

# Information Memo

New York Stock Exchange, Inc.  
20 Broad Street  
New York, NY 10005

Member Firm Regulation



Number 02-34  
August 1, 2002

**ATTENTION:** CHIEF EXECUTIVE OFFICER AND MANAGING PARTNER,  
CHIEF FINANCIAL OFFICER, CHIEF OPERATIONS OFFICER,  
AND CHIEF COMPLIANCE OFFICER

**TO:** ALL MEMBERS AND MEMBER ORGANIZATIONS

**SUBJECT:** SPECIAL DUE DILIGENCE FOR CORRESPONDENT  
ACCOUNTS AND PRIVATE BANKING ACCOUNTS

This Memo is a follow-up to NYSE Information Memo Number 02-21 dated May 6, 2002 which announced approval of NYSE Rule 445 (“Anti-money Laundering Compliance Program”). Rule 445 requires, in part, members’ and member organizations’ ongoing compliance with applicable provisions of the Bank Secrecy Act.

## Compliance with Section 312

**On July 19, 2002 the Financial Crimes Enforcement Network (“FinCEN”) of the Department of the Treasury (“Treasury”) issued an interim rule (see “Exhibit A”), effective July 23, 2002, advising financial institutions on how to comply with Section 312 (“Special Due Diligence For Correspondent Accounts And Private Banking Accounts”) of the USA PATRIOT Act<sup>1</sup>.**

Section 312 amends the Bank Secrecy Act as set forth in Title 31 of the United States Code by adding new subsection (i) to 31 U.S.C. 5318. It requires certain financial institutions, including broker-dealers, to take prescribed anti-money laundering measures with respect to private banking accounts<sup>2</sup> and correspondent accounts that they establish or maintain for non-U.S. persons.

**In brief, the interim rule requires members and member organizations to comply with provisions relating to “private banking accounts”, but their compliance with**

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<sup>1</sup> The USA PATRIOT Act was signed into law on October 26, 2001. It amends, among other laws, the Bank Secrecy Act as set forth in Title 31 of the United States Code.

<sup>2</sup> Per 31 U.S.C. 5318(i)(4)(B), “[t]he term ‘private banking account’ means an account (or any combination of accounts) that (i) requires a minimum aggregate deposits of funds or other assets of not less than \$1,000,000 (ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and (iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.”

**the remaining provisions of section 5318(i) (i.e., those involving “correspondent accounts”) is deferred. Treasury anticipates issuing a final rule no later than October 24, 2002.**

Below are those relevant provisions from section (i) which are mandatory for members and member organizations as of July 23, 2002. References to requirements related to “correspondent accounts” have been removed for purposes of this Information Memo.

### ***General Requirement***

31 U.S.C. 5318(i)(1) prescribes the general requirement that:

“[e]ach financial institution that establishes, maintains, administers, or manages a private banking account ...<sup>3</sup> in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.”

### ***Minimum Standards for Private Banking Accounts***

Section 5318(i)(3) requires that “[i]f a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps –

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such accounts as needed to guard against money laundering and report any suspicious transactions under subsection (g)<sup>4</sup>; and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure<sup>5</sup>, or any

<sup>3</sup> Reference to “correspondent accounts” removed.

<sup>4</sup> References 31 U.S.C. 5318(g) (“Reporting of Suspicious Transactions”) and the implementing regulations thereunder which, upon effectiveness, will require the filing of Suspicious Activity Reports (“SARs”) to a central location determined by FinCEN. See 67 FR 44048 (July 1, 2002).

<sup>5</sup> Under FinCEN’s proposed regulation § 103.75(o), a “senior political figure” means “(i) A current or former senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not), a senior official of a major foreign political party, or a senior executive of a foreign government-owned commercial enterprise; (ii) A corporation, business or other entity that has been formed by, or for the benefit of, any such individual; (iii) An immediate family member of any such individual; and (iv) A person who is widely

immediate family member<sup>6</sup> or close associate of a senior foreign political figure that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.”

The elements of Section 312 should be integrated into existing Anti-Money Laundering Compliance Programs pursuant to NYSE Rule 445 which requires, in part, that each member and member organization develop a program, the policies, procedures, and internal controls of which are reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder, as they become effective.

Question regarding this Memo may be directed to Stephen Kasprzak at (212) 656-5226.

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Salvatore Pallante  
Executive Vice President

Attachments

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and publicly known ( or is actually known by the relevant covered financial institution) to maintain a close personal or professional relationship with any such individual.”

<sup>6</sup> Under FinCEN’s proposed regulation § 103.175(o), the term “immediate family member” means “a spouse, parents, siblings, children, and a spouse’s parents or siblings.”

**BILLING CODE 4810-02**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AA29**

**Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts.**

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** Treasury and FinCEN are issuing an interim final rule temporarily deferring for certain financial institutions (as defined in the Bank Secrecy Act) the application of the requirements contained in section 5318(i) of title 31, United States Code, added by section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act) of 2001 (the Act). Section 5318(i) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. Section 312 takes effect on July 23, 2002, whether or not Treasury has issued a final rule implementing that provision. Additionally, this interim final rule provides guidance, pending issuance of a final rule, to those financial institutions for which compliance with section 5318(i) has not been deferred.

**DATES:** This interim final rule is effective July 23, 2002. Written comments may be submitted on or before [INSERT DATE THAT IS 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Submit comments (preferably an original and four copies) to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 312 Interim Regulations. Comments may also be submitted by electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption in the body of the text, "Attention: Section 312 Interim Regulations." Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480; the Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622-1927; or the Office of the Chief Counsel (FinCEN), (703) 905-3590 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** Treasury and FinCEN are exercising the authority under 31 U.S.C. 5318(a)(6) to temporarily defer the application of 31 U.S.C. 5318(i) to certain financial institutions pending issuance by Treasury and FinCEN of a final rule outlining the scope of coverage, duties, and obligations under that provision. Additionally, for those financial institutions for which compliance with section 5318(i) has not been deferred entirely, interim guidance is provided for compliance with the statute pending issuance of a final rule. Although this interim final rule and the guidance contained herein may be relied upon by financial institutions until superseded by a final regulation or subsequent guidance, no inference may be drawn from this rule concerning the scope and substance of the final regulation that Treasury will issue concerning section 5318(i).

#### **I. Background**

Section 312 of the Act adds new subsection (i) to 31 U.S.C. 5318, the Bank Secrecy Act (BSA). This provision requires each U.S. financial institution that establishes, maintains,

administers, or manages a private banking account or a correspondent account in the United States for a non-U.S. person to take certain anti-money laundering measures with respect to such accounts.

In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through those accounts.

In addition to this general requirement, which applies to all correspondent and private banking accounts for non-U.S. persons, section 312 of the Act specifies additional standards for correspondent accounts maintained for certain foreign banks. For a correspondent account maintained for a foreign bank operating under an offshore license or a license granted by a jurisdiction designated as being of concern for money laundering, a financial institution must take reasonable steps to identify the owners of the foreign bank, to conduct enhanced scrutiny of the correspondent account to guard against money laundering, and to ascertain whether the foreign bank provides correspondent accounts to other foreign banks and, if so, to conduct appropriate related due diligence.

Section 312 also sets forth minimum standards for the due diligence requirements for a private banking account for a non-U.S. person. Specifically, a financial institution must take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the private banking account, as necessary to guard against money laundering. The institution must also conduct enhanced scrutiny of private banking accounts requested or maintained by or on behalf of senior foreign political figures (or their family members or close associates). Enhanced scrutiny must be reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

Section 312(b)(2) provides that subsection 5318(i) takes effect on July 23, 2002, regardless of

whether Treasury has issued a final rule by that date. Furthermore, it indicates that subsection 5318(i) applies to all accounts, regardless of when they were opened.

### **1. The Proposed Rule**

On May 30, 2002, Treasury and FinCEN published in the Federal Register a proposed rule implementing section 312. See 67 Fed. Reg. 37,736 (May 30, 2002). In that proposed rule, Treasury sought to take the broad statutory mandate of section 312 and translate it into specific regulatory directives for financial institutions to apply. Like the statute itself, the rule proposed by Treasury is far reaching, seeking to require a wide range of U.S. financial institutions<sup>1</sup> to apply due diligence and enhanced due diligence procedures to a diverse array of foreign financial institutions<sup>2</sup> that maintain "correspondent accounts" or "private banking accounts" in the U.S. The proposed rule sets forth a series of due diligence procedures that financial institutions covered by the rule may, and in many cases must, apply to correspondent accounts and private banking accounts. Because section 5318(i) takes effect on July 23, 2002, regardless of whether Treasury has issued a final implementing regulation, Treasury imposed a 30-day period in which public comments on the proposed rule would be accepted.

### **2. The Final Rule**

A final rule implementing section 312 cannot reasonably be completed by the statutory effective date of July 23, 2002. Without question, the proposed rule implementing section 312 is

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<sup>1</sup> Treasury proposed that the following financial institutions would be covered by the regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); a commercial bank; an agency or branch of a foreign bank in the United States; a federally insured credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant registered, or required to register, under, and an introducing broker as defined in § 1a23 of, the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); a casino (as defined in § 103.11(n)(5)); a mutual fund (as defined in § 103.130); a money services business (as defined in § 103.11(u)); and an operator of a credit card system (as defined in § 103.135).

<sup>2</sup> Foreign financial institutions include foreign banks and any other foreign person that, if organized in the United States,

the furthest reaching proposed regulation issued under Title III of the Act thus far. The requirements placed on financial institutions under this provision are significant, and commenters have raised substantial and important concerns about the scope of the regulation as well as the major definitions applicable to this section. For example, commenters consistently noted that the definitions of "correspondent account," "covered financial institution," and "foreign financial institution," were overly broad and difficult to implement. Likewise, commenters expressed concerns regarding the definition of "senior foreign political figure." Moreover, the statute does not define many important terms with respect to financial institutions other than banks, leaving the task for Treasury and FinCEN. Additional time is necessary to consider carefully these definitions and the text of the proposed rule in light of comments received to determine whether these terms should be further defined with respect to each financial institution.

Treasury anticipates issuing a final rule no later than October 25, 2002.

### **3. Deferral of Application to Certain Financial Institutions**

Although section 312 is self-executing, in the absence of a final rule, many classes of financial institutions, in particular, non-bank financial institutions, would not have clear notice of, or guidance regarding, their compliance obligations. More pointedly, without regulations defining key terms for financial institutions other than banks, these financial institutions would not have sufficient guidance to comply with all facets of section 312. This situation necessarily stems from the fact that the statute seeks to cover a diverse universe of financial institutions and seeks to address a multitude of issues arising from the panoply of financial relationships that can exist with various foreign financial institutions. Treasury's role in this process is to draft a regulation, after obtaining public comment, that provides clear and unequivocal direction to financial institutions covered by

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would be required to establish an anti-money laundering program pursuant to §§ 103.120 through 103.169 of this part.

the provision. Without clarifying appropriate terms for the various industries, enforcement of section 5318(i) against the full range of financial institutions proposed to be covered by section 312 will be difficult. Therefore, deferral is necessary and appropriate.

Nor would it be appropriate for Treasury to insist on compliance with the terms of the proposed rule pending the completion of a final rule. We are still reviewing and analyzing the comments received and formulating the terms and scope of the final rule. Were Treasury to require strict compliance with the proposed rule, not only would it undermine the administrative process, but also it might require financial institutions to incur substantial costs to comply with provisions of the proposed rule that may be altered or eliminated.<sup>3</sup> Without suggesting that such changes will be made, such a result is untenable.

Accordingly, invoking the authority under section 5318(a)(6) of the BSA, this interim final rule defers the application of all provisions of section 5318(i) to financial institutions other than banks, securities brokers and dealers, futures commission merchants, and introducing brokers.<sup>4</sup> Banks must comply with all provisions of section 5318(i). Securities brokers and dealers, futures commission merchants, and introducing brokers must comply with the provisions of section 5318(i) relating to due diligence and enhanced due diligence for "private banking accounts," but they are exempted from provisions related to correspondent accounts. The reason for this distinction is a practical one—the Act does not define a "correspondent account" for financial institutions other than banks, and Treasury needs time to consider whether the definition in the proposed rule is appropriate.

In contrast, the definition of a private banking account in section 5318(i) is not limited to banks and is both applicable and commonly understood with the securities and futures industries. Moreover,

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<sup>3</sup> Cf. *CFTC v. Schor*, 478 U.S. 833, 845 (1986) (noting the important distinction between a proposed rule and a final rule drafted based on a review of public comment).

<sup>4</sup> "Introducing brokers" refers to those registered, or required to register, with the Commodity Futures Trading

to the extent these financial institutions offer this type of account, the risks of money laundering are similar to the risks posed by banks offering such accounts. As a result, they will be required to comply with the provisions of section 5318(i) regarding private banking accounts pending Treasury's issuance of a final rule, consistent with the guidance set forth below.

**In summary:**

- Banks must comply with section 5318(i) pending Treasury's issuance of a final rule. For the purposes of this interim final rule, these include: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)))<sup>5</sup>; 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 (12 U.S.C. 611 *et seq.*)<sup>6</sup>.
- Securities brokers and dealers registered, or required to register, with the Securities and Exchange Commission (SEC), and futures commission merchants and introducing brokers registered, or required to register, with the Commodity Futures Trading Commission (CFTC) must comply with provisions relating to private banking accounts, but their compliance with the remaining provisions of section 5318(i) is deferred.
- Financial institutions subject to deferment of all obligations under section 5318(i) include: Casinos; money services businesses; mutual funds; operators of credit card systems; and all remaining financial institutions defined in the BSA that are not banks, securities brokers and

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**Commission.**

<sup>5</sup> This group of covered entities was drawn from the list of "covered financial institutions" in the proposed rule. Treasury is evaluating whether to add uninsured national trust banks to this list at the final rule stage as these entities are currently required to have anti-money laundering programs. See 12 CFR 21.21. Treasury also will consider whether non-federally regulated, state chartered, uninsured trust companies and trust banks, and non-federally insured credit unions should be added to the list to the extent that they maintain correspondent or private banking accounts for non-U.S. persons.

<sup>6</sup> For purposes of complying with section 5318(i) pending Treasury's issuance of a final rule, foreign branches of

dealers, futures commission merchants, or introducing brokers.<sup>7</sup>

## **II. Compliance Obligations Pending Publication of the Final Rule**

Under the Act, Treasury is authorized to interpret and administer section 312. This interim final rule provides guidance to those financial institutions for which the application of section 5318(i) has not been deferred. Pending issuance of a final rule, Treasury expects compliance with section 5318(i) as set forth below. Treasury does not expect compliance with the terms and conditions of the proposed rule except to the extent they coincide with the express requirements of the statute. However, the interim compliance measures set forth in this guidance should not be construed as an indication of the obligations that will be imposed by the final rule.

### **1. Due Diligence for Correspondent Accounts—Banks Only**

With respect to correspondent accounts, section 5318(i)(1) requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts established, maintained, administered, or managed in the United States for a foreign financial institution. In the interim period before the issuance of a final rule, a due diligence program under section 5318(i)(1) 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. It is the expectation of Treasury that a bank will accord priority to conducting due diligence on high-risk foreign banks for which it maintains correspondent deposit accounts or their equivalents, and will focus foremost on correspondent accounts used to provide

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insured banks are deemed to be foreign banks rather than covered financial institutions.

<sup>7</sup> The remaining financial institutions include: dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers; trust companies; state chartered credit unions that are not federally regulated; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity

services to third parties. Treasury also expects banks to give priority to conducting due diligence on high-risk correspondent accounts maintained for foreign financial institutions other than foreign banks, such as money transmitters. In all cases, Treasury expects that a bank will accord priority in applying due diligence to accounts opened on or after July 23, 2002.

Treasury acknowledges that, as a practical matter, banks will be unable to craft and implement final comprehensive due diligence policies and procedures pursuant to the dictates of section 5318(i)(1) until Treasury issues a final rule. However, in the interim, a reasonable due diligence policy, in Treasury's view, is one that comports with existing best practices standards for banks that maintain correspondent accounts for foreign banks,<sup>8</sup> and evidences good faith efforts to incorporate due diligence procedures for correspondent accounts maintained for foreign financial institutions posing an increased risk of money laundering.

## **2. Enhanced Due Diligence for High Risk Foreign Banks—Banks Only**

Section 5318(i)(2) requires U.S. financial institutions to establish enhanced due diligence policies and procedures applicable when opening or maintaining a correspondent account in the United States for certain foreign banks designated as high risk. Sections 5318(i)(2)(B)(i) through (iii) further specify requirements that must be incorporated into a financial institution's enhanced due diligence policies and procedures.

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trading advisors.

<sup>8</sup> See, e.g., New York Clearing House Association, L.L.C., "Guidelines for Counter Money Laundering Policies and Procedures in Correspondent Banking," (March 2002) at [www.nych.org](http://www.nych.org); Basel Committee on Banking Supervision, "Customer Due Diligence for Banks" (October 2001) at [www.bis.org](http://www.bis.org). A due diligence program that does not adopt all of the best practices and standards described in industry and other available guidance also could be considered reasonable if there is a justifiable basis for not adopting a particular best practice or standard, based on the particular type of accounts held by the institution.

An enhanced due diligence program will be reasonable under section 5318(i)(2)(B), in Treasury's view, if first, it comports with existing best practice standards for banks that maintain correspondent accounts for foreign banks.<sup>9</sup> Second, the program must also focus enhanced due diligence measures on those correspondent accounts that are maintained by a foreign correspondent bank deemed high risk by section 5318(i)(2)(A) posing a particularly high risk of money laundering based on the bank's overall assessment of the risk posed by the foreign correspondent bank. As with the previous provision, it is the expectation of Treasury that a bank will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

Within these priorities, as required by the statute, banks must take reasonable steps to comply with directives described in sections 5318(i)(2)(B)(i) through (iii). For purposes of section 5318(i)(2)(B)(i), an owner is deemed to be any person who directly or indirectly owns, controls, or has voting power over 5 percent or more of any class of securities of a foreign bank, the shares of which are not publicly traded.

**3. Due Diligence for Private Banking Accounts—Banks, Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers**

Sections 5318(i)(1) and (3) set forth due diligence requirements for U.S. financial institutions that maintain private banking accounts in the United States for non-U.S. persons.<sup>10</sup> Under the Act, a private banking account is an account (or any combination of accounts) that requires minimum aggregate deposits of at least \$1 million, that is established for one or more individuals, and that is assigned to or administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as liaison between the financial institution and the direct or beneficial owner of the account. Section 5318(i)(3)(A) requires financial institutions, as needed to guard

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<sup>9</sup> See *supra* note 7.

<sup>10</sup> For purposes of this interim final rule, a non-U.S. person means an individual who is neither a United States citizen

against money laundering, to take reasonable steps to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, the account. Additionally, the statute requires enhanced scrutiny of private banking accounts maintained by or on behalf of senior foreign political figures, an immediate family member, or close associate, to guard against laundering the proceeds of foreign corruption.

As with the requirements for correspondent accounts, a private banking due diligence program under sections 5318(i)(1) and (3) must be reasonably designed to detect and report money laundering and the existence of the proceeds of foreign corruption. Treasury believes that a due diligence private banking program would be reasonable, pending adoption of final regulations to implement section 5318(i), if the program is focused on those private banking accounts that present a high risk of money laundering. A program that is consistent with applicable government guidance on private banking accounts, such as the guidance on sound practices for private banking issued by the Federal Reserve (SR 97-19 (SUP) "Private Banking Activities" (June 30, 1997) at [www.federalreserve.gov](http://www.federalreserve.gov)) and the guidance on enhanced scrutiny for transactions that may involve the proceeds of foreign corruption issued jointly by Treasury, the bank regulators, and the State Department in January 2001 (at <http://www.treas.gov/press/releases/docs/guidance.htm>) would be reasonable, so long as it incorporates the requirements of section 5318(i)(3).<sup>11</sup> Treasury expects that an institution will accord priority in applying enhanced due diligence to accounts opened on or after July 23, 2002.

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nor a lawful permanent resident as defined in 26 U.S.C. 7701(b)(6).

<sup>11</sup> See also, Wolfsberg Group, "Global Anti-Money-Laundering Guidelines for Private Banking: Wolfsberg AML Principles" (1<sup>st</sup> Revision May 2002) at [www.wolfsberg-principles.com](http://www.wolfsberg-principles.com). A program that does not follow all of the best practices outlined in this government guidance would be reasonable if there is a justifiable basis, based on the particular circumstances of the institution involved, for not following these practices.

### **III. Analysis of the Interim Final Rule**

#### **A. Banks, Savings Associations, and Credit Unions – Section 103.181**

The following financial institutions are not subject to the deferral contained in this interim final rule and must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) pending issuance of a final implementing regulation: An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); 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 (12 U.S.C. 611 *et seq.*).

#### **B. Securities Brokers and Dealers, Futures Commission Merchants, and Introducing Brokers – Section 103.182**

Securities brokers and dealers registered, or required to register, with the SEC, and futures commission merchants and introducing brokers registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*) are subject to the requirements of section 5318(i) relating to due diligence and enhanced due diligence relating to private banking accounts.

They must take steps, in light of the guidance provided above, to comply with the requirements of section 5318(i) relating to private banking accounts pending issuance of a final implementing regulation. Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily defer the application of all other requirements contained in section 5318(i) for securities brokers and dealers, futures commission merchants, and introducing brokers.

#### **C. All Other BSA Financial Institutions – Section 103.183**

Treasury and FinCEN are exercising the authority under BSA section 5318(a)(6) to temporarily

defer the application of all requirements contained in section 5318(i) for all other financial institutions. This temporary deferment applies to casinos; money services businesses; mutual funds; operators of credit card systems; dealers in precious metals, stones, or jewels; pawnbrokers; loan or finance companies; private bankers;<sup>12</sup> trust companies; state chartered credit unions that are not federally insured; insurance companies; travel agencies; telegraph companies; sellers of vehicles, including automobiles, airplanes, and boats; persons engaged in real estate closings and settlements; investment companies; commodity pool operators; and commodity trading advisors.

This temporary deferral does not in any way relieve any financial institution from compliance with the existing anti-money laundering and anti-terrorism requirements imposed by law, regulation, or rule of a self-regulatory organization. Quite to the contrary, the obligations contemplated by section 312 will serve to augment and improve the existing anti-money laundering activities of financial institutions. To that end, Treasury and FinCEN expect financial institutions proposed to be subject to the regulation implementing section 312 to begin immediately the process of evaluating their due diligence procedures when correspondent accounts or private banking accounts are opened or maintained on behalf of non-U.S. persons.

#### **IV. Administrative Procedure Act**

The provisions of 31 U.S.C. 5318(i), requiring due diligence programs for certain foreign accounts, become effective July 23, 2002. This interim rule exempts certain financial institutions from these requirements and provides interim compliance guidance for those financial institutions not exempted. Accordingly, good cause is found to dispense with notice and public procedure as unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B), and to make the

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<sup>12</sup> A private banker under the BSA refers to state chartered banking entities that are not organized as a corporation. Generally, such entities are organized as partnerships. A private banker does not refer to those who offer private banking accounts.

provisions of the interim rule effective in less than 30 days pursuant to 5 U.S.C. 553(d)(1) and (3).

#### **V. Regulatory Flexibility Act**

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

#### **VI. Executive Order 12866**

This interim final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

#### **List of Subjects in 31 CFR Part 103**

Banks, banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

#### **Authority and Issuance**

For the reasons set forth in the preamble, 31 CFR Part 103 is amended as follows:

#### **PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS**

1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5332; title III, secs. 312, 314, 352, Pub. L. 107-56, 115 Stat. 307.

2. Add new undesignated centerheading **ANTI-MONEY LAUNDERING PROGRAMS** to subpart 1 immediately before § 103.120.

3. Add new undesignated centerheading and §§103.181 through 103.183 to subpart 1 to read as follows:

**SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS  
AND PRIVATE BANKING ACCOUNTS**

**103.181 Special due diligence programs for banks, savings associations, and credit unions.**

**103.182 Special due diligence programs for securities brokers and dealers, futures  
commission merchants, and introducing brokers.**

**103.183 Deferred due diligence programs for other financial institutions.**

**SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS  
AND PRIVATE BANKING ACCOUNTS**

**§ 103.181 Special due diligence programs for banks, savings associations, and credit unions.**

The requirements of 31 U.S.C. 5318(i) shall apply, effective July 23, 2002, to a financial institution that is:

- (a) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
- (b) A commercial bank;
- (c) An agency or branch of a foreign bank in the United States;
- (d) A federally insured credit union;
- (e) A thrift institution; or
- (f) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

**§ 103.182 Special due diligence programs for securities brokers and dealers, futures  
commission merchants, and introducing brokers.**

(a) Private banking accounts. The requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for private banking accounts shall apply, effective July 23, 2002, to a financial institution that is:

(1) A broker or dealer registered, or required to register, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) A futures commission merchant or introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*).

(b) Correspondent accounts. A financial institution described in paragraph (a) of this section is exempt from the requirements of 31 U.S.C. 5318(i) relating to due diligence and enhanced due diligence for certain correspondent accounts.

(c) Other compliance obligations of financial institutions unaffected. Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

**§ 103.183 Deferred due diligence programs for other financial institutions.**

(a) Exempt financial institutions. Except as provided in § 103.181 and § 103.182, a financial institution defined in 31 U.S.C. 5312(a)(2) and (c)(1) or § 103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i).

(b) Other compliance obligations of financial institutions unaffected. Nothing in this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

DATED: July 19, 2002

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**James F. Sloan**  
**Director, Financial Crimes Enforcement Network**