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**M E M O R A N D U M**

November 12, 2001

To: Our Clients and Friends

Re: International Money Laundering Abatement  
and Financial Anti-Terrorism Act of 2001

The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001<sup>1</sup> (the “Act”) gives the Secretary of the Treasury (the “Secretary”) broad rule-making powers to prevent, detect and prosecute international money laundering and the financing of terrorism. It also amends the Bank Secrecy Act and the Federal Deposit Insurance Act and strengthens the ability of federal agencies to control and prevent money laundering and terrorist funding activities. Many of the effective dates of the Act’s provisions are tied to the October 26, 2001 enactment date. Congress, by joint resolution, may terminate the provisions of, and amendments made by, this Act on or after January 1, 2005. Major provisions of the Act are summarized below. We have highlighted certain provisions that we believe merit particularly close attention by U.S. depository institutions.

**International Counter Money Laundering and Related Measures**

- **Special Measures.** If the Secretary of the Treasury finds that reasonable grounds exist for concluding that a foreign jurisdiction, institution or transaction is of primary money laundering concern, the Secretary may require domestic financial institutions and domestic financial agencies to take one or more of the following special measures:
  - 1) maintain records, file reports or both, concerning aggregate or individual transactions;
  - 2) obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person;
  - 3) obtain information regarding customers permitted to use a payable-through account or a correspondent account of a foreign financial institution; or

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<sup>1</sup> Title III of the USA Patriot Act (P.L. 107-56)

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- 4) prohibit or impose conditions on payable through or correspondent accounts of foreign institutions.

An order imposing a special measure shall be issued with a notice of proposed rulemaking and may not remain in effect for more than 120 days unless a rule is promulgated by the end of the 120 day period.

- **Due Diligence for Correspondent Accounts/Private Banking.** Each financial institution that establishes or maintains a private banking account or correspondent account in the United States for a non-US person shall establish appropriate and specific due diligence procedures, policies and controls that are reasonably designed to detect and report money laundering through those accounts.

For a foreign bank operating under an offshore license or under a license from a country that has been designated as noncooperative with international anti-money laundering principles, a financial institution shall, at a minimum, ascertain the identity and interests of the owners of the foreign bank, enhance its scrutiny of the account, and, if the foreign bank provides correspondent accounts to other foreign banks, ascertain the identity of those banks.

If a private banking account is requested for a non-US person, the financial institution, at a minimum, must take reasonable steps to ascertain the identity of the nominal and beneficial owners of the account, the source of funds deposited into the account and to conduct enhanced scrutiny of any such account requested by, or on behalf of, a senior foreign political figure or any immediate family member or close associate.

The Secretary is to issue regulations within 180 days after the enactment of the Act concerning this due diligence. However, financial institutions must have these policies, procedures and controls in effect within 270 days of the enactment of the Act (i.e., July 23, 2002) even if no regulations are issued by that time. The Act states that the requirements apply to accounts opened before, on or after the October 26, 2001 date of enactment.

- **Prohibition on Correspondent Accounts with Shell Foreign Banks.** A financial institution shall not establish or administer a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country. Financial institutions that establish correspondent accounts for a foreign bank also must take reasonable steps to ensure that the accounts are not being used to indirectly provide banking services to foreign banks that do not have a physical presence in any country. This provision is effective 60 days after the enactment of the Act.

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- **\*Information Sharing.** Within 120 days after the enactment of the Act, the Secretary shall adopt regulations to encourage regulatory and law enforcement authorities to share with financial institutions information regarding individuals and organizations engaged in, or suspected of engaging in, terrorist acts or money laundering activities. These regulations may require that a financial institution:
  - 1) designate one or more persons to receive information concerning, and monitor accounts of, suspected individuals and entities; and
  - 2) establish procedures for the protection of the shared information.

Two or more financial institutions and any association of financial institutions may share information regarding persons, organizations and countries suspected of possible terrorist or money laundering activities. Such institutions and associations shall not be liable to any person under federal or state law or contract for disclosing such information or for failing to provide notice of such disclosure.

- **Jurisdiction.** United States District Courts shall have jurisdiction over any foreign person, including foreign institutions, against whom an action is brought under this Act. Pretrial restraining orders may be issued over bank accounts and other property to ensure that a judgment can be satisfied.
- **\*Interbank Accounts.** If funds are deposited into an account at a foreign bank and that foreign bank has an interbank account in the United States with a financial institution, the funds deposited into the account at the foreign bank shall be deemed to have been deposited into the interbank account in the United States. Funds in the interbank account may then be restrained, seized and arrested from the financial institution. In cases of forfeiture the Government need not establish that the funds in the interbank account are directly traceable to the funds that were deposited in the foreign bank.
- **\*120 Hour Rule for Domestic Bank Records.** Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance, a financial institution must provide information and account documentation for any account opened, maintained administered or managed in the US by the financial institution.
- **\*Foreign Bank Records.** The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States for records relating to such account. A financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records identifying the owners of the foreign bank and the local representative

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authorized to accept service for legal process for the foreign bank. The financial institution has seven days within which to provide information requested by a Federal law enforcement officer. A financial institution has ten business days to terminate any correspondent relationship with a foreign bank after receiving a written notice from the Secretary or the Attorney General indicating that the foreign bank has failed to comply with a summons or subpoena. Failure to terminate the relationship carries a civil penalty of \$10,000 per day. A financial institution is not liable to any person if it terminates the correspondent account as required by the Act.

- **\*Concentration Accounts.** The Secretary may issue regulations governing the maintenance of concentration accounts in order to ensure that such accounts are not used to disguise the identity of the customer. At a minimum, these regulations shall:
  - 1) prohibit financial institutions from allowing clients to direct transactions that move their funds through concentration accounts;
  - 2) prohibit financial institutions from informing customers of the existence of concentration accounts of the institution; and,
  - 3) require financial institutions to develop written procedures governing the documentation of all transactions involving concentration accounts, in particular concentration accounts that commingle funds of several customers (e.g., omnibus accounts).
  
- **\*Verification of Identification.** The Secretary shall issue regulations establishing standards for identifying customers when accounts are opened. At a minimum, these regulations shall require financial institutions to implement reasonable procedures for:
  - 1) verifying the identity of any person seeking to open an account;
  - 2) maintaining records of information used to verify identity; and
  - 3) verifying that a new customer does not appear on a list of known or suspected terrorists provided by any governmental agency.

These regulations shall take effect within one year of the enactment of the Act.

- **\*Financial Institution's Anti-Money Laundering Record.** In reviewing proposed bank acquisition or merger applications under the Bank Holding Company Act or under the Federal Deposit Insurance Act, federal banking agencies must take into consideration the effectiveness of the company or any insured depository institution involved in the proposed merger in combating money laundering activities.
  
- **Cooperation with Foreign Financial Supervisory Agencies.** The Secretary, in consultation with the Attorney General and the Secretary of State, shall take all reasonable steps to encourage foreign governments to require the inclusion of the name

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of the originator in wire transfer instructions sent to the US and other countries, with the information to remain with the transfer from its origination until the point of disbursement. The President should direct the Secretary of State, the Attorney General and the Secretary of the Treasury to seek to enter into negotiations with the financial supervisory agencies of other countries to: 1) ensure that foreign banks maintain adequate records of transaction and account information relating to any foreign terrorist organization or any individual engaged in money laundering activities; and 2) establish a mechanism whereby such records be made available to US law enforcement officials and domestic financial institution supervisors.

### **Bank Secrecy Act Amendments**

- **Civil Liability Immunity.** Current law exempts a financial institution and its officers, directors and employees that makes a voluntary disclosure of a possible violation of law or regulation to a government agency from liability under federal or state law for such disclosure or failure to provide notice of such disclosure to the person who is the subject of such disclosure. The Act expands the immunity of financial institutions and their officers, directors and employees from liability under contracts or other legally enforceable agreements when a voluntary disclosure of a possible violation of law or regulation is made to a government agency
- **Prohibition on Notification Disclosures.** Under current law, a financial institution that voluntarily reports a suspicious transaction to a government agency may not notify any person involved in the transaction. The Act expands this restriction by prohibiting any Federal or State officer or employee with knowledge of the report to disclose to any person involved in the transaction the fact that it has been reported
- **\*Written Employment Records.** An insured depository institution and its directors, officers and employees may disclose to another insured depository institution in a written employment reference relating to an institution-affiliated party, information concerning the possible involvement of the party in a potentially unlawful activity. There is no shield from liability however, if the disclosure is made with malicious intent.
- **\*Financial Institution's Anti-Money Laundering Program.** Each financial institution is to establish anti-money laundering programs, which shall, at a minimum, include:
  - 1) development of internal policies, procedures, and controls;
  - 2) designation of a compliance officer;
  - 3) ongoing employee training program; and,
  - 4) an independent audit function to test programs.

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The Secretary is authorized to prescribe minimum standards. This requirement is effective 180 days after the enactment of the Act, regardless of whether the Secretary has prescribed minimum standards by that time.

- **\*Reporting of Suspicious Activities Broadened.** The Secretary, after consultation with the SEC and Federal Reserve Board, shall publish final regulations by July 1, 2002, requiring brokers and dealers registered with the Securities and Exchange Commission to submit suspicious activity reports. The Secretary may also propose regulations requiring futures commission merchants, commodity trading advisors, and commodity pool operators to submit suspicious activity reports. The Secretary, the Board of Governors and the Securities and Exchange Commission shall within a year of the enactment of the Act submit a joint report to Congress on recommendations for effective regulations to apply the requirements of the Bank Secrecy Act to investment companies.
- **Administration of Bank Secrecy Act.** The Secretary within six months of the enactment of the Act shall issue a report to Congress regarding whether the duties and responsibilities of the Internal Revenue Service in administering the Bank Secrecy Act should be transferred to other agencies.

### Other Provisions

- **Fair Credit Reporting Act.** A consumer reporting agency shall furnish a consumer report and all other information in a consumer's file to a government agency authorized to conduct investigations of international terrorism. The consumer reporting agency shall not disclose to any person that a government agency has sought or obtained access to the information and shall not be liable to any person under state or federal law for disclosing this type of information.
- **Money Transmitters.** The definition of the term "money transmitter" required to be licensed is expanded to include "any person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system." Rules promulgated by the Secretary and the Federal Reserve concerning retention of records by insured depository institutions under the Federal Deposit Insurance Act shall apply to "money transmitters." Anyone who controls, manages, owns, directs, an unlicensed money transmitter business shall be fined or imprisoned for not more than five years or both, whether or not the person knew that the operation of the business was required to be licensed.

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- **Financial Crimes Enforcement Network (FinCEN).** The Act elevates FinCEN to bureau status within the Department of the Treasury. The Secretary shall establish a highly secure network in FinCEN that allows financial institutions to file reports required under BSA and the Federal Deposit Insurance Act and provides financial institutions with information that warrants immediate scrutiny. Such a network shall be in place within nine months of the enactment of the Act.
- **\*Increase in Civil and Criminal Penalties.** A financial institution or agency that violates the added provisions of the Act or implementing regulations is subject to civil money penalty or criminal penalty of not less than two times the amount of the transaction but not more than \$1,000,000.
- **Coin and Currency.** The Currency Transaction Reporting (“CTR”) requirements have been expanded to cover foreign coin and currency and certain monetary instruments in amounts in excess of \$10,000 US.

If you have any questions concerning the provisions of this Act, please call Gilbert Schwartz, Robert Ballen or Tom Fox at 202-776-0700.