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Financial Crimes Enforcement Network

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Final Regulation Implementing Section 312 of the USA PATRIOT Act Announced

The Financial Crimes Enforcement Network announced today a final regulation implementing the international correspondent banking provisions and the private banking provisions of Section 312 of the USA PATRIOT Act. The final rule requires certain U.S. financial institutions to apply due diligence to correspondent accounts maintained for certain foreign financial institutions. Simultaneously, the Financial Crimes Enforcement Network has announced a related notice of proposed rulemaking involving one key provision of Section 312 that requires enhanced due diligence for correspondent accounts maintained for certain foreign banks.

The final rule takes effect within 90 days for new accounts opened by U.S. financial institutions and 270 days for existing accounts from the date the regulation is published in the *Federal Register*. The rules will be published in the *Federal Register* shortly after the beginning of the year.

Section 312 of the USA PATRIOT Act requires U.S. financial institutions to perform due diligence and, in some cases, enhanced due diligence, with regard to correspondent accounts established or maintained for foreign financial institutions and private banking accounts established or maintained for non-U.S. persons. "This rule reflects a significant milestone in our continued progress towards adding transparency to the financial system to help safeguard it from the financing of terror and other illicit money flows," said William J. Fox, Director of the Financial Crimes Enforcement Network. "Further, this regulation provides a platform from which additional, fact-specific guidance for the industry can flow."

The Final Rule – The final rule implements all of Section 312 with the exception of the provisions requiring enhanced due diligence in connection with certain foreign correspondent banks. With respect to correspondent banking generally, it limits the scope of U.S. financial institutions to which the rule applies and outlines the general due diligence requirements. With respect to private banking accounts, the final rule similarly limits the scope of U.S. financial institutions to which the rule applies, outlines the due diligence and enhanced due diligence that is required, and further clarifies duties with respect to accounts maintained for senior foreign

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political figures. Specifically, the general due diligence provisions and the private banking provisions will apply to depository institutions, securities broker-dealers, futures commission merchants and introducing brokers in commodities, and mutual funds.

The Notice of Proposed Rulemaking – The Financial Crimes Enforcement Network has also released a notice of proposed rulemaking regarding the key provision of Section 312 that requires enhanced due diligence for correspondent accounts maintained by certain foreign banks. The original proposed rulemaking issued in 2002 sought to create an exception to the enhanced due diligence requirement for those offshore banks that were branches of well-regulated foreign banks. Specifically, we proposed to exclude from enhanced due diligence those foreign banks operating under an offshore banking license that are branches of banks licensed in a jurisdiction where one or more banks had been determined by the Federal Reserve to be subject to comprehensive supervision or regulation on a consolidated basis.

The notice of proposed rulemaking focuses on clarifying that U.S. financial institutions have some flexibility in applying the enhanced due diligence procedures on a risk-assessed basis, tailoring the enhanced due diligence to the risks associated with the particular account. The issuance of the proposed rule opens a 60-day comment period, and the Financial Crimes Enforcement Network will take into consideration all comments before issuing the final rule.

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Attachments:

- [Final Regulation](#)
- [Notice of Proposed Rulemaking](#)
- [Fact Sheet](#)