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**James S. Keller**  
*Chief Regulatory Counsel*

March 6, 2006

**BY E-MAIL**

FinCEN  
P.O. Box 39  
Vienna, VA 22183  
Attention: Section 312 Regulations  
[regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov)

RE: Regulatory Information No. 1506-AA29--Notice of Proposed Rulemaking on Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts

Ladies and Gentlemen:

The PNC Financial Services Group, Inc. ("PNC"), Pittsburgh, Pennsylvania, appreciates the opportunity to submit comments on the proposed regulation (the "Proposal") issued by the U.S. Department of the Treasury and the Financial Crimes Enforcement Network (collectively, the "Treasury") to implement Section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56) (USA PATRIOT Act)(the "Act") (71 Fed. Reg. 516 (January 4, 2006)).

PNC Bank, National Association ("PNC Bank"), Pittsburgh, Pennsylvania, is the principal subsidiary bank of PNC, which is one of the largest diversified financial services companies in the United States, with \$ 92.0 billion in assets as of December 31, 2005. PNC engages in retail banking, institutional banking, asset management, and global fund processing services. PNC Bank has branches in the District of Columbia, Florida, Indiana, Kentucky, Maryland, New Jersey, Ohio, Pennsylvania and Virginia. PNC also has a state non-member bank subsidiary, PNC Bank, Delaware, Wilmington, Delaware, which has branches in Delaware.

PNC Bank believes that the focus of an effective anti-money laundering compliance program should be on the identification and management of high risk customer relationships, including any foreign financial institutions that have correspondent accounts and that are considered to present higher risk under the program's risk-based analysis. PNC Bank offers the following comments to refine the enhanced due diligence measures of Section 312, including comments and recommendations pertaining to (1) the framework for conducting risk-based enhanced due diligence and (2) integrating

enhanced due diligence into a comprehensive compliance program for foreign correspondent accounts.

#### 1. Risk-Based Enhanced Due Diligence Framework

PNC Bank supports the risk-based approach towards enhanced due diligence and believes that the Proposed Rule correctly recognizes that “not all correspondent accounts present the same type or level of risk.” (71 Fed. Reg. at 517). PNC agrees that the following banks present a presumption of heightened money laundering risk:

- (1) Banks operating under an offshore banking license;
- (2) Banks operating under a banking license issued by a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures; and
- (3) Banks operating under a banking license issued by a jurisdiction designated by the Treasury under Section 311 of the Act as warranting special measures due to money laundering concerns.

Under a risk-based approach, PNC Bank does not believe that all of the components of enhanced due diligence as described in the Proposed Rule are necessarily appropriate in all cases when one of these factors is present. We note that while FinCEN declined to adopt the “Consolidated Exception” set forth in its May 30, 2002 proposed notice of rulemaking, which would have provided blanket exceptions for banks operating under an offshore license but that are chartered in countries with comprehensive regulatory structures, the Proposed Rule does indicate that the degree of enhanced due diligence to be conducted on a foreign bank should be risk-based. However, we note that the risk-based standard in the Proposed Rule is contained in subsection (b) (1) of the Proposed Rule, which can be interpreted to mean that the provisions of subsections (b) (2) (pertaining to ‘nested banks’) and (b) (3) (pertaining to ascertaining the ownership of the foreign bank) are not necessarily risk-based.

We suggest that the risk-based standard for enhanced due diligence therefore be set forth in the first paragraph of subsection (b) of the Proposed Rule, clarifying that all components of the enhanced due diligence framework should be risk-based, and be subject to the results of the risk assessment conducted by the Covered Institution. For example, a Covered Institution might decide, under its risk-based approach, that it is not necessary to identify the owners of a U.S. non-publicly held bank that has a branch located in a foreign jurisdiction, on the basis that it is familiar with the institution and is aware that its foreign branch is regulated and supervised by U.S. bank regulatory



authorities. We believe this is consistent with the risk-based enhanced due diligence discussion in the Proposed Rule preamble and the notion that banks should allocate risk management resources to accounts that present the greatest risks of money laundering.

## 2. Performance of Enhanced Due Diligence as Part of Overall Compliance Program

While the Proposed Rule pertains to high-risk correspondent accounts, Sections 313 and 319 of the Act apply to all correspondent accounts maintained at banks and broker-dealers, regardless of the risks associated with a particular account. To the extent that a Covered Institution is subject to Sections 313 and 319 of the Act, PNC Bank believes that a comprehensive compliance program that incorporates the requirements of these sections, as well as Section 312, might in some cases be the most efficient and effective means of addressing the risks associated with foreign correspondent bank accounts. For example, in the course of obtaining the certification required by Sections 313 and 319 of the Act, a Covered Institution might determine that additional certifications would be appropriate, such as expanding the "shell bank" certification to include a certification by the foreign bank that no other foreign banks are accessing or using its correspondent account. Additional certifications or information might also be obtained regarding the ownership of the foreign bank, the implementation of its anti-money laundering program or other factors that the Covered Institution believes are relevant to its due diligence or expanded due diligence requirements. We believe that this coordinated approach is consistent with the development of efficient anti-money laundering programs and would expect that FinCEN and the federal functional regulators would encourage this strategy.

However, we are concerned that there are two factors that might discourage Covered Institutions from pursuing this approach. First, to the extent a Covered Institution makes any changes to the certification used to comply with Sections 313 and 319 of the Act, it may be compromising the availability of the "safe harbor," thus raising the risk that bank or other examiners might consider such alterations, even if they strengthen the compliance program, to constitute noncompliance by the Covered Institution with those sections of the Act. We recognize that the regulations adopted under these sections are not the subject of the Proposed Rule. However, we believe that, given the significant benefit a Covered Institution might gain by adding due diligence or enhanced due diligence information to its certification process, FinCEN should discuss this alternative in the Preamble to the final regulation as a means of assuring Covered Institutions that voluntarily strengthening their overall foreign correspondent bank compliance program in this manner will remain within the safe harbor applicable to certifications under Sections 313 and 319 of the Act, provided, of course, that the certifications continue to include all of the provisions required for these sections. Besides giving Covered Institutions the option of performing their foreign correspondent bank responsibilities in a more efficient manner, such a discussion might also have the policy benefit of encouraging other

Covered Institutions not subject to Sections 313 and 319 of the Act to incorporate voluntarily some or all of the certificate provisions of those sections into their Section 312 compliance programs.

Second, PNC Bank believes that to the extent that a Covered Institution utilizes an expanded certification to comply with Sections 312, 313 and 319 in a single process, it may in effect be performing major components of enhanced due diligence on all of its foreign correspondent bank accounts. A Covered Institution might also conclude that if the overall number of its correspondent accounts is relatively low, the most effective and efficient means of addressing the enhanced due diligence monitoring requirements is to conduct focused monitoring of all correspondent accounts. Although we strongly believe that the regulation must be risk-based, we also believe that Covered Institutions should have the option to hold all accounts to the highest common denominator with respect to performing its due diligence responsibilities. In this regard, PNC Bank recommends that FinCEN confirm that if a Covered Institution determines that applying the equivalent of enhanced due diligence to all of its correspondent bank accounts is appropriate, it need not formulate additional measures for some of them.

Conclusion

PNC Bank appreciates the opportunity to comment on the proposal, and hopes that these comments will be useful to the Treasury in finalizing risk-based rules that achieve the purposes of the Act by allowing Covered Institutions to focus their resources on those relationships that present higher risks of money laundering and the financing of terrorism.

Sincerely,

A handwritten signature in cursive script that reads "James S. Keller". The signature is written in dark ink and is positioned centrally below the "Sincerely," text.

James S. Keller

cc: Gary TeKolste  
Michael Carroll