

MEMO# 15469

December 19, 2002

TREASURY EXTENDS DEADLINE FOR FOREIGN SHELL BANK RULE

URGENT [15469] December 19, 2002 TO: BROKER/DEALER ADVISORY COMMITTEE No. 50-02 BROKER/DEALER ASSOCIATE MEMBERS No. 15-02 COMPLIANCE ADVISORY COMMITTEE No. 114-02 INTERNATIONAL MEMBERS No. 32-02 INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 61-02 MONEY LAUNDERING RULES WORKING GROUP No. 73-02 SEC RULES MEMBERS No. 115-02 SMALL FUNDS MEMBERS No. 56-02 TRANSFER AGENT ADVISORY COMMITTEE No. 107-02 RE: TREASURY EXTENDS DEADLINE FOR FOREIGN SHELL BANK RULE As explained more fully below, the Treasury Department has extended by 90 days the December 26, 2002 deadline for covered financial institutions to confirm that correspondent accounts maintained for foreign banks are not being used to provide services, directly or indirectly, to foreign shell banks.¹ This extension also applies to the requirement that covered financial institutions obtain certain information from foreign banks for which they maintain correspondent accounts. The new deadline is March 31, 2003. BACKGROUND In September, Treasury adopted a final rule implementing sections 313 and 319(b) of the USA PATRIOT Act.² This rule addresses correspondent accounts maintained by U.S. banks and broker-dealers (for purposes of the rule, "covered financial institutions") on behalf of foreign 1 "Treasury Issues Rule Extending the Deadline for Obtaining Shell Bank Certifications Under the USA PATRIOT Act," press release dated December 18, 2002. A copy of the press release is attached. It also is available at <http://www.treas.gov/press/releases/po3705.htm>. 2 Financial Crimes Enforcement Network; Anti-Money Laundering Requirements – Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks, 67 Fed. Reg. 60562 (Sept. 26, 2002). See also Memorandum to Broker-Dealer Advisory Committee No. 41-02, Broker-Dealer Associate Members No. 11-02, Compliance Advisory Committee No. 79-02, International Members No. 26-02, International Operations Advisory Committee No. 42-02, Money Laundering Rules Working Group No. 55-02, SEC Rules Members No. 81-02, Small Funds Members No. 38-02 and Transfer Agent Advisory Committee No. 85-02, dated September 26, 2002. 2 banks and prohibits accounts with foreign shell banks. These provisions apply to all covered financial institutions, including mutual fund transfer agents that are banks or broker-dealers.³ Consistent with the statute, the rule prohibits covered financial institutions from maintaining accounts for foreign shell banks. The rule also requires covered financial institutions to take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the U.S. for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank. As part of these steps, the rule requires every covered financial institution to obtain a certification from every foreign bank for which it opens or maintains an account. The rule adopted in September required these certifications to be obtained on or before December 26, 2002 for all accounts existing as of

October 28, 2002. If a certification cannot be obtained from a foreign bank prior to the deadline, the rule requires the covered financial institution to close all correspondent accounts with that foreign bank within a commercially reasonable time. **EXTENSION OF THE DECEMBER 26TH DEADLINE** The rule adopted today extends the December 26th deadline by 90 days.⁴ The new deadline is March 31, 2003. Treasury has sent the rule providing the extension to the Federal Register for publication, and expects that it will be published in the Federal Register prior to December 26, 2002. However, according to Treasury's press release accompanying the new rule, should publication be delayed, covered financial institutions will not be expected to begin the process of terminating accounts on that date. Robert C. Grohowski Associate Counsel Attachment (in .pdf format) Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 15469, or call the ICI Library at (202) 326-8304 and request the attachment for memo 15469. ³ The Institute's principal comment on this rule was a request for clarification that the rule does not apply to investment company transfer agents that are US banks or broker-dealers with respect to their investment company transfer agency activities. The status of bank or broker-dealer transfer agents was not addressed in the adopting release or the final rule. ⁴ A copy of the rule is not yet available. The rule will be published shortly in the Federal Register and, in the interim, may be available through a link provided with the press release at <http://www.treas.gov/press/releases/po3705.htm>. At the time of this memorandum, that link was inoperable.