



OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Subject: USA PATRIOT Act – Anti-
Money-Laundering Provisions

TO: Chief Executive Officers of All National Banks, Federal Branches and Agencies,
Department and Division Heads, and All Examining Personnel

PURPOSE

The President signed the USA PATRIOT Act into law on October 26, 2001.¹ The PATRIOT Act establishes a wide variety of new and enhanced ways of combating international terrorism. The provisions that affect national banks (and other financial institutions) most directly are contained in Title III of the act. In general, Title III amends current law – primarily the Bank Secrecy Act (BSA) – to provide the Secretary of the Treasury (Treasury) and other departments and agencies of the federal government with enhanced authority to identify, deter, and punish international money laundering. This issuance highlights the anti-money-laundering provisions of Title III that are of most immediate significance to national banks.

The provisions Title III of the PATRIOT Act will sunset after September 30, 2004, if the Congress enacts a joint resolution to terminate them. The act requires expedited consideration by the Congress of any such joint resolution.

DISCUSSION

Key Provisions of Title III of the USA PATRIOT Act

Prohibition on United States Correspondent Accounts with Foreign Shell Banks (Sec. 313)

- Effective Date: **December 25, 2001.**
- Section 313 bars covered financial institutions² from establishing, maintaining, administering, or managing correspondent accounts in the United States for foreign “shell” banks. A foreign shell bank is a foreign bank that does not have a physical presence in any country. An exception permits covered financial institutions to provide correspondent

¹ The USA PATRIOT Act is an acronym for The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, Pub. L. No. 107-56 (October 26, 2001).

² Section 313 defines “covered financial institution” by cross reference to 31 USC 5312(a)(2)(A) through (G). These include insured banks, under 12 USC 1813(h); commercial banks or trust companies; private bankers; branches, and agencies of foreign banks in the United States; credit unions; thrifts; and registered brokers and dealers.

accounts for foreign shell banks that are affiliated with depository institutions that have a physical presence and that are subject to supervision by a banking regulator.³

- Section 313 also requires covered financial institutions that maintain correspondent accounts in the United States for a foreign bank to take reasonable steps to ensure that such accounts are not being used by that foreign bank to provide indirect banking services to a foreign shell bank. Treasury is directed to issue regulations to define these “reasonable steps.” Treasury has published guidance (copy attached) describing a certification process that covered financial institutions may use to comply with section 313 pending issuance of regulations by Treasury. *See* 66 Fed. Reg. 59342 (Nov. 27, 2001) or the Treasury Web site at www.treas.gov/press/releases/po813.htm.

Forfeiture of Funds in United States Interbank Accounts; Production of Bank Records (Sec. 319)

- Effective Date: Effective immediately, but the section expressly gives covered financial institutions a 60-day grace period, that is until **December 25, 2001**, to comply.
- *Section 319*: Section (a) provides for forfeiture of a foreign bank’s interbank account⁴ in the United States under certain circumstances. Section (b) contains provisions that enhance the ability of bank regulators and law enforcement authorities to obtain certain records from covered financial institutions.
 - *Forfeiture*. Section 319(a) expands the circumstances under which funds in a U.S. interbank account may be subject to forfeiture. If a deposit of funds in a foreign bank outside of the United States is subject to forfeiture, U.S. law enforcement authorities can seize the funds in the U.S. account as a substitute for the foreign deposit. Law enforcement is not required to trace the funds seized in the United States to the deposit abroad.
 - *Information and Documentation Requests: The 120 Hour Rule*. Section 319(b) requires U.S. covered financial institutions to comply, within 120 hours, with an appropriate federal banking agency’s request for information and documentation concerning any account opened, maintained, administered or managed in the United States by that financial institution. The rule also covers requests for information and documentation on the nature of a covered financial institution’s or covered financial institution customer’s anti-money-laundering compliance.

³ The act defines an “affiliate” as a foreign bank that is controlled by or under common control with another institution. A bank has a “physical presence” in a jurisdiction if it maintains a place of business at a fixed address, other than a solely electronic address, employs full-time staff, maintains operating records, and is subject to inspection by the bank’s licensing authority.

⁴ The act uses the definition of “interbank account” in 18 USC 984(c)(2)(B), which is “an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.”

- Foreign banks that maintain correspondent accounts in the United States are subject to subpoena and summons with respect to records relating to a correspondent account, including records maintained outside the United States. U.S. covered financial institutions may be required to sever correspondent arrangements with foreign financial institutions that do not either comply with or contest any such summons or subpoena.
- *Records.* Covered financial institutions that maintain correspondent accounts in the United States for foreign banks are required to keep records that identify the owners of the foreign bank and a person authorized to accept service of process in the United States. These records must be turned over to federal law enforcement authorities within seven days of receipt of a request for them. The certification process published by Treasury, referred to in the previous section, may be used to comply with this requirement. *See* 66 Fed. Reg. 59342 (Nov. 27, 2001) or the Treasury Web site at www.treas.gov/press/releases/po813.htm.

Special Due Diligence for Correspondent Accounts and Private Banking Accounts (Sec. 312)

- Effective Date: Treasury regulations are required to be issued, in consultation with the appropriate federal functional regulator, by **April 24, 2002**; whether or not regulations are issued, this provision is effective on **July 23, 2002**.
- *General Due Diligence Standards.* Section 312 requires that all financial institutions that establish, maintain, administer, or manage private banking accounts or correspondent accounts in the United States for non-United States persons or their representatives have “appropriate, specific and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.” Treasury is required to issue regulations implementing this special due diligence requirement.
- *Additional Due Diligence Standards for Certain Correspondent Accounts.* Section 312 requires additional due diligence for money laundering when a U.S. financial institution maintains correspondent accounts or private banking accounts for foreign banks under three circumstances:
 - When the foreign bank operates under an offshore banking license;⁵
 - When the foreign bank operates under licenses issued by countries that have been designated by intergovernmental groups as noncooperative with international counter-money-laundering principles; or
 - When the foreign bank operates in a jurisdiction designated by Treasury as warranting special measures because of money-laundering concerns.

⁵ Section 312 defines an “offshore banking license” as a license to conduct banking activities, with a condition of the license being that the bank may not offer banking services to citizens of, or in the local currency of, the jurisdiction issuing the license.

The additional due diligence measures require U.S. financial institutions to:

- If the foreign bank is not publicly traded, identify each of its owners and the nature and extent of each owner’s interest;
 - Take reasonable steps to conduct enhanced scrutiny of the correspondent account and to report suspicious transactions; and
 - Take reasonable steps to ascertain whether the foreign bank provides correspondent accounts to other foreign banks. If so, the U.S. financial institution must identify those institutions and conduct due diligence on them.
- *Minimum Due Diligence Standards for Private Banking Accounts.* Private banking accounts are defined as accounts with minimum deposits of \$1 million that are assigned to or managed by a bank employee who acts as a liaison between the financial institution and the beneficial owner. For these accounts, financial institutions must at a minimum identify the nominal and beneficial owners of the account and the account’s source of funds and report suspicious transactions. The financial institution must also conduct enhanced scrutiny of any account requested or maintained by a “senior foreign political figure, or any immediate family member or close associate” to detect transactions that may involve proceeds of foreign corruption.

Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money-Laundering Concern (Sec. 311)

- Effective Date: To be determined by future orders and regulation.
- Section 311 gives Treasury, in consultation with the Federal Reserve, the OCC, the other appropriate federal functional regulators, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and other agencies the Secretary may find to be appropriate, regulatory authority to require domestic financial institutions to perform special recordkeeping and reporting (special measures) with respect to foreign jurisdictions, foreign financial institutions, international transactions, or types of accounts if Treasury determines that such jurisdictions, institutions, transactions, or types of accounts are of “primary money-laundering concern.”
- The special measures include additional recordkeeping or reporting requirements about transactions, participants in transactions, and beneficial owners of funds involved in transactions. Special measures may also include the identification of customers of a foreign financial institution who use an interbank payable-through account opened by the foreign financial institution at a domestic financial institution and increased due diligence and other restrictions concerning opening or maintaining interbank correspondent or payable-through accounts.

Verification of Identification (Sec. 326)

- Effective Date: Treasury must issue regulations by **October 26, 2002**.
- Section 326(a) requires that Treasury prescribe, by regulation, minimum standards that financial institutions must follow to verify the identity of customers, both foreign and domestic, when a customer opens an account. As part of the verification, financial institutions must consult lists, provided by a governmental agency, of known or suspected terrorists or terrorist organizations and keep records of the information used to verify the customer's identity. Treasury must issue these regulations jointly with the OCC, the other banking agencies, and the other functional regulators defined in the Gramm-Leach-Bliley Act, plus the Commodity Futures Trading Commission.

Cooperative Efforts to Deter Money Laundering (Sec. 314)

- Effective Date: Treasury Regulations to be issued by **February 23, 2002**.
- Section 314 requires Treasury to issue regulations to encourage cooperation among financial institutions, financial regulators, and law enforcement officials for the purpose of sharing information regarding individuals, entities, and organizations “engaged in or reasonably suspected, based on credible evidence, of engaging in” terrorist acts or money-laundering activities. Section 314 also allows law enforcement and regulatory authorities to share such information with financial institutions.
- Section 314 allows sharing of information among financial institutions concerning possible terrorist or money-laundering activity upon notice to Treasury.

Concentration Accounts at Financial Institutions (Sec. 325)

- Effective Date: To be determined by future Treasury regulation.
- Section 325 authorizes Treasury to issue, at the secretary’s discretion, regulations concerning the maintenance of “concentration accounts,” a term not defined in the statute, by financial institutions. The purpose would be to prevent an institution’s customers from anonymously directing funds into or through such accounts. The regulations would prohibit a financial institution from allowing its clients to move personal funds through concentration accounts, prohibit a financial institution from giving its customers information about the financial institution’s concentration accounts, and require a financial institution to have written procedures to ensure the documentation of all transactions in a concentration account.

Amendments Relating to Reporting of Suspicious Activities (Sec. 351)

- Effective Date: Effective immediately.
- These amendments protect financial institutions from potential liability in cases where such institutions make voluntary disclosures of suspicious activities to government authorities.

The amendment also provides that financial institutions need not give notice to the person who is the subject of the disclosure – financial institutions will not be liable for failure to give such notice.

- Current law protects financial institutions from civil liability for reporting suspicious activity. Section 351 states a rule of construction that this protection from liability does not apply if an action against the institution is brought by a government entity.
- Current law prohibits financial institutions and their employees from disclosing that a suspicious activity report has been filed. The Act amends current law to also prohibit such disclosure by any federal, state, or local government employee, except as necessary to fulfill that employee's official duties.
- Section 351 amends the prohibition on disclosure of SARs and the safe harbor for liability so that information that has been reported as suspicious may be disclosed by a financial institution in a written employment reference or a written termination notice provided to a self-regulatory agency. However, while the information may be disclosed in these circumstances, the financial institution may not disclose the fact that a SAR was filed.

Authorization to Include Suspicions of Illegal Activity in Written Employment References (Sec. 355)

- Effective Date: Effective immediately.
- Section 355 permits, but does not require, an insured depository institution to include information, in a response to a request for an employment reference by a second insured depository institution, about the possible involvement of a former institution-affiliated party in potentially unlawful activity. The safe harbor from civil liability for an insured depository institution that provides information to a second insured depository institution applies unless the first institution acts with malicious intent.

Anti-Money-Laundering Programs (Sec. 352)

- Effective Date: **April 24, 2002**; Treasury must issue rules by that date as well, after consulting with the appropriate federal functional regulators.
- ∃ Section 352 requires all financial institutions to have a Bank Secrecy Act (BSA) program that contains the four basic components of a typical BSA program. See, e.g., 12 CFR 21.21(c) (describing minimum requirements for BSA compliance programs of national banks).⁶

⁶ The term “financial institution” is defined in Subchapter II of Chapter 53 of USC Title 31 to include brokers, dealers, MSBs, currency exchanges, insurance companies, travel agencies, car dealers, casinos, and realtors.

Reporting of Suspicious Activities by Securities Brokers and Dealers; Investment Company Study (Sec. 356)

- Effective Date: Treasury regulation must be published by July 1, 2002.
- Section 356(a) requires Treasury, after consultation with the Securities and Exchange Commission and the Federal Reserve Board, to issue regulations that require registered securities brokers and dealers to file suspicious activity reports. These regulations must be published as proposed rules by January 1, 2002 and in final form by July 1, 2002.

Penalties for Violations of Geographic Targeting Orders and Certain Recordkeeping Requirements, and Lengthening Effective Period of Geographic Targeting Orders (Sec. 353)

- Effective Date: Effective for future violations.
- Section 353 provides that penalties for violation of the Bank Secrecy Act also apply to violations of Geographic Targeting Orders issued under 31 USC 3526 and to certain recordkeeping requirements relating to funds transfers.

Increase in Civil and Criminal Penalties for Money Laundering (Sec. 363)

- Effective Date: Effective for future violations.
- Section 363 increases from \$100,000 to \$1,000,000 the maximum civil and criminal penalties for a violation of provisions added to the Bank Secrecy Act by sections 311 and 312 of the PATRIOT ACT.

Establishment of Highly Secure Network (Sec. 362)

- Effective Date: Network to be operational by **July 26, 2002**.

Section 362 directs Treasury to establish a secure network within FinCEN that will allow financial institutions to file suspicious activity reports on line. The new network will also make information regarding suspicious activities available to financial institutions.

Consideration of Anti-Money-Laundering Record in Certain Applications (Sec. 327)

- Effective Date: Effective for applications submitted after **December 31, 2001**.⁷

⁷ By the terms of the statute, the new requirement applies to any application “submitted to the responsible agency . . . after December 31, 2001, which has not been approved by all appropriate responsible agencies before the date of enactment of [the USA PATRIOT Act].” This provision, apparently drafted in contemplation of a later enactment date than the actual enactment date, appears to mean that the new requirement applies to all applications submitted after December 31, 2001.

- Section 327 amends the Federal Reserve Act and the Bank Merger Act to require that the Federal Reserve Board, the OCC, and the other federal banking regulators consider the effectiveness of a bank holding company or a financial institution in combating money-laundering activities (including in overseas branches) in ruling on an application by a financial institution or bank holding company under these acts.

Questions concerning this advisory may be directed to the Legislative and Regulatory Activities Division at (202) 874-5090 or the Enforcement and Compliance Division at (202) 874-4800.

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