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FinCEN
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Subject: **NPRM—Section 352 Unregistered Investment Company Regulations**

Dear Sir or Madam:

Bank One Corporation ("Bank One") appreciates the opportunity to comment on the proposed regulations (the "Proposed Regulations") concerning anti-money laundering ("AML") programs for unregistered investment companies issued pursuant to Section 352 of the USA PATRIOT Act (the "Patriot Act"). Bank One is the nation's sixth-largest bank holding company, with assets of more than $270 billion. From time to time, subsidiaries of Bank One may provide investment advisory and other services to unregistered investment companies including hedge funds, offshore funds and other types of vehicles that would be subject to the Proposed Regulations.

Bank One supports FINCen's efforts to identify unregistered funds that could be vulnerable to money laundering schemes by terrorists or other criminals. However, Bank One believes that the definition of an unregistered investment company is too broad in connection with certain offshore funds. As drafted, the Proposed Regulations would apply to offshore funds that have only limited contact with the United States and that are already subject to comprehensive AML requirements in other countries. For example, the Proposed Regulations would apply to a fund even if it has only one U.S. investor. Moreover, the Proposed Regulations could also be interpreted to apply when a fund's only contact with the United States is its investment advisor. In many cases, these funds are serviced by offshore administrators that are already subject to developed AML regulations outside of the United States. As a result, Bank One recommends that the Proposed Regulations be revised to limit the definition of unregistered investment company to those funds that have a meaningful nexus to the United States. In addition,

Bank One recommends that the Proposed Regulations revise the requirements for delegating AML compliance programs to offshore administrators to eliminate duplicative record keeping requirements. Our specific comments are set forth below in more detail.

A. Unregistered Investment Company Definition – Sales to a Single U.S. Investor. The Proposed Regulations require unregistered investment companies to comply with United States AML requirements even if they have limited contact with the United States or United States investors. Under the Proposed Regulations, unregistered investment companies include companies that sell ownership interests to "a U.S. person." As a result, compliance with the Proposed Regulations would be required even for a fund that has only a single U.S. investor. Such compliance would be required even if the only U.S. investor is the advisor to the fund.[1] Bank One believes that this definition is too broad and will subject offshore companies who have minimal contacts with the United States to multiple anti-money laundering regulations.

Typically, offshore funds retain non-U.S. administrators who are already subject to comprehensive anti-money laundering regulations in the country where they provide services. Although it may be appropriate to subject a fund that is actively sold in the United States to both U.S. and foreign anti-money laundering regulations, dual regulation should not be imposed when the fund has only an occasional U.S. investor and is already subject to meaningful AML regulation outside of the United States. Specifically, Bank One recommends that the definition of unregistered investment company be revised such that the final regulations only apply to offshore funds in which 25% or more of the investors (exclusive of the investment advisor) are U.S. investors.

B. Unregistered Investment Company Definition – U.S. Investment Advisors. The Proposed Regulations also apply to funds that are "organized, operated or sponsored by a U.S. person." However, it is unclear what activities are included in organizing, operating, or sponsoring a fund. Specifically, Bank One is concerned that a fund would be subject to the Proposed Regulations even if its only nexus with the United States is that it is advised by a U.S. investment advisor. For example, Banc One Investment Advisors Corporation ("BOIA"), an investment advisor registered with the SEC, serves as investment advisor to the One Group Global Fund. The fund shares are marketed outside of the United States and are sold only to non-U.S. investors. BOIA's activities are limited to providing investment advisory services. All shareholder servicing is performed outside of the United States by parties other than BOIA. The manager of the fund is located in Dublin, Ireland and is responsible for providing an anti-money laundering program in compliance with the Irish Criminal Justice Act.

Despite its limited connection with the United States, it is unclear whether the Proposed Regulations would apply to the One Group Global Fund. However, given the limited contact with the United States and the fact that the fund is already subject to comprehensive anti-money laundering regulations in Ireland, the fund should be excluded from the scope of the Proposed Regulations. As a result, Bank One recommends that the

[1] Typically, investment advisors to unregistered hedge funds make an investment in the fund along with unrelated outside investors.

Proposed Regulations be clarified to provide that a fund will not be subject to the regulations merely because its advisor is located in the United States.

C. Compliance by Offshore Administrators. In addition to clarifying the definition of unregistered investment company, the Proposed Regulations should be revised to provide that a fund is not required to keep duplicate AML records in the United States if such records are customarily kept by an offshore administrator. As FINCen correctly observed in the Proposed Regulations, some components of an AML program are "best performed" through third party providers such as fund administrators rather than by the fund itself. With respect to offshore funds, shareholder servicing including AML programs are typically provided by the fund's administrator. Although a fund is permitted to delegate responsibility to such offshore administrators, the fund is still responsible for "ensuring that federal examiners are able to obtain information and records relating to the AML program and to inspect" the third party service provider.

Compliance with these provisions could be extremely burdensome given the overseas location of some administrators and the limited contact that these funds have with the United States. For example, a fund could be required to keep two sets of records: one set to satisfy AML and other legal requirements in the fund's offshore jurisdiction and one set in an United States location. In addition, a fund may not be able to require an offshore administrator to submit to inspection by U.S. federal examiners. As a result, the Proposed Regulations should provide that a fund will have satisfied its AML responsibility if the offshore administrator contractually agrees to: (1) keep records relating to AML compliance in a place reasonably accessible to the offshore administrator, and (2) provide copies of such records within a reasonable time after request from the fund's U.S. investment advisor or sponsor.

Bank One appreciates the opportunity to comment on the Proposed Regulations. If it would be helpful to discuss any of our comments in greater detail, please contact the undersigned at (614) 248-5749.

Sincerely,

/s/Jessica K. Ditullio

Jessica K. Ditullio
First Vice President and Counsel

cc: Chris Edwards