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#4
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FinCEN
P.O. Box 39
Vienna, VA 22183
Attention: Section 312 Regulations

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

Ladies and Gentlemen:

The Florida International Bankers Association ("FIBA") 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").

FIBA was founded in 1979 to foster international banking, trade, and commerce, as well as to promote and sustain ethical standards and practices in the conduct of international banking. With a membership consisting of foreign and domestic banks with strong international ties, FIBA has historically been involved in regulatory and industry wide efforts to combat money laundering and encourage safe, sound and responsible banking systems. FIBA has consistently and actively assisted its membership in developing programs to combat the risks associated with money laundering. Furthermore, FIBA has taken an active role in working with bank regulatory authorities to develop effective anti-money laundering programs for U.S. financial institutions.

FIBA fully supports all reasonable efforts in preventing the use of U.S. financial institutions for the purpose of money laundering. Such efforts, however, must not be permitted to unnecessarily and unduly burden U.S. financial institutions to the point where such institutions are at a competitive disadvantage with foreign financial institutions, particularly when such efforts do not necessarily provide a measurable benefit. Most U.S. financial institutions, particularly foreign banks operating in Florida, already have implemented stringent and effective anti money laundering programs in compliance with the Bank Secrecy Act. These programs include comprehensive Know Your Customer policies and procedures. Any new requirements imposed by the Patriot Act, therefore, should be

implemented in a manner reasonably calculated to provide meaningful benefits in the fight against money laundering and terrorism.

Accordingly, FIBA 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, FIBA 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.

As acknowledged in the commentary to the Proposed Regulations, recent legislation has significantly expanded the scope of U.S. organizations that are required to establish anti-money laundering programs. Non-financial institutions, such as casinos and mutual funds, are now required to maintain anti-money laundering programs.

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 for U.S. financial institutions 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 of U.S. financial institutions.

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. In this regard, we also submit that the definition of correspondent banking 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. Unlike traditional anti-money laundering policies that require U.S. financial institutions to inquire as to its customer's financial and professional background, the Proposed Regulations impose a more daunting requirement; that covered financial institution delve into the personal lives of its customers. Such a requirement is not only extremely intrusive, but will likely work against the purposes of the Patriot Act by driving customers to non-U.S. financial institutions. Privacy is as important and legitimate a concern for foreign individuals as it is for U.S. citizens.

Furthermore, 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.

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* in the U.S. merely because the U.S. office of a foreign bank solicits or promotes deposit 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. Covered financial institutions 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 guidance as to the type and nature of public information to be considered and the frequency of review.

5. Enhanced Due Diligence for Certain Off Shore Banks

The Proposed Regulations require that a covered financial institution take reasonable steps to determine the ownership of any foreign bank whose accounts are subject to the enhanced due diligence procedures of the Proposed Regulations---essentially foreign banks operating with an off-shore license. For purposes of the Proposed Regulations, an owner is defined as any person who directly or indirectly owns, controls, or has power to vote five percent (5%) or more of any class of securities of the foreign bank.

The five percent (5%) threshold set forth in the Proposed Regulations is too low. It is highly unlikely that a five percent (5%) shareholder of a non-publicly traded institution will be in a position to exercise a controlling influence over the institution. Consequently, such a low threshold will only result in significant additional costs and reporting burdens without providing any meaningful benefits. Historically, the threshold for determining ownership of financial institutions has been set at twenty five percent. Ownership of less than twenty five percent has been deemed to be *de minimus* since such person would not be able to control, influence or dictate the policies of such financial institution.

Although we understand and appreciate that twenty five percent may not be an appropriate threshold for enhanced due diligence purposes, five percent is certainly too low of a threshold. We suggest that a more meaningful and workable solution would be between ten and fifteen percent.

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

Respectfully submitted,

David Konfino
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FLORIDA INTERNATIONAL
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