

SCHWARTZ & BALLEN
1990 M STREET, N.W. · SUITE 500
WASHINGTON, DC 20036-3418

(202) 776-0700

FACSIMILE
(202) 776-0720

SCHWARTZANDBALLEN.COM

MEMORANDUM

July 25, 2002

To Our Clients and Friends

Re: USA Patriot Act: Anti-Money Laundering Programs
For Correspondent and Private Bank Accounts

SUMMARY

In May the Treasury Department issued a proposed rule to implement Section 312 of the USA Patriot Act (see our memo dated May 30). Section 312 amends the Bank Secrecy Act (“BSA”) to require each U.S. covered financial institution¹ that establishes, maintains, administers or manages a correspondent account or a private banking account in the United States for a non-U. S. person to establish appropriate, specific, and where necessary, enhanced, due diligence policies, procedures and controls that are reasonably designed to enable the U.S. financial institutions to detect and report instances of money laundering through these accounts.

The Treasury Department is still reviewing comments received on the proposed rule and is not in a position to issue a final rule. As Section 312 became effective July 23 regardless of whether a final rule was issued, the Treasury Department is issuing an interim rule which:

- defers application of Section 312 pending issuance of a final rule to financial institutions other than banks, securities brokers and dealers, futures commission merchants and introducing brokers
- requires banks² to comply with due diligence provisions of Section 312 relating to correspondent accounts and private banking accounts

¹ The term “covered financial institution” includes depository institutions, broker-dealers, mutual funds, money transmitters and operators of credit card systems.

² Banks are an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act), a commercial bank, an agency or branch of a foreign bank in the United States, a federally insured credit union, a thrift institution, and a corporation acting under section 25A of the Federal Reserve Act.

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- requires securities brokers and dealers, futures commission merchants and introducing brokers to comply with the due diligence provisions of Section 312 relating to private banking accounts but deferring compliance with provisions relating to correspondent accounts
- provides guidance to these financial institutions in complying with the due diligence requirements of Section 312 until Treasury issues a final rule.

This interim rule is effective until October 25, 2002, by which time Treasury anticipates issuing a final rule.

DUE DILIGENCE PROGRAMS FOR CORRESPONDENT ACCOUNTS

The due diligence program for correspondent accounts that a bank must establish under Section 312 will be reasonable in Treasury's view if it focuses compliance efforts on the correspondent accounts that pose a high risk of money laundering based on an overall assessment of the money laundering risks posed by the foreign correspondent institution. Banks should accord priority to conducting due diligence on

- high-risk foreign banks for which it maintains correspondent deposit accounts or their equivalents, particularly those correspondent accounts used to provide services to third parties
- high-risk correspondent accounts maintained for foreign financial institutions other than foreign banks (e.g., non-bank money transmitters)
- accounts opened after July 23, 2002.

Treasury acknowledges that a bank will be unable to implement final and comprehensive due diligence policies and procedures for Section 312 until Treasury issues a final rule. Treasury expects, however, that programs implemented prior to the final rule will comport with existing best practices standards for banks that maintain correspondent accounts for foreign banks.

Section 312 requires a bank to establish an enhanced due diligence program for certain foreign banks designated as high risk. Treasury expects that such an enhanced program implemented prior to the final rule for those correspondent accounts maintained by high risk foreign banks will:

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- comport with existing best practice standards for banks that maintain correspondent accounts for foreign banks
- focus on those correspondent accounts that are maintained by a foreign correspondent bank deemed high risk for money laundering
- extend priority to accounts opened after July 23, 2002

DUE DILIGENCE PROGRAMS FOR PRIVATE BANKING ACCOUNTS

Treasury believes that, pending the issuance of a final rule, a due diligence program for private banking accounts³ will be reasonable if the program is focused on those account that present a high risk of money laundering and is consistent with applicable government guidance on private banking accounts. As with correspondent accounts, priority is to be given to accounts opened after July 23, 2002.

If you have any questions concerning this interim rule, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700. The interim rule can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

³ For purposes of the proposed rule, a private banking account is one or more accounts that requires minimum aggregate deposits of at least \$1 million, is established for individuals and which is assigned to or administered or managed by an agent, employee, or officer of the financial institution acting as a liaison.