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MEMORANDUM

July 19, 2002

To Our Clients And Friends

Re: Proposed Patriot Act Rules on Customer Identification

SUMMARY

The Treasury Department and the federal financial institution regulatory agencies, including the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Securities and Exchange Commission and the Commodity Futures Trading Commission have issued proposed rules to implement section 326 of the USA Patriot Act, which requires financial institutions to establish procedures for identifying and verifying the identity of customers seeking to open new financial accounts. Comments on the proposed rule are due in 45 days. The final rules are required to be effective by October 25, 2002

REQUIREMENTS

Depository Institutions

The first proposed rule, issued jointly by the Treasury Department and the federal banking agencies, requires banks,¹ savings associations and credit unions to

¹ "Bank" has the same meaning as it has under the Bank Secrecy Act except that any foreign branch of an insured bank is covered by the rule. Any branch, agency, or representative office of a foreign bank in the United States, as well as any Edge Corporation is subject to the proposed rule.

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implement a Customer Identification Program (“CIP”) that is appropriate to the bank’s size, location and type of business. At a minimum, a CIP must include procedures for:

- verifying the identity of any person seeking to open an account
- maintaining records of the information used to verify the person’s identity, including name, address, and other identifying information
- determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the bank by any federal government agency, and
- providing customers with notice that the institution is requesting information.

The CIP must be in writing, must be approved by the board of directors or a committee of the board, and must be part of the institution’s anti-money laundering program.

Verification of Identity

The proposed rule requires that a CIP must include procedures for verifying the identity of each customer. The institution must, at a minimum, obtain from each customer opening an account (or adding a signatory to an account) the following information: name, address, date of birth and an identification number².

The CIP must contain risk-based procedures for verifying the information that the bank obtains within a reasonable period of time after the account is opened. The CIP must describe when the institution will verify identity through documentation, including the documents that will be used for that purpose, and when the institution will verify identity through non-documentary methods, including identifying the methods that will be used and when they will be used. When an account is opened by telephone, by mail, and over the Internet, an institution will be permitted to use other methods of verification. The CIP must also include procedures when the institution is unable to verify the customer’s identity.

² For US persons, a taxpayer identification number is to be obtained; for non-US persons, a US taxpayer identification number, passport number, alien identification card number or any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard must be obtained.

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Maintaining Verification Records

The CIP must include procedures for maintaining a record of all information obtained in verifying a customer's identity. The record must include information provided by a customer, a copy of any document relied upon to verify identity, any non-documentary methods used and the results obtained from their use, and the resolution of any discrepancy in identifying information obtained. All records must be retained for five years after the account is closed.

Comparison with Government Lists

The CIP must include procedures for determining whether the customer appears on a list of known or suspected terrorists or terrorist organizations provided by a federal government agency, and must ensure that the institution follows all federal directives issued in connection with such lists.

Customer Notification

The CIP must include procedures for providing customers with adequate notice that the institution is requesting information to verify their identities.

Securities Broker-Dealers

The SEC and the Treasury have jointly proposed a rule which require broker-dealers to establish, document and maintain written CIPs. The proposed provisions of the Treasury/SEC rule are substantially identical to those described above that are applicable to depository institutions.

Futures Commission Merchants and Introducing Brokers

The Commodity Futures Trading Commission and the Treasury have jointly proposed a rule which require futures commission merchants and introducing brokers to establish, document and maintain written CIPs. The proposed provisions of the Treasury/CFTC rule are substantially identical to the rules described above that are applicable to depository institutions.

If you have any questions concerning the proposed rules, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700. A copy of the proposed rules can be found at <http://www.schwartzandballen.com/WhatsNew.htm>.

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