Securities Industry Association
Futures Industry Association

February 23, 2006

Via E-mail

William Langford
Associate Director
Regulatory Policy and Programs Division
Financial Crimes Enforcement Network
P. O. Box 39
Vienna, VA 22182

Re: Final 312 Rule

Dear Mr. Langford:

The Securities Industry Association[1] and the Futures Industry Association[2] (the "Associations") remain committed to assisting the Government in deterring and preventing money laundering and terrorist financing. To that end, as they have done with respect to the prior rules promulgated under the USA PATRIOT Act (the "Act"),[3] our member institutions are in the process of establishing policies and procedures to implement the Final Rule for Section 312 of the Act issued by the Department of the Treasury and the Financial Crimes Enforcement Network (collectively, "Treasury"), which requires due

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[1] The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated $236.7 billion in domestic revenue and an estimated $340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

[2] The Futures Industry Association is a principal spokesman for the commodity futures and options industry. Its regular membership is comprised of approximately 40 of the largest futures commission merchants in the United States. Among its approximately 150 associate members are representatives of virtually all other segments of the futures industry, both national and international, including U.S. and international exchanges, banks, legal and accounting firms, introducing brokers, commodity trading advisors, commodity pool operators and other market participants, and information and equipment providers. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than 90 percent of all customer transactions executed on U.S. contract markets.

[3] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56).

diligence for correspondent accounts and for private banking accounts for non-U.S. persons (the "Final Rule").[4]

Our members, however, are experiencing difficulties implementing compliance programs for the Final Rule within the time frame allotted under the regulations. Due to a number of significant practical concerns, as well as the need for further interpretive guidance on certain significant issues, we are writing to request an additional 90 days from the April 4, 2006 date for implementation of the Rule with respect to new accounts in order to provide our member organizations with a more realistic time frame in which to implement the requirements of the Final Rule. We understand that the Investment Company Institute is also submitting a letter requesting similar relief.

As you are no doubt aware, the due diligence requirements under the Final Rule are among the most extensive and labor-intensive regulations promulgated under the Act. The Final Rule requires development and implementation of new policies and procedures with respect to both new and existing accounts of certain foreign financial institutions and private banking accounts. Member firms have been working diligently on their own and through industry associations to determine the most efficient ways of implementing these procedures. As a general matter, our member firms concur that in order to implement these procedures, the member organizations will need the additional time to: a) design, develop, test, and implement criteria, procedures and systems for identifying such accounts subject to the Final Rule at their institutions; b) enhance existing new account forms and develop additional forms to obtain the requisite information from customers; c) craft written procedures directing their employees to obtain the information required and train the employees in this regard; d) enhance their systems for collecting, analyzing and recording the information collected; and e) redesign their computer systems to capture and monitor the transactions in these accounts. The issues arising vary according to the type of member firms involved and the new account systems in place, but overall the member firms agree that the issues are far more complex than originally anticipated and that additional time beyond the original compliance date of April 4th is essential.

As Treasury itself has recognized, the correspondent account rule, as it applies to broker-dealers and FCMs, has always been difficult to anticipate given the fact that the term "correspondent account" is not one that is traditionally used or understood in these industries. Although many member firms have adopted enhanced due diligence policies and procedures, firms were unable to model those programs precisely around the proposed rule until they learned whether and how the Final Rule would address the interpretive questions raised by the proposed rule. In fact, the Final Rule was far more detailed than had been expected and encompassed a different category of foreign financial institutions than described under the proposed rule. Establishing new mechanisms for these correspondent accounts will require not only significant resources, but also a significant expenditure of time.

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[4] 71 Fed. Reg. 496 (Jan. 4, 2006).

We recognize that the rule with respect to private banking accounts has been applicable on an interim basis to both broker-dealers and FCMs for some time and that broker-dealers and FCMs have already implemented certain aspects of the due diligence rules and enhanced due diligence rules with respect to private banking accounts. However, the private banking portion of the Final Rule has additional nuances and raises new questions that had not been anticipated and need to be taken into account in the implementation of the Final Rule.

The challenges are compounded by the need for additional clarification of certain aspects of the Final Rule. The application of these rules may well be made more difficult or possibly alleviated depending on the interpretation of certain issues. Among the various issues that we consider the most significant are: 1) the definition of who is the customer in omnibus and intermediated client relationships; 2) how to evaluate whether a foreign entity organized under foreign law would be a covered financial institution under U.S. law if located in the United States (*e.g.*, whether a foreign investment company would be required to be registered as a mutual fund under the Investment Company Act of 1940); 3) how to apply the private banking account definition and due diligence obligations in the context of these industries, and in particular, in the context of clearing arrangements; and 4) whether member firms can utilize the risk-based approach adopted in the Final Rule to determine which of the due diligence factors should be followed in implementing the correspondent account obligations.

Many of the systems and other structures that must be put in place to implement the Final Rule cannot be finalized until we receive additional guidance on these issues. For example, the resolution of the issue relating to intermediaries and omnibus accounts is critical to our ability to implement the program in a meaningful and timely manner. Moreover, understanding the definition of a foreign financial institution is an essential prerequisite to designing any compliance program under the Final Rule.

For purposes of this letter, we have only briefly touched on certain of the areas that we anticipate requesting additional interpretive guidance. These are addressed here simply to illustrate our need for more information and more time to achieve compliance with the Final Rule. We intend to follow up with subsequent communications explaining in more detail the areas for which we are requesting guidance. In addition, we are still evaluating the implementation issues with respect to existing accounts and may address those issues separately.

We very much appreciate the opportunity to express our concerns. Should you have any questions, please contact Alan Sorcher of the Securities Industry Association at (202) 216-2000 or Betty Santangelo of Schulte Roth and Zabel LLP at (212) 756-2587.

Sincerely,

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