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Gary L. Ryan
Senior Vice President and Corporate Counsel
Telephone (504) 533-5560 Fax (504) 533-5595

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Financial Crimes Enforcement Network
Section 312 Regulations
P. O. Box. 39
Vienna, Virginia 22181

Re: Proposed Rulemaking – Due Diligence Anti-Money Laundering Programs for Certain Foreign Accounts, 67 FED. REG. 37736 (May 30, 2002)

Ladies and Gentlemen:

Hibernia Corporation ("Hibernia") is a financial services holding company headquartered in New Orleans, Louisiana. Hibernia has a significant interest in the captioned proposed rulemaking because each of three of Hibernia's wholly-owned subsidiaries would be deemed to be a *covered financial institution* as that term is defined in proposed 31 C.F.R. § 103.175(d). Accordingly, Hibernia respectfully requests that its comments be included in the administrative record compiled in connection with therewith.

Even prior to the enactment of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (the "Act"), Hibernia and its subsidiaries sought to obtain information regarding their non-United States customers in order to provide themselves with a reasonable assurance that those customers were not engaged in money laundering activities. While we strongly believe that reasonable due diligence efforts on the part of financial institutions are both necessary and appropriate, we equally strongly believe that any regulations adopted by the Department of the Treasury ("Treasury") to implement the Act, including section 312 thereof, should not impose significant, prescriptive due diligence burdens that far outweigh any usefulness such burdens may have in combating money laundering and terrorism. We therefore urge Treasury to consider carefully whether the burdens it seeks to impose on each *covered financial institution* are necessary, or even significantly helpful, in combating money laundering and terrorism. If they are not, we respectfully suggest that such universal burdens should be discarded in favor of the more limited use of the special measures authorized by section 311 of the Act.

In our reading of the proposed regulations, we found several provisions which we believe are in need of substantial modification so as not to impose undue burdens which appear to have little or no relationship to combating money laundering and terrorism. The following comments address those provisions.

Proposed 31 C.F.R. § 103.175(f) defines *foreign financial institution* in terms of whether the foreign entity would be required to establish an anti-money laundering program if it were organized in the United States. Such definition gives rise to uncertainty because it is subject to change as new types of institutions in the United States are added to the list of those required to

establish an anti-money laundering program. Moreover, it may be extremely difficult for a domestic financial institution to ascertain whether a foreign entity engages in an activity which might be deemed to constitute, for example, a *money services business* as a very small part of its normal business and thus bring it within the scope of the definition of *foreign financial institution.*

We respectfully suggest that the definition be modified to list specifically the activities which would make a foreign entity a *foreign financial institution* and to provide that such activities must constitute a significant portion, say at least 25 percent, of the foreign entity's gross revenues in order for the foreign entity to be deemed to be engaged therein for purposes of the definition of a *foreign financial institution.*

Proposed 31 C.F.R. § 103.175(o) contains a lengthy definition of the term *senior foreign political figure* which is overly broad and virtually impossible for domestic financial institutions to apply with any degree of certainty or uniformity.

A *senior foreign political figure* under the proposed definition would include the mistress (who is a person known to maintain a close personal relationship) of the son (who is an immediate family member) of the pilot of a foreign military aircraft (who is an individual in the military with substantial authority over the use of a government resource, *viz.* an aircraft costing perhaps millions of dollars). Moreover, the proposed definition, which expressly includes former officials, would continue to characterize the son's mistress as a *senior foreign political figure* even long after the pilot retired from military service, the son returned in marital fidelity to his wife, and the mistress repented of her ways and entered a convent which afforded her no contact with the outside world. Not everyone would agree, of course, that the pilot, the son, or the mistress should be characterized as a *senior foreign political figure*, but it is clear that the proposed definition creates uncertainty and with it the lack of uniform treatment of foreign individuals.

As the foregoing example suggests, it is virtually impossible for a domestic financial institution to ascertain who may, and who may not, be a *senior foreign political figure* in the eyes of Treasury. Accordingly, Hibernia respectfully suggests that Treasury, perhaps in cooperation with the Department of State, publish and maintain a list of each person deemed to be a *senior foreign political figure* so that (1) financial institutions would have a clear understanding of who such persons might be and (2) such persons would be treated uniformly by all financial institutions. A model for such a list would be the list of Specially Designated Nationals and Blocked Persons published and maintained by the Office of Foreign Assets Control, which list is available through the Internet and includes a mechanism by which subscribers may obtain electronic notification of changes thereto.

Proposed 31 C.F.R. § 103.176(a)(5) would require each covered financial institution which maintains a correspondent account for any foreign financial institution to adopt procedures which include

> [r]eviewing public information to ascertain whether the foreign financial institution has been the subject of criminal action of any nature, or regulatory action relating to money laundering.

Unfortunately, neither the proposed rule nor the preamble provides any guidance as to what might constitute *public information.*

Hibernia does not believe that Treasury would intend that domestic financial institutions should be made to assume the significant burden and expense of hiring employees fluent in what may be hundreds of foreign languages to obtain and review information contained in press releases issued by foreign governments and regulatory agencies and items which appear in foreign publications. Accordingly, Hibernia respectfully suggests that the Treasury establish reasonable parameters for what constitutes *public information* and recommends that engaging in an annual search on the LexisNexis™ system or some equivalent data base be established as a "safe harbor" by which a financial institution would be deemed to satisfy its obligation to review *public information.*

Proposed 31 C.F.R. § 103.176(c)(1)(ii) references

> ... a jurisdiction where one or more foreign banks have been found, by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act or the International Banking Act, to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction ....

Although the Supplementary Information provides a list of such countries as of May 10, 2002, Hibernia is unaware of any readily-available source for such information other than individual orders issued by the Board of Governors of the Federal Reserve System (the "Board") under such statutes.

Hibernia respectfully suggests that Treasury should reduce the burden on financial institutions and itself undertake, in cooperation with the Board, to maintain and make readily available to the public a list of those countries to which proposed 31 C.F.R. § 103.176(c)(1)(ii) is intended to apply. A model for a such an undertaking might be the list of Specially Designated Nationals and Blocked Persons maintained and made readily available to the public on the Internet by the Office of Foreign Assets Control, which has a mechanism in place to notify subscribers of any changes made thereto.

Proposed 31 C.F.R. § 103.176(c)(2) references

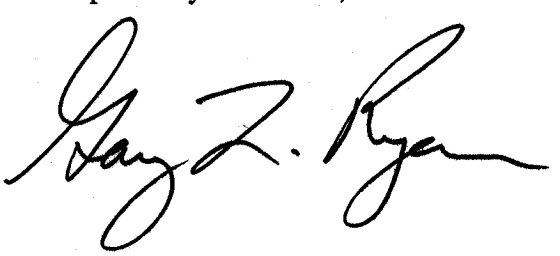
> ... a foreign country that has been designated by an intergovernment group or organization to which the United States belongs as noncooperative with international anti-money laundering principles of procedures and with which designation the U.S. representative concurs ....

The Supplementary Information indicates that the only such intergovernmental organization is the Financial Action Task Force on Money Laundering ("FATF") and that the United States has concurred in all designations made to date.

Although the FATF designations may be viewed at http://www.oecd/fatf/NCCT_en.htm, there seems to be no readily available source for determining if the United States would concur in any future changes to FATF's list. Hibernia respectfully suggests that Treasury undertake to maintain and make readily available to the public a continuously updated list of countries to which proposed 31 C.F.R. § 103.176(c)(2) is intended to apply. A model for a such an undertaking might be the list of Specially Designated Nationals and Blocked Persons maintained and made readily available to the public on the internet by the Office of Foreign Assets Control, which has a mechanism in place to notify subscribers of any changes made thereto.

Hibernia appreciates the opportunity to comment on the proposed regulations and hopes that its comments may be helpful in achieving final regulations which strike a fair and equitable balance between the imposition of burdens on *covered financial institutions* and combating money laundering and terrorism.

Respectfully submitted,



GLR/hs