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COUTTS (USA) INTERNATIONAL
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FinCen
P.O. Box 39
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Attention: Section 312 Regulation

21 June, 2002

Dear Sirs:

Re: Proposed Regulations Implementing Section 312 of the USA Patriot Act

Coutts (USA) International and Coutts Securities Inc. (together hereafter referred to as "Coutts") appreciates the opportunity to comment on the proposed regulations issued by the Department of the Treasury, implementing Section 312 of the USA Patriot Act (the "Proposed Regulations").

Coutts (USA) International is a federally supervised banking company servicing non-resident alien private banking clients based in Latin America. Coutts Securities Inc. is a broker-dealer registered with the SEC, NASD and State of Florida, established following the enactment of the "push out" provisions of the Gramm Leach Bliley Act of 1999. Both corporations are affiliated group members of the Royal Bank of Scotland Group (RBS) (www.rbs.co.uk). RBS operates within the management of the Coutts Group of companies (www.coutts.com) part of the Wealth Management division of RBS.

Coutts Group is dedicated to servicing the wealth management needs of high net worth individual clients. The principal company in the Group, Coutts & Co., was founded in 1692 and is incorporated in England. Coutts is headquartered in London with offices around Great Britain, as well as internationally in Europe, East Asia, the Middle East, the Caribbean and Miami through a variety of banks, branches and representative offices.

Coutts, in accordance with the policies set by RBS has consistently and actively developed programs to combat the risks associated with "private banking" and have implemented stringent and effective anti-money laundering programs in compliance with the Bank

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Secrecy Act. These programs include comprehensive Know Your Customer policies and procedures. Coutts fully supports all reasonable efforts in preventing money laundering. Such efforts, however, must not be permitted to become unnecessarily and unduly burdensome to the point where we are placed at a competitive disadvantage with our competitors based outside the United States, particularly when such efforts do not necessarily provide a measurable benefit.

Accordingly, Coutts urges that the Proposed Regulations be evaluated in light of the following standards and goals:

(i) The need to avoid regulations which create or impose undue burdens or restrictions on U.S. financial institutions or increase the cost of doing business in the United States, without meaningful benefits in the fight against money laundering and terrorism; and

(ii) The need to provide clear and concise guidelines to U.S. financial institutions in order to avoid any uncertainties concerning the implementation of Section 312 of Patriot Act.

Based on the foregoing, Coutts respectfully offers the following specific comments to the Proposed Regulations:

1. Definition of "Foreign Financial Institution"

The Proposed Regulations define "foreign financial institution" to include any person organized under foreign law, that if organized in the United States, would be required to establish an anti-money laundering program. This definition is overly broad.

The proposed definition goes well beyond traditional notions of correspondent banking and will encompass a wide range of businesses that do not engage in "correspondent banking" activities or maintain "correspondent accounts" with U.S. financial institutions. We submit that the proposed definition of "foreign financial institution" will significantly increase the cost of doing business without any meaningful policy enhancement or law enforcement benefits. The businesses that will fall under the proposed definition do not pose the types of risks associated with "correspondent bank accounts" that the Patriot Act attempts to address. Furthermore, and perhaps more significantly, the accounts, activities, sources of funds and ownership of these business are already covered by the "know your customer" policies and procedures that Coutts

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currently has in force. Nothing is to be gained, therefore, by requiring U.S. financial institutions to treat as "correspondents", businesses that do not engage in correspondent banking activities or maintain correspondent banking accounts. The added costs and burdens of implementing enhanced due diligence procedures for these types of businesses clearly outweigh the law enforcement benefits to be obtained.

The definition of foreign financial institution should be narrowed to those types of institutions that truly engage in traditional correspondent banking activities and that maintain correspondent banking accounts (i.e. deposits) with U.S. financial institutions, including fully disclosed broker-dealer and clearing agents of introducing brokers. In this regard, we also submit that the definition of correspondent account should be limited to deposit relationships. The money laundering risks associated with non-deposit relationships simply do not warrant the costs and burdens required under an enhanced due diligence program.

2. Definition of "Senior Foreign Political Figure"

The Proposed Regulations define "senior foreign political figure" to include immediate family members and individuals *widely and publicly* known to be close personal or professional associates of certain foreign political figures.

This definition is at best vague and at worst overly intrusive and difficult for a covered financial institution to implement and enforce. The Proposed Regulations essentially require that covered financial institutions determine, *without any guidance*, whether its customers are close friends or business associates of foreign political figures.

The extremely vague definition of "senior foreign political figure," will make it virtually impossible for a covered financial institution to implement and enforce this provision. How is an institution expected to know if an individual is "widely and publicly" known to be a personal or professional associate of a senior political figure? When should a covered financial institution investigate to determine if a person is widely and publicly known to be associated with a foreign political figure? How exhaustive must a covered financial institution's investigation be? What exactly constitutes "widely and publicly known?" How is a covered financial institution expected to monitor or keep track of a customer's association with friends and business associates? No guidance whatsoever is provided by the Proposed Regulations with respect to these critical issues.

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The proposed inclusion of "individuals *widely and publicly* known to be close personal or professional associates" of certain foreign political figures in the definition of senior foreign political figure, imposes an unworkable requirement. As written, it will be virtually impossible for a covered financial institution to comply with this provision. The definition of senior foreign political figure should be narrowed by eliminating the provisions dealing with personal relationships.

3. Definition of Private Banking Account

The definition of "private banking account" is overly broad to the extent that it encompasses accounts established *outside the United States* solely by virtue of the fact that a U.S. based employee may have had some involvement in the process. It should be clear that an account will not deemed *established, managed or administered* in the U.S. merely because the U.S. affiliate of a foreign financial institution solicits or promotes deposit or investment products on behalf of its head office or non-U.S. affiliates.

4. Due Diligence Programs for Correspondent Accounts

The Proposed Regulations provide that in adopting an enhanced due diligence program for correspondent banking relationships, a covered financial institution must consider (i) any publicly available information from U.S. governmental agencies and multinational organizations and (ii) public information in order to ascertain whether the foreign financial institution has been the subject of criminal action of any nature or regulatory action relating to money laundering.

No guidance whatsoever is provided as to the meaning of *publicly available information*. In light of the virtually unlimited sources of *public information* and reporting mediums available today, a covered financial institution may potentially be required to continuously search all publicly available mediums (in the US and abroad), including the Internet, for information regarding its correspondent customers. This is not only unduly burdensome and expensive, but also essentially counterproductive. Coutts will be required to allocate significant resources to finding information that is essentially a needle in a haystack, instead of allocating and directing such resources to more productive anti-money laundering efforts.

These provisions should be eliminated or significantly narrowed and clarified. At a minimum, the Proposed Regulations should provide covered financial institutions with specific and clear

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guidance as to the type and nature of public information to be considered and the frequency of review.

We trust that these observations and comments will prove constructive in your evaluation of the Proposed Regulations

Respectfully submitted,

Coutts (USA) International
Coutts Securities Inc.

Keith A.D. Harrison
Chief Operating Officer