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#27

July 1, 2002

FinCEN
P.O. Box 39
Vienna, VA 22183
Attention: Section 312 Regulations
regcomments@fincen.treas.gov

RE: Notice of Proposed Rulemaking on Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, appreciates the opportunity to submit comments on the proposed regulation (the "Proposal") issued by the U.S. Department of the Treasury and the Financial Crimes Enforcement Network (collectively, the "Treasury") to implement Section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56) (the "Act") (67 Fed. Reg. 37736 (May 30, 2002)).

PNC is one of the largest diversified financial services companies in the United States, with $66.6 billion in assets as of March 31, 2002. Its major businesses include regional community banking, corporate banking, real estate finance, asset-based lending, wealth management, asset management and global fund services, including one of the largest full-service mutual fund transfer agents in the United States. PNC's full-service subsidiary banks have offices in Delaware, Florida, Indiana, Kentucky, New Jersey, Ohio and Pennsylvania.

PNC strongly supports the federal government's efforts to combat money laundering and terrorist financing, and has been an active participant in the preparation of comments by the Financial Services Roundtable and the American Bankers Association on the rules that the Treasury has issued pursuant to the Patriot Act regarding correspondent accounts for foreign banks and suspicious activity reporting for broker-dealers, and the information sharing rules. PNC has also participated in, and supports, the comment on Section 312 jointly prepared by the American Bankers Association, the Bankers Association for Finance and Trade, the Financial Services Roundtable, the Futures Industry Association, the Institute of International Bankers, the Investment

Company Institute, The New York Clearing House Association L.L.C., the Securities Industry Association, and the Swiss Bankers Association. PNC seeks to supplement and emphasize some of the comments contained in that submission.

While PNC supports the adoption of more stringent customer due diligence requirements for high risk accounts and businesses, we are concerned that some aspects of the Proposal would create extremely burdensome compliance requirements for many financial institutions, with little demonstrable benefit in preventing or detecting money laundering or terrorist financing. We recognize that, because of the constraints of Section 312 of the USA PATRIOT Act, the Treasury may have little discretion in addressing some of these concerns. However, to the extent that such discretion is present, PNC urges the Treasury to modify the Proposal in certain parts, and delay its implementation beyond July 24 in others. PNC's comments and recommendations for improving the Proposal are set forth below.

Definition of Financial Institutions

The proposed definition of "financial institution" will add extremely burdensome, and perhaps unintended, compliance requirements to those already faced by American financial services companies. The Proposal will apply to every domestic financial institution that currently has, or in the future will be required to have, an anti-money laundering compliance program. As a result, entire segments of the financial services industry will suddenly be required to search existing customer databases for information that simply may not be available on such short notice. They will have to search customer records not only for accounts maintained by foreign banks, but also for a wide range of other foreign customers, including those falling within classes of institutions that might be added to the financial institution definition at a later date. They will also have to search for individuals who may have connections with foreign political leaders, and they will have to do so for all customers by July 24, 2002.

Impact on Mutual Fund Industry

Although all financial institutions will find compliance with the Proposal quite burdensome, the mutual fund industry will be particularly affected. A typical mutual fund could have millions of shareholders, some of which purchase their shares directly from the fund, others through broker-dealers. Millions of shares could change ownership in a single day. There is no entity within the mutual fund process that currently maintains the information necessary to identify foreign financial institutions, much less perform the basic or expanded due diligence that would be required when a foreign financial institution is identified as a shareholder. Similarly, given the sheer numbers of individual shareholders, there might be hundreds, if not thousands, of shareholders of each fund who would require analysis to determine if they are senior foreign political figures. It might

be possible for the industry to institute processes for new shareholder purchases where such information might be captured, perhaps in conjunction with the customer identification processes that will be included in the regulations under Section 326 of the Act. However, imposing the due diligence requirements upon the mutual fund industry for existing shareholders, especially with a July 24, 2002 effective date, would create an insurmountable compliance burden.

Impact on Other U.S. Financial Institutions

Mutual funds would not be the only impacted industry if the broad definition of "financial institution" is included in a final rule that becomes effective on July 24, 2002. With respect to the application of the definition to domestic institutions that must conduct the due diligence, some of the entities that have recently fallen within the scope of Section 352 would undoubtedly find a July 24, 2002 compliance date to be very burdensome. For example, all covered domestic institutions will find that the application of the broad definition to the foreign financial firms they must identify and evaluate greatly expands their compliance burdens, because they will have to identify which of their customers are non-U.S. mutual funds, money remitters or other entities meeting the definition. Should the final rule require all U.S. "financial institutions" to search existing accounts for all non-U.S. "financial institution" relationships effective July 24, 2002, there would be an enormous compliance cost, which would be disproportionate to the likely results, given that existing customer records are unlikely to have the required information.

Recommended Effective Dates

PNC believes that in lieu of imposing the expanded due diligence provisions at one time on all domestic financial institutions, it would be more productive to do so in coordination with other regulations issued under the Act. This could include adding the due diligence requirements for foreign financial institutions to the shell bank regulations under Section 319 of the Act, applicable initially to domestic institutions subject to those regulations. Next, all financial institutions subject to the customer identification regulations to be issued under Section 326 could include the foreign financial institution and private banking due diligence provisions as part of their procedures for all new accounts under those regulations. This would enable institutions such as mutual funds (or their service providers) to establish systems that could be leveraged to search existing customer bases at a later date. Such an approach could also be used for other financial institutions that are later made subject to either the shell bank provisions of Section 319 or the anti-money laundering provisions of Section 326. We believe that such an approach would enable financial institutions that have had anti-money laundering programs to implement promptly most of the Proposal's requirements, while enabling

those institutions that have not had such programs to develop and implement comprehensive programs in a coordinated and disciplined manner.

Application of the Definition of "Financial Institution" to Foreign Accounts

With respect to the application of the broad definition of "financial institution" to foreign accounts, PNC believes that it may not always be apparent to the domestic institution that its customer falls within the definition. While PNC acknowledges that in most cases normal and customary account opening processes should disclose the business of a foreign customer, there may be cases where a foreign customer engages in some activities that fall within the broad definition, which would not normally be identified by the domestic institution conducting the due diligence. PNC believes the Treasury should take into account that some foreign customers that would not be allowed to engage in the business of banking under U.S. laws may have banking powers in their countries, but exercise them in a very limited manner unrelated to their account relationship with the U.S. institution. The final regulations should also provide that if a U.S. institution does not have knowledge that a foreign customer is a financial institution, but has reasonable procedures in place to ascertain the status of the foreign customer, it will not be in violation of the regulation if the foreign customer is deemed a financial institution.

PNC believes the Proposal is confusing with respect to the foreign financial institution expanded due diligence requirements. It is unclear whether the term "licensed" means "chartered." For example, if a foreign bank chartered in a low risk country (such as Great Britain) has a "licensed" branch in a high risk country (such as Nigeria), would all covered U.S. financial institutions that have accounts with that foreign bank be required to conduct "expanded due diligence" because of this licensed branch? PNC believes that the nation where the foreign bank obtains its charter, and not the licensing nations for branches or other activities, should be the triggering factor for the expanded due diligence, since in most cases the chartering country would have supervisory jurisdiction over all of the branches of that bank. Regardless of the approach the Treasury adopts, clarification on the "licensing" concept is necessary in the final regulation.

PNC is also concerned that for the vast majority of foreign banks, many U.S. financial institutions will be conducting duplicate due diligence reviews, in some cases within the same holding company structure. We believe that compliance resources need to be allocated to manage real potential risks. Just as with the shell bank certification process, we urge the Treasury to provide a "safe harbor" list of acceptable foreign banks that domestic institutions could rely on to identify foreign banks requiring little separate due diligence. Such a list would provide U.S. institutions a quick checkpoint for these banks, and allow resources to be devoted primarily to institutions that may have higher risk profiles.

PNC notes that the list of high risk countries includes some that are important allies in the U.S. efforts to combat terrorism, and that domestic financial institutions may determine that the costs of maintaining relationships with institutions located in these countries exceed the benefits derived from them. Some of these allied countries may have fragile economies that are dependent upon their banking systems' relationships with U.S. financial institutions for development efforts. Termination of these relationships by U.S. institutions as a means of avoiding the costs of expanded due diligence could prove very harmful to these economies. PNC therefore recommends that the Treasury evaluate the overall impact of characterizing a country as "high risk" with respect to combating terrorism before including it as one of the nations whose banks are subject to expanded due diligence.

"Publicly Available" Information

PNC is concerned that the notion of "publicly available" information concerning a foreign financial institution, country or private bank customer is too subjective and may result in inconsistent or incorrect conclusions by U.S. institutions. One institution may not have the capability of conducting internet or other research regarding a particular customer or country, raising the likelihood that problematic foreign customers will search for those institutions lacking sophisticated research capabilities. PNC believes that more emphasis needs to be placed upon information from law enforcement and the regulatory community in identifying problem foreign institutions and jurisdictions, and suggests that the information sharing provisions of Section 314(a) were intended to provide just this sort of support.

Private Bank Due Diligence Provisions

PNC believes that several points within the private bank due diligence provisions need clarification. First, the Proposal does not indicate whether customer relationships across affiliated companies should be aggregated for purposes of either the $1 million minimum account threshold or the liaison requirement. Many bank and financial holding companies have customers whose relationships extend across affiliated companies, only one of which may include a "liaison" between the customer and the institution. If the intent of the Proposal is to aggregate these relationships, the Proposal should also provide that the information sharing necessary to identify such relationships is excluded from applicable information sharing and consumer privacy laws, such as the Fair Credit Reporting Act, even if the customer has opted out of such information sharing. PNC also believes that the Treasury needs to clarify the notion of an account "administrator" or "liaison." For example, many institutions dedicate a manager to handle many accounts based on geographic delineation, and not on any personal relationship the employee has with the customer. In fact, in many such cases the assigned manager may never meet or

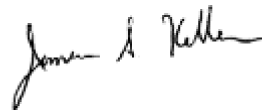
speak to the customer unless there is a customer-driven need. Other institutions may assign relationship management based on business cost centers or other internal factors. To avoid the unintended characterization of these and similar loosely managed relationships as “private bank” accounts, the Treasury should further define the extent to which an account (or part of a relationship of multiple accounts) should receive the personal attention of an employee for the private bank due diligence provisions to apply.

In this regard, PNC suggests that a much narrower concept of “liaison” is warranted if the Treasury is concerned that problematic private bank accounts are those where an employee shields the customer from the normal scrutiny that would otherwise be applied to the account. If this is the primary concern, the Proposal should provide more specific guidance with respect to the types of services that the institution employee must provide in order for the regulation to be applicable. PNC does not believe that the assignment of an employee to an account equates to a lessened anti-money laundering control environment. In fact, we believe that in many such cases the active management of a customer relationship offers more, not less, opportunity for effective anti-money laundering controls, simply because the size and nature of the relationship warrants more frequent review of account transactions. To avoid the costly and unproductive evaluation of accounts that are already being adequately managed for money laundering concerns, PNC suggests that the Treasury indicate the types of administrative functions that, when performed by an employee for a customer, would trigger potential expanded due diligence.

Conclusion

PNC expresses its appreciation for this opportunity to comment on the Proposal. We hope our comments will be helpful to the Treasury in formulating the final regulation.

Sincerely,



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