

SCHWARTZ & BALLEN LLP

1990 M STREET, N.W. · SUITE 500
WASHINGTON, DC 20036-3465

(202) 776-0700

FACSIMILE
(202) 776-0720

www.schwartzandballen.com

MEMORANDUM

May 2, 2003

To Our Clients and Friends

Re: Final Patriot Act Rules on Customer Identification

The Department of the Treasury (“Treasury”) and the federal financial institution regulatory agencies, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration have issued a final rule on customer identification that applies to banks, savings associations, credit unions, private banks, and trust companies (“banks”).

This rule implements section 326 of the USA Patriot Act, which requires banks to establish procedures for identifying and verifying the identity of customers opening new financial accounts. Banks must fully implement this rule by October 1, 2003.

Similar rules have been issued for mutual funds and broker-dealers by Treasury and the Securities and Exchange Commission and for futures commission merchants and introducing brokers by Treasury and the Commodity Futures Trading Commission.

DEFINITIONS

- *Account* – a formal banking relationship established to provide or engage in services, dealings or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extensions of credit¹. An account does not include:
 - a product or service where a formal banking relationship is not established with a person (e.g., check cashing, sale of money orders, wire transfers);

¹ The term also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian and trust services.

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- an account that a bank acquires through an acquisition, merger, purchase of assets or assumption of liabilities; and
- an account opened to participate in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.
- *Bank* – Any financial institution defined as a “bank” under the Bank Secrecy Act and subject to regulation by one of the federal financial institution regulatory agencies and credit unions, private banks and trust companies that do not have a federal functional regulator. A foreign branch of an insured U.S. bank is not considered a bank under this rule.
- *Customer* – A person who opens a new account and an individual who opens a new account for an individual who lacks legal capacity (such as a minor) or for an entity that is not a legal person (such as a civic club). For deposits made by a broker, the customer is the broker who opens the account, not the clients of the broker for whom the funds are deposited.

Customer does not include a person who has an existing account with the bank (provided that the bank has a reasonable belief that it knows the true identity of the person), regulated financial institutions, governmental entities and U.S. operations of publicly-traded companies. Signatories to accounts are not considered customers under the rule.

REQUIREMENTS

A bank must implement a written Customer Identification Program (“CIP”) appropriate for its size, location, and type of business that, at a minimum, includes procedures for:

- verifying the identity of each customer to the extent reasonable and practicable;
- making and maintaining a record of all information used to verify a customer’s identity;
- determining whether the customer appears on any list of known or suspected terrorist or terrorist organizations designated as such by Treasury; and
- providing bank customers with adequate notice that the bank is requesting information to verify their identities.

In addition, a bank may include procedures in its CIP indicating when it will reply on another financial institution (including an affiliate) to perform any procedures contained in the bank’s CIP.

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The CIP must be in writing and must be part of the institution's anti-money laundering program. A bank required to have an anti-money laundering program does not have to have its CIP separately approved by its board of directors although it must be approved as part of the bank's anti-money laundering program. Boards of directors of credit unions, private banks and trust companies without a federal functional regulator, however, must approve the CIPs of these organizations as these organizations are not at this time required to have anti-money laundering programs.

Verification of Identity

The final rule requires that a CIP must include risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable, within a reasonable period of time after the account is opened. The CIP must specify the identifying information that a bank must obtain from a customer opening an account. The bank must obtain, at a minimum, from each customer the following information: name, date of birth, address and identification number².

The CIP must describe when the bank will verify identity through documentation, including identifying the documents that will be used, and when the bank will verify identity through non-documentary methods, including a description of the procedures the bank will use. The bank, however, will not be responsible for verifying the validity of the documents. The CIP must also address situations where:

- an account is opened by a customer that is not an individual and it is necessary to obtain information about individuals that control the account (including signatories) in order to verify the identity of the customer;
- a customer opens an account without appearing at the bank in person; and
- the bank is unable to verify the customer's identity.

Maintaining Verification Records

The CIP must include procedures for making and maintaining a record of all information obtained in verifying a customer's identity. The record must include all identifying information about the customer (e.g., name, address, date of birth and identification number) and a description, but not a copy, of the document(s) the bank relied upon to verify identity, the methods used to verify identity and the resolution of any discrepancies discovered when verifying identity. The bank must maintain identifying customer information for five years after the date the account is closed but only needs to maintain the records concerning the documents and methods relied upon to verify identity for five years after the record is made.

² A bank offering credit card accounts may acquire information about a customer, including an identification number, from a third party source prior to extending credit to the customer, rather than having to obtain this information directly from the customer prior to opening an account.

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Comparison With Government Lists

The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by a federal government agency and designated as such by Treasury in consultation with the federal functional regulators. Banks will be given notice regarding the lists that are to be used for this purpose and will not have to seek out all such lists compiled by the federal government.

Customer Notification

The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities. Adequate notice includes generally describing the identification requirements and ensuring that a customer views the notice, or is otherwise given notice, before opening an account. Sample language that a bank can use is included in the final rule.

Reliance on Another Financial Institution

The CIP may include procedures specifying when the bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP with respect to any customer of a bank that is opening, or has opened, an account or has established a similar formal banking relationship with the other financial institution provided that:

- the reliance is reasonable under the circumstances;
- the other financial institution is subject to anti-money laundering compliance program requirements and is regulated by a federal functional regulator; and
- the other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program and that it will perform the specified requirements of the bank's CIP.

The final rules can be found at www.schwartzandballen.com/WhatsNew.htm.

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