Comment received via email, Monday, March 6, 2006

On behalf the financial institutional institutions industry in Florida the Florida Bankers Association ("FBA") provides its response to the request for comments regarding the Special Due Diligence Programs for Certain Foreign Accounts. The enhanced due diligence regulations are of deep interest to Florida financial institutions as they will have a strong effect upon this state.

Before addressing specific items, we wish to observe that there are several policy objectives that conflict in the context of this rule. On the one hand there is an interest in monitoring the international flow of money that may be used for illicit activities such as the drug trade, fraud and terrorism. On the other hand there is an interest in the efficient flow of capital, promotion of investment in this country, the cost of compliance and the competitiveness of the United State's banking system. We hope that a reasonable balance can be struck between these interests.

Florida bankers are concerned that the line being drawn between the interest of protecting against illicit activities and the effective operation of the banking system is shifting too far. Many of our banks see themselves being required to undertake functions for which they were not intended and being used as instrumentalities to accomplish objectives that governmental organizations choose not accomplish on their own while having the cost shifted to them in the process. The use of financial institutions as regulators and policemen is no doubt alluring to many but that fact does not make it good policy. We respectfully suggest that if the pendulum had swung too far toward a lack of discipline by financial institutions in dealing with international financial transactions, the current regulations swing back too far in the opposite direction.

Turning to the specific provisions of the rules regarding Special Due Diligence for Certain Foreign Accounts, FBA makes the following comments.

1- The requirements of 103.176 (b) (1) (ii) and (ii) appear to impose an obligation to pass upon the efficacy of the foreign correspondent's money laundering program. We appreciate the comments that this does not require an audit and that in "appropriate" cases the bank may

not have to obtain and review the policy itself. In reality, however, if it turns out that the correspondent bank has engaged in improper practice we expect that the language of comments to be cold comfort.

The better approach is to let the domestic institution concentrate on those matters which are within its control. The domestic bank can monitor accounts flowing through it to see if any are unusual or inappropriate. To ask the bank, however, to enter into a judgmental arena where it does not have control is not a useful practice. Whether or not an anti-money laundering program ("AML") is effective is much more a matter of its implementation than its paperwork. This means that the pressure will be on the bank to do an audit. If banks see this as being required, it is a strong disincentive to have foreign correspondent accounts. We recommend that domestic institutions not have to pass on the effectiveness of foreign correspondent bank's AML policies.

2- The requirements of 103.176 (b) (2) regarding "nested banks" are of concern. As noted above, in practical terms it is difficult for a domestic bank to serve as a monitor of policies of its correspondent.

To require surrogate regulation (for that is what it is) of correspondents of correspondents and customers of correspondents of correspondents is to ask something that is for all practical purposes not reasonably possible. We recommend that domestic banks not be required to investigate the AML programs of correspondents of correspondents or to be required to make determinations of who their customers are.

3- The burden of this regulation falls heavily on smaller institutions. As is true of most regulation, if the costs are spread over a smaller number of transactions it will be more expensive. By requiring substantial investigation of foreign institutions operations and of those institutions and persons that are even further removed from the domestic bank, the rules will make it prohibitive for smaller institutions engage in foreign correspondent banking.

If the underlying purpose of this rule is to put Florida banks, and in particular smaller institutions, out of the foreign correspondent banking business, then it is succeeding. Although we have not done a survey at this point, our discussions with bankers reveal that many of them are ceasing correspondent operations.

Correspondent banking facilitates international trade and commerce. Florida is a hub for trade with Central America and the Caribbean Basin. Much of that trade is between small and mid-sized businesses and is financed by and through smaller and mid-sized banks through correspondent banking transactions. By causing these institutions to cease correspondent banking, serious damage is being done to trade and to the small countries who need that trade.

We understand the attraction of comprehensive regulations which will give the appearance that strong action has been taken. It may well result, however, in illicit transactions simply moving to other countries or being buried even further underground.

In the final analysis the FBA and Florida bankers strongly support efforts to impede the flow of terrorist assets. We are concerned, however, that the regulation will not achieve any diminution of undesirable transactions but rather will only move them to other places while the institutions and economy of this country suffer.

We thank you for your consideration of these comments and look forward to continuing to work with you.

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