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Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183-1618
Attn: Section 312 Regulations

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

Ladies and Gentlemen:

Union Bank of California, N.A. (UBOC) respectfully submits the following comments in response to the proposed rule regarding due diligence anti-money laundering programs, implementing Section 312 of the U.S.A. PATRIOT Act

UBOC is the second largest commercial bank headquartered in California with $36 billion in assets and is among the 35 largest banks in the United States. The Bank has more than 250 branches in California, Washington and Oregon, an office in Texas, as well as 16 international offices. Our holding company is UnionBanCal Corporation. We are a full service commercial bank, providing a broad mix of financial services, including consumer and small business banking, middle market banking, real estate finance, corporate banking, correspondent banking and trade finance, personal and business trust services and domestic and global custody. We have a large private banking business segment, over 3000 foreign correspondent relationships and over 900 correspondent account relationships in both low and high-risk countries. The provisions of the Section 312 regulations will significantly impact both of these areas of our operations.

Summary Conclusion:

UBOC acknowledges the need for enhanced scrutiny of high-risk business relationships, such as private and foreign correspondent banking. In recognition of this, we have already established our own due diligence processes to identify

our high-risk clients and monitor their transactions. Additionally, we've instituted a monitoring process for transactions involving our foreign correspondents located in high risk countries and have already uncovered activity that has resulted in arrests of potential money launderers. We are constantly in contact with our foreign correspondents and visit them on a regular basis. We deal with a large number of banks in Russia and are proactively assisting them in developing their own anti-money laundering programs.

Our processes have been found to be effective in mitigating risk and identifying potential suspicious activity. They have been tailored to fit our business structure and geographic focus. The processes described in the proposed rule are unduly burdensome and will yield little additional value beyond what we are already doing. We see no need for additional constrictive and prescribed rules.

General Comments:

We find several areas of the proposed rules particularly burdensome and troubling.

Definition of "correspondent account" is too broad.

The statement "…*handle other financial transactions related to such institution"* in the definition of correspondent account could be interpreted to mean any transaction involving a foreign bank. If so, would we be required to follow the due diligence processes outlined in the proposed rule (as well as the certification process required by §313 & 319) each time we conduct any type of transaction involving a foreign bank? Would this apply to each letter of credit issued by a foreign bank, each syndication loan involving a foreign bank or even each check drawn on a or by a foreign bank which we process on behalf of our U.S. clients. U.S. banks routinely process and clear items drawn on foreign institutions in the same manner as U.S. items. Would it now be necessary for U.S. banks to screen all check deposits to identify foreign checks and potentially refuse to accept such items until due diligence is completed on the bank that issued the check?

If the definition is interpreted this broadly, international commerce could be seriously impaired. In general, most of our dealings are with our established foreign correspondents, which are already subjected to our existing due diligence processes. If we were required to implement a program, such as required by the proposed rule, each time we handle a transaction involving a foreign bank we would probably establish a policy prohibiting transactions with any foreign bank other than our established correspondents. The alternative would just be too difficult to manage and too costly to support processing simple, low fee transactions.

The major threat, however, would be the potential impact of making it progressively more difficult for the global community to use the U.S. dollar as a major international currency. The ultimate threat of increasing the cost of the U.S. dollar as the dominant global currency, and of even barring large numbers of participants from U.S. dollar clearing is that the dollar will decline in importance as the major global currency. The U.S. as the current global financial capital will experience the end of the seigneur age it enjoys as the issuer of the world's dominant reserve currency.

The U.S. now enjoys, in effect, interest free loans from the various global players who hold U.S. dollars as reserves or even as deposits. If the imposition of ever-harsher rules eventually results in the U.S. having to redeem dollars held everywhere else in the world, the economic impact would be huge.

July 23 is too soon to expect full compliance.

Section 103.176(b) requires "covered" financial institutions to obtain some information which local law may prohibit our foreign correspondents from disclosing (for example, sources and beneficial ownership of funds). While we anticipate that we should eventually be able to obtain consent from local government to access the information, governmental processes in many countries are very slow. Therefore, we see no way that we will be able to obtain all the required information in less than one month.

It may be impossible for U.S. financial institutions to judge the effectiveness of anti-money laundering programs established by foreign banks.

Section 103.176(b)(1) requires "covered" financial institutions to review documentation regarding the foreign correspondent's anti-money laundering program and consider whether the program is effective. Determining if a program designed to deter and detect money laundering in a foreign jurisdiction if effective may be difficult for a U.S. institution. We are not always familiar with local business practices and criminal trends. It is entirely possible that we may overlook major weaknesses yet question practices that are normal and legitimate for the foreign institution.

Identifying any persons who have authority to direct transaction activity of a foreign correspondent would be a difficult and cumbersome process.

Section 103.176(b)(1) further requires that enhanced scrutiny shall, when appropriate, include identification of any persons who will have authority to

direct transaction activity of the correspondent account. The number of individuals with transaction authority can vary widely between institutions and can range from a few key individuals to thousands in a larger institution and depends upon what constitutes "authority to direct transaction activity". Does this apply to anyone who has the authority to issue a letter of credit or initiate a funds transfer?

Conclusion:

The concerns stated above illustrate why a prescriptive and detailed approach to due diligence will not work. Each financial institution has a different business focus often with unique associated risks. Therefore, we strongly urge that the rule adopt a more risk-based approach. Each "covered" institution is in the best position to develop a program tailored to their business and relationships.

Again, we thank you for this opportunity to comment and appreciate your consideration of our views. Should there be any questions regarding our comments, or if further information is needed, please feel free to contact Margaret Silvers at (415) 291-4791 or me at (415) 291-4780.

Sincerely,

Stuart Lehr

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