The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE

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COMMENT LETTER ON DUE DILIGENCE AML PROGRAMS FOR CERTAIN FOREIGN ACCOUNTS

[14851] July 2, 2002 TO: INTERNATIONAL COMMITTEE No. 50-02 MONEY LAUNDERING RULES WORKING GROUP No. 34-02 RE: COMMENT LETTER ON DUE DILIGENCE AML PROGRAMS FOR CERTAIN FOREIGN ACCOUNTS As you know, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) recently proposed regulations to implement Section 312 of the USA PATRIOT Act, which would require covered financial institutions to adopt due diligence programs with respect to correspondent accounts for foreign financial institutions and accounts for foreign private banking clients.1 Attached is a comment letter filed jointly2 in response to the proposal by eleven financial services industry associations, including the Institute.3 The letter is briefly summarized below. General Comments. The letter supports the general concept of a risk-based approach to the due diligence requirements of Section 312 that would allow financial institutions to focus their attention and resources on customers, accounts and transactions that are most vulnerable to money laundering and terrorist financing. More specifically, the letter recommends that the proposed rule explicitly recognize two "vital components of an effective risk-based due diligence program": (1) a distinction between proprietary accounts of foreign financial institutions (which normally do not create the types of concerns at which Section 312 is 1 See Memorandum to International Committee No. 38-02 and Money Laundering Rules Working Group No. 26-02, dated May 28, 2002. 2 The Institute earlier had circulated a draft of an Institute comment letter. See Memorandum to International Committee No. 46-02 and Money Laundering Rules Working Group No. 30-02, dated June 17, 2002. The draft letter and our cover memorandum referenced the fact that a group of financial services trade associations were considering submitting a joint letter. Subsequently, we were invited to comment on drafts of, and sign onto, the joint letter. As we indicated to you by email last week, we concluded that the joint letter would appropriately address the issues that are of greatest concern to Institute members and that there would be a benefit to the financial services industry speaking with a single voice. For these reasons, we decided to sign the joint letter and to refrain from filing our own, separate comment letter. 3 In addition to the Institute, organizations signing the letter included the American Bankers Association, the Bankers Association for Finance and Trade, the Financial Services Roundtable, the Futures Industry Association, the Institute of International Bankers, the Securities Industry Association, the Swiss Bankers Association, The Bond Market Association, and the New York Clearinghouse Association L.L.C. 2 directed) and accounts that foreign financial institutions establish to provide services to third parties; and (2) reliance on intermediaries in appropriate circumstances. Timing of

Implementation. The letter proposes a tiered approach to implementation of the proposed rule. It recommends that with respect to new accounts that pose a particularly high risk of money laundering, the effective date of the rule should be 30 days after publication of the final rule in the Federal Register. This would include accounts that are subject to enhanced due diligence under the rule and private banking accounts. With respect to other, lower-risk new accounts, the letter recommends that the effective date be 90 days after publication of the final rule. Finally, with respect to existing accounts, the letter recommends that the effective date be 180 days after publication of the final rule. Definitional Issues. The letter makes a number of specific comments on the scope of the proposed rule, including revisions to the definitions of “correspondent account,” “covered financial institution,” and “foreign financial institution.” In particular, the letter notes that the definition of “correspondent account” as proposed is so broad that it reaches practically every relationship of a covered financial institution with a foreign financial institution. The letter highlights four types of accounts that do not pose the same level of risk as traditional correspondent accounts, and urges Treasury to refine the definition to achieve an approach that is truly risk-based. Intermediaries. The letter requests Treasury to explicitly recognize that covered financial institutions are entitled to rely, in appropriate circumstances, on the due diligence conducted by intermediaries. The letter notes that the associations that signed the letter are jointly developing a proposed attestation form, which could be adapted for various purposes, setting forth the types of representations that would be obtained from intermediaries. Enhanced Due Diligence Standards. Consistent with the general comments noted above, the letter recommends that the final rule take a more risk-based approach to the enhanced due diligence required of certain foreign banks. In this context, such an approach would allow the covered financial institution to assess the degree to which it could rely on the due diligence performed by the foreign bank on its foreign bank customers and focus the greatest attention on the accounts that create the greatest risk. In addition, the letter makes a number of specific comments with regard to the proposed enhanced due diligence standards. Public Information. In a number of instances, the proposed rules impose obligations upon covered financial institutions to search public information as part of their due diligence program. The term “public information” is not defined in the proposed rule, and the letter recommends that the term be defined in the final rule as information disseminated through a form of print media that is widely and readily available, generally regarded as a leading publication in its country, and generally regarded as reliable. Private Banking Accounts. Given the definition of “private banking account” in the proposed rule, it does not appear that the private banking provisions in the proposed rule 3 would apply to typical mutual fund accounts. Nevertheless, the letter makes a number of recommendations on behalf of other financial services association signatories with respect to these provisions. Robert C. Grohowski Associate Counsel Attachment (in .pdf format)
