Securities Industry Association
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#3
Via Electronic Mail and U.S. Mail

August 22, 2002

Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183-1618
Attention: Section 312 Interim Regulations

Re: Interim Rule To Implement Section 312 of the Patriot Act

Ladies and Gentlemen:

The Securities Industry Association ("SIA")[1] appreciates the opportunity to comment on the Interim Rule issued by the Financial Crimes Enforcement Network of the Department of the Treasury to implement section 312 of the USA PATRIOT Act[2]. Section 312 requires U.S. financial institutions, such as broker-dealers, banks, and mutual funds, to establish due diligence policies to detect money laundering through correspondent accounts with foreign financial institutions and private banking accounts with foreign persons.

Treasury initially issued a proposed rule to implement section 312 on May 30, 2002. SIA and eleven other trade associations submitted a joint comment letter on July 1, 2002 in response to Treasury's proposal. Our letter addressed many issues raised by the proposal, including its

[1] The SIA brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member firms (including investment banks, brokers-dealers and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift and pension plans. The industry generates $358 billion of revenue and employs approximately 760,000 individuals. (More information about the SIA is available on its home page: http://www.sia.com.)

[2] "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," ("Patriot Act") Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

overly broad scope, the need for a risk-based approach including reliance on intermediaries, and the effective date of the proposal.

We commend Treasury for recognizing the substantial requirements placed on the industry by their initial proposed rule under section 312, and for delaying the issuance of a final rule so that it could more carefully consider the important concerns raised by the industry about the rule's scope. The Interim Rule requires broker-dealers to comply with due diligence and enhanced due diligence requirements for private banking accounts, but exempts them from the provisions related to correspondent accounts until a final rule is issued.

We remain concerned about the private banking account requirements, which continue in force in the Interim Rule for broker-dealers, banks and futures commission merchants. While Treasury has indicated that no inference should be drawn from the Interim Rule regarding the scope and substance of the final regulation , we urge Treasury, in considering its final rule, to consider the comments SIA and the other trade associations submitted on the private banking requirements. Our joint comment letter raises a number of important issues with respect to the range of accounts that are subject to the private banking requirements and the definitions of certain key terms in the proposed rule. These definitional points are particularly important because, although Treasury appears to be of the view that private banking is well known to the securities industry, we respectfully suggest that it is not and that many firms are finding it difficult to determine how to apply the rule. Moreover, as we also discussed in our joint comment letter, there is a need for the rule to recognize reliance on intermediaries as part of a risk-based due diligence approach for private banking.

We are also concerned by the suggestion that broker-dealers will be in compliance with the Interim Rule's requirements if they follow the guidance previously issued by the banking regulators. For example, the Interim Rule states that "[a] program that is consistent with applicable government guidance on private banking accounts, such as the guidance for private banking issued by the Federal Reserve . . . would be reasonable, so long as it incorporates the requirements of section 5318(i)(3)." We want to ensure that securities firms will not be required to comply with guidance that was specifically crafted for banking institutions, and as to which our member firms have not previously been requested to provide written comment. While we appreciate Treasury's efforts to provide some form of interim guidance to broker-dealers regarding the private banking requirements, we believe that incorporating such guidance into the final regulation would not be consistent with the notice provisions of the Administrative Procedures Act.

We appreciate the time Treasury has given to consider industry's views. If you wish to receive additional information related to our comments, please feel free to contact us.

Sincerely,

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cc: (Via Electronic Mail)

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