potential for serious illegal conduct. Recent reports from law enforcement agencies confirm that some money laundering, related illicit schemes, and violations of foreign asset control regulations have involved the use of payable through account arrangements at national banks. In addition, problems have been reported regarding the use of accounts in private banking and trust departments involving bearer share corporate accounts from secrecy jurisdictions. If these accounts at national banks are used for illegal purposes, the entities could face serious financial losses as a result of asset seizures and forfeitures brought by law enforcement authorities along with damage to their reputation.

Guidelines on Payable Through Account Activities

Because of the possibility of illicit activities being conducted through payable through accounts in national banks, the OCC believes that national banks offering payable through account services should develop and maintain procedures designed to guard against possible improper or illegal use of these accounts.

These procedures must be fashioned to enable each national bank offering payable through account services to foreign banks to identify the ultimate users of its foreign bank customers' payable through accounts, including obtaining (or having the ability to obtain) in the United States substantially the same type of information on the ultimate users as the U.S. banking entity obtains for its domestic customers. This may require a review of the foreign bank's own procedures for identifying and monitoring sub-account holders, as well as the relevant statutory and regulatory requirements

placed on the foreign bank to identify and monitor the transactions of its own customers by supervisory authorities of its home country. In addition, national banks should have procedures whereby they monitor account activities conducted in their payable through accounts with foreign banks and report suspicious or unusual activity in accordance with applicable OCC criminal referral regulations.

In those situations where (1) adequate information about the ultimate users of the payable through accounts cannot be obtained; (2) national banks cannot adequately rely on the home country supervisor to require the foreign bank to identify and monitor the transactions of its own customers; or (3) the national bank is unable to ensure that its payable through accounts are not being used for money laundering or other illicit purposes, it is recommended that national banks terminate the payable through arrangement with the foreign bank as expeditiously as possible.

ACTION

In light of the potential hazards, those national banks engaging in payable through facilities should establish and maintain procedures designed to guard against the possible improper or illegal use of these facilities. As a first step, national banks should contact each foreign bank that maintains any type of payable through account with its banking organization to bring the records related to its accounts into conformity with the aforementioned guidelines. National Bank Examiners will review the procedures related to payable through accounts, to the extent that a bank conducts such activities. Examiners will review any improvements or enhancements made to ensure that payable through accounts are not misused and efforts, if needed, to contact foreign banks that maintain payable through accounts at national banks in the U.S.

FOR FURTHER INFORMATION: contact your district office or John McDowell in the Consumer and Fiduciary Compliance Department at (202) 874-4846.

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