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VIA Electronic Mail

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Attention: Section 312 Regulations

Re: Notice of Proposed Rulemaking on Due Diligence
Anti-Money Laundering Programs for Certain Foreign Accounts

Dear Sir or Madam:

Bank One Corporation ("Bank One") appreciates the opportunity to comment on the Department of Treasury and the Financial Crimes Enforcement Network's (collectively, the "Department") proposed rule issued under Section 312 of the USA PATRIOT Act ("Patriot Act"), concerning anti-money laundering due diligence programs for certain foreign accounts (the "Proposal"). Also, Bank One commends the Department for issuing a rule to clarify the compliance obligations of financial institutions under Section 312 of the Patriot Act. As one of the largest financial service providers in the United States, Bank One recognizes the importance of preventing money laundering and other related activities. Accordingly, Bank One strongly supports the federal government's efforts to combat money laundering and related international activities that help finance global terrorism. In furtherance of this objective, Bank One believes that the goals of Section 312 of the Patriot Act may be achieved by enacting the recommended changes as further described.

Bank One's lead bank, Bank One, N.A. (Chicago) is a member of The New York Clearing House Association, L.L.C. and the Financial Services Roundtable as well as some of the other financial institution associations (the "Associations"), which will be submitting a joint letter offering comprehensive comments on the Proposal. Bank One concurs with the Associations' comments on the Proposal. However, Bank One offers additional comments to the Proposal on the need for a risk based approach to the due diligence requirements of Section 312 and the narrowing of the Proposal's definitions of "correspondent account" and "covered financial institution".

1. **A Risk-Based Approach to the Due Diligence Requirements Should Be Implemented in Section 312.**

Bank One strongly endorses a risk-based approach to the due diligence requirements of Section 312 of the Patriot Act. Bank One believes that an effective due diligence program is a rigorous risk assessment by a covered financial institution of its

businesses and clients, the types of accounts it maintains, and the types of transactions in which it engages. A risk-based approach is critical to the effective implementation of Section 312 and the Proposal because of the wide breadth of coverage for both the financial institutions and transactions. Such an approach enables covered financial institutions to focus their attention and resources on those customers, accounts and transactions which are most vulnerable to money laundering and terrorist financing. Bank One believes that a different approach will result in a less effective deterrence and prevention of money laundering. The required due diligence under the Proposal should be tailored to the money laundering risks presented.

Bank One recommends that the Proposal explicitly recognize two necessary components of an effective risk-based due diligence program. The first is reliance, in appropriate circumstances, on intermediaries with regard to their own anti-money laundering due diligence programs as applied to "beneficial owners" and other clients. The second key component of risk-based due diligence relates to the distinction between proprietary accounts of foreign financial institutions which have a lower risk and accounts maintained by such institutions on behalf of, or to provide services to, third parties. The latter type of account involves higher risk because it is used to conduct transactions for multiple persons and the covered financial institution's capacity to conduct due diligence on those persons is limited. As a result, covered financial institutions should be allowed to institute varying anti-money laundering due diligence programs depending on the level of risk.

2. The Definition of "Correspondent Account" Should Be Narrowed.

Bank One recommends that the definition of "correspondent account" be narrowed. Bank One understands the need for restricting access to correspondent accounts in order to prevent money laundering. However, some types of accounts present minimal risk of illegal activities and should be excluded from the scope of the definition of "correspondent account". Currently, the Proposal defines "correspondent account" as "an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution." This definition is too expansive and will increase compliance costs for U.S. banks.

The Patriot Act's statement of purpose explains that the new law focuses on correspondent accounts because they may "permit the laundering of funds by hiding the identity of real parties in interest to financial transactions." However, the definition of "correspondent account" captures not only accounts of the Patriot Act's intended targets, foreign shell banks and bank customers whose identity can be concealed, but would also cover an array of accounts through which covered financial institutions conduct ordinary business transactions with foreign banks acting as principal. For example, it would cover, among others, federal funds and inter-bank placement accounts (for overnight and other short-term loans between banks); corporate trust and payment accounts; securities clearing accounts; accounts established for foreign exchange, repurchase, and derivatives transactions; and certificates of deposit issued by a covered financial institution and purchased by a foreign bank. These accounts pose little or no threat of laundering illicit funds. By including minimal risk accounts in the definition of "correspondent account", it makes the compliance aspect for covered financial institutions excessive and drains resources which could be directed toward the more challenging areas. As set forth in prior comment letters, Bank One suggests that the Department focuses its definition of "correspondent accounts" on accounts of concern and excludes minimal risk accounts.

3. The Definition of "Covered Financial Institution" Should Not Include Foreign Branches of U.S. Financial Institutions.

Bank One urges the Department to limit the scope of the term "covered financial institution" to exclude foreign branches of U.S. financial institutions. In particular, the Department's Proposal states that a foreign branch of an insured bank is a covered financial institution. Bank One believes that foreign branches of covered financial institutions should and will voluntarily comply with anti-money laundering due diligence programs in Section 312 of the Patriot Act. However, the inclusion of foreign branches as covered financial institutions, particularly with respect to the due diligence requirement, would be overly burdensome. Because of these factors, Bank One recommends that foreign branches of covered financial institutions is excluded from the definition of "covered financial institution".

Bank One believes that there are strong policy reasons for excluding foreign branches. Bank One recognizes the Department's concern that a failure to include foreign branches of U.S. banks in the definition of "covered financial institution" could result in a gap in application of the Patriot Act's due diligence requirements. This concern is mitigated because a foreign branch or foreign affiliate of a covered financial institution is normally subject to both the anti-money laundering policies and procedures of its head office, and the anti-money laundering regime of the jurisdiction in which it operates.

If the Department does not accept this comment, Bank One recommends the following approach to close any gap in coverage. For purposes of Section 312 and the Proposal, foreign branches should be treated like the proposed treatment for foreign affiliates of covered financial institutions, as foreign financial institutions. Bank One suggests that a covered financial institution should not be required to conduct due diligence on the foreign branches and affiliates of another covered financial institution, provided that such other covered financial institution provides a certification stating that its foreign branches and affiliates are subject to the due diligence policies and procedures of the head office that comply with requirements of the Proposal.

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Thank you in advance for your consideration. If you have any questions about the foregoing comments, please contact the undersigned (312-732-4291) or James Roselle (312-732-5298).

Very truly yours,



Gelene M. Stanton
Assistant Vice President and Counsel

Enclosure

cc: Mr. James Roselle
Mr. Jay Bestmann
Mr. Gerald R. Janiak
Mr. Richard Rogoff
Ms. Patricia Kaszubowski
Ms. Penny Rostow