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The Financial Crimes Enforcement Network Issues Notice of Proposed Rulemaking to Establish More Comprehensive Regulatory Framework for Non-bank Prepaid Access

On June 21, 2010, the Financial Crimes Enforcement Network ("FinCEN") issued a notice of proposed rulemaking ("Notice") proposing to revise the Bank Secrecy Act ("BSA") with regard to stored value or prepaid access. The proposed changes are intended to address regulatory gaps that have resulted from the proliferation of prepaid innovations over the last ten (10) years and their increasing use as an accepted payment method.

The Notice is mandated under the Credit Card Accountability, Responsibility and Disclosure Act of 2009 and covers prepaid devices such as plastic cards, mobile phones, electronic serial numbers, key fobs and/or other mechanisms that provide a portal to funds that have been paid for in advance and are retrievable and transferable.

Under the Notice, non-bank providers of prepaid access would be subject to BSA regulations. To make BSA reports and records valuable and meaningful, the proposed changes impose obligations on the party within any given prepaid access transaction chain with predominant oversight and control, as well as others who might be in a position to provide meaningful information to regulators and law enforcement, such as prepaid access sellers.

The changes proposed in the Notice are intended to address the potential use of prepaid access as a means of furthering money laundering, terrorist financing or other illicit transactions through the financial system.

Among the major features of the Notice are:

1. Renaming "stored value" as "prepaid access" to allow for future changes in technology and prepaid devices;
2. Deleting the terms "issuer" and "redeemer" of stored value and adding the terms "provider" and "seller;"
3. Placing registration requirements on providers of prepaid access and suspicious activity reporting, customer information recordkeeping and new transactional recordkeeping requirements on both providers and sellers of prepaid access; and
4. Exempting certain categories of prepaid products and services posing lower risks of money laundering and terrorist financing from certain requirements.

A copy of the Notice may be found at http://www.fincen.gov/statutes_regs/frn/pdf/Prepaid%20Access%20NPRM.pdf

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