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From: Ari Feinstein [arijfeinstein@yahoo.com]
Sent: Tuesday, May 21, 2002 4:47 PM
To: regcomments@fincen.treas.gov
Subject: Attn. Section 352 AMLP Regulations

DATE: May 21, 2002

ATTENTION: Section 352 AMLP Regulations

Per guidelines stipulated in 31 CFR Part 103 I am submitting comments regarding the interim final rules issued by FinCEN on April 29, 2002.

My name is Ari Feinstein and I am the general counsel for a company named World-Check. It is my job responsibility in part to understand and follow the evolution of the USA Patriot Act. My company, World-Check, helps financial institutions avoid money laundering. I therefore have also been in the unique position of witnessing firsthand the functional impact, or lack thereof, of the Patriot Act to date.

I am writing to bring attention to the significant dilution in both the wording and enforcement of the interim final rules in comparison to the Act's original and clearly communicated intent. In fact, the interim final rules for financial institutions flatly contradict the proactive approach proscribed by the Patriot Act.

Through the Patriot Act, Congress and the President set a standard that required financial institutions to address their unique money laundering vulnerabilities proactively. Yet the interim final rules flatly contradict the legislation in stating that financial institutions "will be deemed to be in compliance . . . if (the institution) complies with the regulations of its regulator governing the establishment and maintenance of anti-money laundering programs." Under this approach, as I have witnessed firsthand, financial institutions are passively waiting for direction from regulators.

The interim final rules go beyond promoting passivity - they sanction it. By "deeming" financial institutions to be in compliance if they meet their regulators existing rules, the interim final rules place the burden of defining and enforcing anti-money laundering programs firmly on the regulators - and not the financial institutions.

Inexplicably yet thankfully, there is one bright exception to this bureaucratic erosion of the Patriot Act. The interim final rules on mutual funds take an approach consistent with the Patriot Act, requiring mutual funds to develop anti-money laundering programs without waiting for guidelines from regulators. In addition, the interim final rules require mutual funds to rapidly implement anti-money laundering programs under strict time frames. Lastly, the interim final rules for mutual funds highlight the seriousness of anti-money laundering programs by referencing 18 U.S.C. 1956 and 1957, which impose both civil and criminal liability for non-complying financial institutions. Such liability may extend from the individual compliance officer all the way up to the board of directors. This is all despite the fact that mutual funds have never before had to implement such programs. The interim final rules for mutual funds stand out in stark contrast to the interim final rules for financial institutions.

The message derived from the interim final rules on mutual funds is clear and consistent with the original intent of the Patriot Act: It is the individual mutual fund's responsibility to establish their own anti-money laundering programs and the implementation of such programs should be a top priority.

The US is in a war on terror and the frontlines of the war are at the doorsteps of every US financial institution. US financial institutions are inadvertently aiding and abetting domestic terror against American citizens, and the Patriot Act was designed to address this harsh reality. For national security it is imperative that FinCEN apply the same standard for the implementation of anti-money laundering programs to all financial institutions. Simple logic suggests that financial institutions on the frontline against terror, like banks, should face at least as stringent standards as mutual funds regarding anti-money laundering programs. Yet, the interim final rules as drafted do not reflect this logical approach-either in wording or enforcement.

The Patriot Act calls for action to protect America from terror. Time is of the essence. I strongly recommend that FinCEN hold all financial institutions to the standards set forth in the Patriot Act, and in specific, proscribed for mutual funds. FinCEN should incorporate the following framework for all financial institutions.

1) There is no one-size-fits all anti-money laundering program.

2) Financial institutions must proactively assess their own risks and vulnerabilities and implement enhanced anti-money laundering programs.

3) All U.S. financial institutions should be reminded that non-compliance may result in both civil and criminal liability, extending from an individual compliance officer up to the board of directors.

4) Implementation and revamping of anti-money laundering programs is a top priority, and therefore must be completed according to strict deadlines.

Thank you in advance for your consideration. The safety of the nation is in your hands.

Sincerely,

Ari Feinstein

General Counsel

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