Bank of Tokyo-Mitsubishi **MTFG**

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June 28, 2002

Financial Crimes Enforcement Network
U.S. Department of the Treasury
Attention: Section 312 Regulation
P.O. Box 39
Vienna, VA 22183

Re: Proposed Regulations under Section 312 of the USA PATRIOT ACT -- RIN 1506-AA29

Ladies and Gentlemen:

We at The Bank of Tokyo-Mitsubishi, Ltd. ("BTM") appreciate this opportunity to comment on the regulations proposed by your Department (the "Proposal") under Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "Act"). BTM is a member of Mitsubishi Tokyo Financial Group, Inc., one of the leading banking groups in Japan. BTM offers a broad range of commercial, investment, and trust financial services on a global basis, and operates offices and subsidiaries throughout the world. BTM maintains 11 offices and 8 banking and nonbanking subsidiaries in the United States, which together employ nearly 10,000 people in this country.

We at BTM strongly support the global war against terrorism and efforts of the Congress and the Administration to combat the financing of terrorist activities and money laundering generally. The implementation of the Act is a significant step in this effort.

Section 312 of the Act is an important part of this process in that it requires "covered financial institutions," which includes U.S. branches and agencies and U.S. bank and broker-dealer subsidiaries of foreign banks, to establish due diligence procedures for correspondent and private banking accounts maintained for certain non-U.S. customers. In addition, enhanced due diligence procedures must be included for correspondent accounts maintained for certain specified foreign bank customers.

In fact, many of the requirements in the Proposal are consistent with practices already in place within major financial institutions, including BTM. Nonetheless, the Proposal does contain certain requirements that may be overly broad or inflexible when implemented in practice, while not allowing sufficient opportunity for covered financial institutions to make careful risk assessments for actual money laundering risks and tailor their money laundering programs accordingly.

I. Risk-Based Approach

BTM strongly endorses the conceptual approach taken by the Proposal that allows covered financial institutions to take a risk-based approach in implementing appropriate due diligence procedures for individual clients. In fact, BTM as well as most major financial institutions employ this approach in their due diligence procedures at this time.

We note, however, that the Proposal would establish five elements that would be considered minimum requirements for such due diligence. The first and second of these (a determination of whether enhanced due diligence is necessary and the relevant factors in the risk assessment process) are appropriate. The last three elements may better be incorporated into the second, however, insofar as they should be deemed as factors to be evaluated as may be appropriate in the context of a given customer, rather than as blanket requirements for all customers. This may particularly be the case where those requirements specify the need to review "publicly available" and "public" information regarding regulation and supervision or criminal action applicable to a client, since those terms are somewhat unclear. In the absence of greater specification on these terms, covered financial institutions should retain the flexibility to evaluate public information in the context of what is reasonable for the individual risk profile of each institution.

In addition, that desired flexibility should allow for verification and maintenance of due diligence records in a jurisdiction other than the United States when the business structure of the covered financial institution and the money-laundering regime of the other jurisdiction justify doing so. For example, many of BTM's correspondent relationships originate in Japan, through its Head Office there, but (depending on the final definition of "correspondent account") may allow account relationships with a number of offices elsewhere in the world, including in the United States. In that case, if the due diligence records in the Head Office are comparable to the standards suggested by the proposal, and the money laundering regulatory and supervisory regime in Japan is comparable to global standards (as is the case), no purpose would be served in duplicating efforts or records locally. Therefore, we suggest that the Proposal be modified to allow for the recognition of substantial compliance with due diligence requirements through centralized home country procedures that meet comparable standards.

II. Definitional Issues

A. Definition of Correspondent Account

The Proposal addresses, but does not finally resolve, the issue of the definition of "correspondent account". The Act defines this term quite broadly to include accounts used to receive from and make payments on behalf of a foreign financial institution or "handle other financial transactions related to such institution." The Proposal notes that, in the case of banks, "this broad definition would include most types of banking relationships between a U.S. bank and a foreign financial institution." In the case of broker-dealers and futures commission merchants, the definition would include "any account that permits the foreign financial institution to engage in securities or futures transactions, funds transfers, or other types of financial transactions."

On February 11, 2002, BTM submitted a comment letter to the Department of the Treasury with respect to the same broad definition of "correspondent account" proposed for use in regulations governing Sections 313 and 319 of the Act. In that comment, we noted that many wholesale, interbank transactions that might be covered by the broad definition in the Proposal in fact present little or no risk for money laundering. We noted, for example, that interbank funds placements, foreign exchange transaction, letter of credit confirmations, or derivatives transactions do not pose a material risk of money laundering.

As noted, the risk-based approach to due diligence procedures introduced by the Proposal is a positive and welcome step. We respectfully request that this same conceptual approach be brought to the definition of "correspondent account" to allow for the recognition that many traditional banking activities do not pose any meaningful risks of money laundering and therefore may be excluded from the definition for purposes of the Proposal.

B. Definition of "Foreign Financial Institution"

Covered financial institutions are required to maintain due diligence programs with respect to correspondent accounts maintained for all "foreign financial institutions." This term includes a broader group than just foreign banks, since it also includes foreign broker-dealers, futures commission merchants, and mutual funds.

As in the case of the definition of "correspondent account", this definition is potentially extremely broad in its application and may require the application of regulatory due diligence procedures to relationships that pose little or no risk of money laundering. In this case as well, we believe greater flexibility should be afforded to allow covered financial institutions to evaluate the risks of such activities in the context of specific client relationships and to conduct due diligence as may be appropriate in each case.

In addition, we note that foreign country central banks are excluded from the definition of "foreign financial institution", presumably in recognition of the fact that government-owned financial institutions do not realistically present money laundering risks. We believe however, that this concept should be expanded to include other types of governmental-owned financial institutions, particularly when those institutions are established to achieve a specific governmental objective. Examples of these institutions would include government-owned economic development banks or export-import banks that are established to further governmental economic policies or development objectives.

III. Enhanced Due Diligence Requirements

A. Standards for FATF-based Jurisdictions

In addition to the minimum due diligence requirements established for all correspondent relationships, the Proposal establishes much more rigorous due diligence standards for banks from countries included on the FATF list. We recognize that many institutions from certain jurisdictions included in the FATF list may pose a high degree of money laundering risk, and special scrutiny should be brought to bear on those institutions. However, we believe that applying the same enhanced standards to all institutions from every FATF-listed country is inconsistent with the risk-based concept that the Proposal appropriately introduces to money laundering control.

Many institutions within FATF-listed countries have made significant strides in meeting their responsibilities as participants in the global economy. Similarly, significant differences exist among the FATF-listed countries in their efforts to bring their regulatory environment up to global standards. We believe that covered financial institutions should be allowed to develop appropriate risk-based methodologies that will permit them to recognize these differences and tailor risk-based due diligence procedures accordingly.

This approach is particularly appropriate in view of the very demanding requirements set forth in the Proposal for enhanced due diligence. For example, the requirement in the Proposal that would necessitate "looking through" the foreign bank customer's correspondent account to identify the customers and source of funds in that account may be functionally impossible for many foreign banks to comply with due to local privacy laws or restrictions imposed by the bank's customers. As a result, those banks may be functionally excluded from participation in the global financial system, and their customers driven to alternative, less visible financial mechanisms, when instead those banks should be encouraged to evolve to meet global anti-money laundering standards. Again, covered financial institutions should be free to adapt their due diligence procedures to address the specific circumstances of their foreign bank customers, taking into account whether their home country is FATF-listed, but with the flexibility to recognize differences among those customers and countries.

B. Standards for "Offshore Banking Licenses"

We are pleased that the Proposal excludes from the definition of foreign banks operating under offshore banking licenses those branches of foreign banks that are licensed by countries that the Federal Reserve Bank has determined exercise comprehensive consolidated supervision ("CCS") over their banks. We note, however, that many foreign banks may establish wholly-owned subsidiary banks, rather than branches, in such jurisdictions for reasons of internal management or tax or accounting convenience. Nonetheless, such subsidiaries are subject to the same degree of home country supervision under CCS as they would be if established as branches. Therefore we respectively recommend that the exception included in the Proposal for such foreign branches be expanded to include foreign subsidiaries as well.

IV. Implementation Issues

A. Timing of Implementation

Because of the complexity and potential breadth of the Proposal, as a practical matter it is likely to be virtually impossible to comply fully with the statutory implementation for all correspondent accounts by the statutory date of July 23, 2002. This is particularly so in view of the applicability of the Proposal to existing as well as to new account relationships, the uncertainty until final regulations are issued of its applicability to specific accounts and financial institutions, the need to modify existing due diligence practices to conform to the final requirements under the Proposal, and in particular the need to develop and carry out the extensive enhanced due diligence requirements that may ultimately apply to certain account relationships. Since all of these changes would require substantial resources, it is not practical to expect banks to begin implementation before the regulations are finalized, or complete implementation in the short period available before July 23rd. Therefore, we recommend a phased-in approach after the effective date of the final rule, designed to reflect the realistic time frames that will be required for compliance. Thus it may be appropriate for the final rule to establish a deadline for banks to design and begin implementation of a due diligence program that meets the requirements of the rule (for example within 90 days after the effective date), with a second deadline for completing the required due diligence (for example, within 180 days after the effective date).

B. Industry Reasonable Practices Standards

Although we believe that all major covered financial institutions are committed to the objectives of the Act and the Proposal, the risk will remain that different institutions may carry out their compliance programs in different ways due to differences in internal administrative and systems practices. In order to minimize uncertainty within the industry and ensure consistency in the implementation of the final rule, we urge FinCEN to work closely with bank regulatory authorities and the financial services industry to develop a single set of examination principles and guidelines for use in evaluating compliance with the final rule. In this way, more meaningful and effective implementation on an industry-wide basis can be assured.

V. Conclusion

We share your interest in aggressively combating international terrorist financing and money laundering, and we look forward to working with you in order to formulate the most effective regulatory framework for this purpose with a minimum adverse impact on the free flow of capital among legitimate entities on a global basis. Should you wish to discuss any of the issues discussed above, please do not hesitate to contact the undersigned or Mio E. Cloud, Esq. at (212)782-4632.

Very truly yours,