

MEMO# 16951

January 9, 2004

ADDITIONAL AML GUIDANCE ISSUED ON CUSTOMER IDENTIFICATION PROGRAM RULE

[16951] January 9, 2004 TO: BROKER/DEALER ADVISORY COMMITTEE No. 1-04 BROKER/DEALER ASSOCIATE MEMBERS No. 2-04 COMPLIANCE ADVISORY COMMITTEE No. 3-04 INTERNAL AUDIT ADVISORY COMMITTEE No. 1-04 MONEY LAUNDERING RULES WORKING GROUP No. 1-04 OPERATIONS MEMBERS No. 2-04 PENSION COMMITTEE No. 3-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 2-04 SEC RULES MEMBERS No. 6-04 TRANSFER AGENT ADVISORY COMMITTEE No. 2-04 RE: ADDITIONAL AML GUIDANCE ISSUED ON CUSTOMER IDENTIFICATION PROGRAM RULE The staffs of the Department of the Treasury, Financial Crimes Enforcement Network, and five banking regulatory agencies have issued a number of frequently asked questions providing guidance on the customer identification program (CIP) rule applicable to banks and other depository institutions (31 C.F.R. 103.121). A copy of the FAQs is available on the OCC web site at <http://www.occ.treas.gov/ftp/bulletin/2004-3a.pdf>, as well as on the sites for the other regulators involved in issuing the guidance. Although the FAQs do not apply to the CIP rules applicable to mutual funds or broker-dealers, a number of the questions address issues that also arise in the mutual fund and broker-dealer contexts. As a result, they may be of interest to you in determining your CIP policies and procedures. In particular, the FAQs include questions and answers on the following topics (among others): • The applicability of the rule to foreign subsidiaries [Question 1 under 103.121(a)(2)] • The treatment of a person with a power-of-attorney opening an account [Question 1 under 103.121(a)(3)] • The treatment of a person who becomes a co-owner of an account [Question 2 under 103.121(a)(3)] • 2 • The treatment of automatic rollovers from employer-sponsored retirement plans to IRAs under section 657(c) of EGTRRA and transfers of benefits from terminated plans to financial institutions [Question 4 under 103.121(a)(3)] • The treatment of customers who had accounts, closed them, and subsequently open new accounts [Question 2 under 103.121(a)(3)(ii)(C)] • The demonstration of “a reasonable belief that [a bank] knows the true identity of a person with an existing account” [Question 3 under 103.121(a)(3)(ii)(C)] • The treatment of new customers that have existing accounts with affiliates [Question 4 under 103.121(a)(3)(ii)(C)] • The acceptability of rural route numbers and similar addresses [Question 1 under 103.121(b)(2)(i)] • Whether verification of the accuracy of identifying information is required [Question 1 under 103.121(b)(2)(ii)] • Verification of partnerships and sole proprietorships [Questions 4 and 5 under 103.121(b)(2)(ii)] • Recordkeeping [Five questions under 103.121(b)(3)(i) and 103.121(b)(3)(ii)] • The provision of notice to joint account owners [Question 1 under 103.121(b)(5)] Finally, one FAQ relates directly to a topic that has been the subject of a

great deal of discussion – the proper interpretation of the reliance provisions in the CIP rule. As you know, the CIP rule applicable to mutual funds allows a mutual fund to satisfy its obligations under the rule by relying on another financial institution to perform those obligations. To take advantage of this provision, the rule requires the financial institution being relied upon “to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund’s CIP.” [Emphasis added.] The bank CIP rule contains nearly identical language. FAQ number 1 under 31 C.F.R. 103.121(b)(6) clarifies that “the reliance provision does not impose on the other financial institution the obligation to duplicate the procedures in the bank’s CIP.” The FAQ goes on to state that “the reliance provision permits a bank to rely on another financial institution to perform any of the procedures of the bank’s CIP, meaning, any of the elements that the CIP rule requires to be in a bank’s CIP: (1) identity verification procedures, which include collecting the required information from customers and using some or all of that information to verify the customers’ identities; (2) keeping records related to the CIP; (3) determining whether a customer appears on a designated list of known or suspected terrorists or terrorist organizations; and (4) providing customers with adequate notice that information is being requested to verify their identities.” [Emphasis in original.] Robert C. Grohowski Associate Counsel

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