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July 1, 2002

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Attention: Section 312 Regulations
Regcomments@fincen.treas.gov

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

Ladies and Gentlemen:

National Futures Association is a registered futures association under the Commodity Exchange Act and the self-regulatory organization for the United States commodity futures industry. At this time, NFA appreciates the opportunity to comment on the Department of the Treasury's proposed rulemaking to implement Section 312 of the USA PATRIOT Act of 2001¹, which requires U.S. financial institutions to establish due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that U.S. financial institutions establish or maintain for non-U.S. persons. Our specific comments on the proposed rules cover two issues.

First, we strongly endorse the proposed rules' risk-based approach to implementing Section 312's due diligence requirements. Any covered financial institution's due diligence program needs to assess its type of business, client base, the type of accounts, and the types of transactions in which it engages in order to properly implement Section 312's requirements. In fact, in adopting the anti-money laundering ("AML") requirements to implement Section 356 of the USA PATRIOT Act for the futures industry, NFA attempted to implement such a risk based approach, particularly in recognizing that there may be instances when it is appropriate for one covered financial institution to rely upon another to perform certain due diligence functions. To that end, NFA believes that it would be extremely beneficial for the final rules to explicitly recognize that a covered financial institution may rely upon, in appropriate circumstances, a reputable foreign financial institution's own AML due diligence program as applied to its own customers. Moreover, NFA believes that the final rule's risk-based due diligence requirements should distinguish between proprietary accounts

¹ 67 Fed. Reg. 37736 (May 30, 2002)

of foreign financial institutions and accounts maintained by these institutions on behalf of third parties.

Second, NFA encourages FinCEN to adopt realistic implementation deadlines with regard to Section 312's requirements. As you are aware, this Section's requirements are currently due to take effect on July 23, 2002, approximately three weeks from now, and will apply to all accounts covered by the requirements regardless of when they were opened. Although NFA expects its Member firm's to comply with Section 312's comprehensive due diligence requirements as soon as possible, we believe it is inappropriate to expect full compliance with the requirements by July 23, 2002. To that end, we strongly encourage you to consider the comments from various financial industry participants and work with them to develop realistic compliance dates.

Lastly, in addition to the two matters discussed above, NFA also encourages FinCEN to consider the comments from various financial industry participants relating to the following: (1) the scope of the proposed rule and, in particular, the definitions of "correspondent account," "covered financial institution" and "foreign financial institution;" and (2) the enhanced due diligence requirements applicable to certain correspondent accounts, particularly with respect to permitting a covered financial institution to follow its normal business practices in terminating a correspondent account of a foreign bank.

NFA's appreciates the opportunity to comment on the proposed Section 312 requirements. If you have any questions or need additional information, please do not hesitate to contact me at (312) 781-1413 or Carol Wooding at (312) 781-1409.

Sincerely,

Thomas W. Sexton
General Counsel