



March 6, 2006

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183
Regulatory Information Number 1506-AA29

RE: Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

Dear Sir or Madam:

The Conference of State Bank Supervisors¹ appreciates the opportunity to comment on the proposed *Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts*. CSBS commends FinCEN for recently issuing a Notice of Proposed Rulemaking (NPR) to address issues associated with the enhanced due diligence provisions contained in section 312 of the USA PATRIOT Act of 2001. In addition, the NPR was issued simultaneously with a Final Rule to implement all other provisions of section 312. CSBS believes it is important to the functioning of the regulatory system that rules are issued in a clear, concise and timely manner. In the areas relating to the Bank Secrecy Act and Anti-Money Laundering compliance, this is of critical importance given the harmful effects that uncertainty can have on both a covered financial institution and the nation.

In general, CSBS supports both the objectives and methods detailed in the NPR and the Final Rule, but believes FinCEN has missed an opportunity to clarify the meaning and intent of the proposed rule.

Enhanced Due Diligence

The NPR states that covered financial institutions are required to apply enhanced due diligence measures to correspondent accounts maintained for the three categories of foreign banks listed in 31 USC 5318(i)(2), specifically, offshore banks, banks licensed in non-cooperative jurisdictions, and banks licensed in countries warranting special measures due to money laundering concerns. In concentrating solely on the requirements of paragraph 2 of the statute, however, the NPR does not clarify whether enhanced due diligence measures are also required or “expected” to be applied to other high-risk correspondent accounts under the provisions of 31 USC 5318(i)(1). CSBS believes it would be helpful to both the industry and the bank examiners in the field if FinCEN would take this opportunity to provide such clarification.

In paragraph (i)(1) of the statute, the use of the term “where necessary”, combined with the general principles of a risk-based approach, has raised the question of whether enhanced due diligence measures are required by law to be applied only to the three categories of foreign banks listed above. For

¹ CSBS is the national organization of state officials responsible for chartering, regulating and supervising the nation’s 6,250 state chartered commercial and savings banks and over 400 state licensed branches and agencies of foreign banks.

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instance, if foreign bank correspondent accounts that are not in the three listed categories have been identified as high risk by the covered financial institution's compliance program but enhanced due diligence procedures are not applied, should the institution be cited for a violation of law, a significant program deficiency, or both?

Instructions to Examiners

The Overview and Enhanced Due Diligence sections of the NPR contain valuable commentary on how FinCEN expects a covered financial institution will obtain and review documentation relating to the foreign correspondent bank's anti-money laundering (AML) program. Specifically, the Enhanced Due Diligence section makes clear that FinCEN does not "...contemplate that the covered financial institution would conduct an audit of the foreign correspondent bank's anti-money laundering program." The NPR goes on to say that a review of the AML program may not be required in every instance, "...especially with a well-regulated foreign correspondent bank that the covered financial institution knows well and has been doing business with for an extended time...." CSBS encourages FinCEN to work with the Federal Banking Agencies to incorporate this narrative section or similar language and concepts into the Interagency Examination Manual's instructions on correspondent banking. By doing so, FinCEN will ensure that the concepts expressed in the NPR are not lost or ignored and will promote consistency of application across institutions and agencies.

Final Rule—Private Banking Accounts

On a related matter, although not a comment to the NPR, CSBS encourages FinCEN to follow up on their stated intention (see footnote 49, Summary of Comments to Final Rule) to review the extent to which the application of the statutory definition of private banking account (minimum of \$1 million) could result in money laundering risks. If necessary, this review could initiate a rulemaking to require special due diligence for a broader range of private banking accounts not covered by the Final Rule.

Best Regards,

Neil Milner
President & CEO

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