

SCHWARTZ & BALLEN
1990 M STREET, N.W. · SUITE 500
WASHINGTON, DC 20036-3418
(202) 776-0700

FACSIMILE
(202) 776-0720

SCHWARTZANDBALLEN.COM

M E M O R A N D U M

September 19, 2002

To Our Clients and Friends

Re: Final Rule Implementing USA Patriot Act:
Foreign Bank Correspondent Accounts

SUMMARY

The USA Patriot Act amended the Bank Secrecy Act (“BSA”) by adding new anti-money laundering provisions concerning correspondent accounts maintained by financial institutions for foreign banks.

Last December the Treasury Department issued a proposed rule for implementing these provisions. Based on comments received, the Treasury Department has now issued a final rule which is effective in late October.

REQUIREMENTS

The final rule provides that a covered financial institution:

- may not establish, maintain, administer, or manage a correspondent account in the U.S. for, or on behalf of, a foreign shell bank that is not a regulated affiliate;
- shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank is not being used by the foreign bank to indirectly provide banking services to a foreign shell bank;
- that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the

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owners of each such foreign bank whose shares are not publicly traded and the name and street address of a U. S. resident who is authorized, and has agreed, to be an agent to accept service of legal process for records regarding each such account;

- shall obtain from each foreign bank for which it maintains a correspondent account, at least once every three years, a certification or recertification concerning the correspondent account; and
- must close within a commercially reasonable time any correspondent account for which it has not obtained a certification or recertification from the foreign bank within a prescribed period of time.
- may not reestablish a closed correspondent account nor may it open any other correspondent account for the foreign bank until certification is obtained from the foreign bank.

CERTIFICATION PROCESS

A covered financial institution will be deemed to be in compliance with the final rule if it obtains at least once every three years a certification or recertification from the foreign bank indicating that is not a shell bank and that any correspondent accounts it has with the covered financial institution are not being used to provide banking services to a shell bank and providing the required information on ownership and process agent. The Treasury Department has developed a model certification form that covered financial institutions may send to foreign banks and which will grant the covered financial institutions “safe harbor.”

A foreign bank may execute a global certification that is applicable to all correspondent accounts which it maintains with a covered financial institution. A covered financial institution may obtain a copy of a foreign bank’s certification either directly from the foreign bank or indirectly from a central database or another covered financial institution.

A covered financial institution is expected to review the form to ascertain that all information required is included and seek to obtain any information that is missing from the certification. A covered financial institution must also “take appropriate measures” to verify any information that it “knows, suspects, or has reason to suspect” may be incorrect.

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DEFINITIONS

“Covered financial institution” is:

- an “insured bank,” as defined in the Federal Deposit Insurance Act;
- a commercial bank, trust company or private banker;
- an agency or branch of a foreign bank in the United States;
- a thrift institution or credit union;
- a broker-dealer registered with the Securities and Exchange Commission;
- a corporation acting under Section 25A of the Federal Reserve Act; and
- a broker or deal registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

Foreign branches of insured banks are not included within this definition.

“Correspondent account” is an account established by a covered financial institution for a foreign bank to receive deposits from, to make payments or other disbursement on behalf of a foreign bank, or to handle other financial transaction related to the foreign bank. The term “account”:

- means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and
- includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit

Most isolated or occasional transactions that a covered financial institution conducts with a foreign bank would not constitute a correspondent account for purposes of the rule.

“Foreign bank” is as defined in the current BSA regulations (i.e., a bank organized under foreign law, or an agency, branch or office located outside the United States of a bank).

“Foreign shell bank” is a foreign bank without a physical presence in any country. “Physical presence” means a place of business that:

- is maintained by a foreign bank;
- is located at a fixed address (other than solely an electronic address or a post office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

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- (1) employs one or more individuals on a full-time basis and
- (2) maintains operating records related to its banking activities; and
- is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

“Owner” means any person who, directly or indirectly:

- owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or
- controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

“Regulated” affiliate means a foreign shell bank that:

- is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and
- is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union or foreign bank.

The final rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>

If you have any questions concerning this final rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.