



Securities Industry Association

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Via Electronic Mail and By Hand

March 7, 2003

U.S. Department of the Treasury
1500 Pennsylvania Avenue
Washington, D.C 20220

Attention: Charles Klingman, Financial Analyst

Re: Submission to Treasury Patriot Act Task Force

Ladies and Gentlemen:

The Securities Industry Association (“SIA”)¹ is writing in response to the invitation by the Treasury Department’s Patriot Act Task Force to provide recommendations for improvements to the anti-money laundering provisions under the USA Patriot Act,² the implementing regulations issued by Treasury and the Securities and Exchange Commission (“SEC”), and other money laundering related statutes and regulations governing financial institutions. SIA welcomes the opportunity to express its views on the regulatory structure established by the Patriot Act and the money laundering and terrorist financing provisions that are applicable to the securities industry.

At the outset, we would like to commend Treasury for the work it has accomplished over the past sixteen months in crafting comprehensive anti-money laundering regulations to

¹ The Securities Industry Association brings together the shared interests of more than 600 securities firms to accomplish common goals. SIA member-firms (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. The U.S. securities industry manages the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2001, the industry generated \$198 billion in U.S. revenue and \$358 billion in global revenues. Securities firms employ approximately 750,000 individuals in the United States (More information about the SIA is available on its home page: <http://www.sia.com>.)

² “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (“Patriot Act”) Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001.

implement the Patriot Act. We also greatly appreciate the effort and time spent by the Treasury staff in meeting with and listening to the concerns of the securities industry. The recommendations in this letter should not detract from the fact that, to date, Treasury's implementing regulations have generally reflected a sensible, balanced and effective approach to implementing the Patriot Act.

SIA and its member firms are strongly committed to the detection and prevention of money laundering. Even prior to passage of the Patriot Act, many SIA member firms that were not covered by the existing regulations voluntarily filed reports of suspicious activity ("SARs") and endeavored to develop and implement sophisticated anti-money laundering programs. SIA has worked with its members to increase their level of anti-money laundering compliance and, to that end, issued comprehensive industry-wide preliminary guidance to deter money laundering activity in February 2002. SIA also has been working diligently with its member firms to facilitate implementation of the Patriot Act's requirements and to further industry-wide anti-money laundering education.

Following passage of the Patriot Act, SIA has continued to work closely with federal regulators to develop sound and effective rules to protect U.S. securities firms from being used for illicit purposes. As Treasury is aware, SIA has been actively involved in the Patriot Act rulemaking process. We have submitted comment letters on all of the Patriot Act rules that apply to broker-dealers, including those related to customer identification and verification, due diligence for correspondent and private banking accounts, the prohibition on dealings with non-U.S. shell banks, anti-money laundering compliance programs, suspicious activity reporting and information sharing.³ Because we support strong anti-money laundering rules on the international level, we also filed a comment letter on the Consultation Paper issued by the Financial Action Task Force on Money Laundering.⁴

A guiding principle embodied in all of our comment letters is that implementation of the various Patriot Act rules should be accomplished through a risk-based approach. Such an approach gives firms the needed flexibility to tailor their anti-money laundering efforts to fit the nature and scope of their businesses and to allocate their resources to those areas where the risks of money laundering are the greatest. We are pleased that the regulations proposed and adopted by Treasury have, for the most part, taken such an approach. By doing so, Treasury has crafted an anti-money laundering regulatory structure that fully advances the Act's goals and, at the same time, avoids placing unnecessary and counter-productive burdens on financial institutions.

As discussed in greater detail below, however, we believe that Treasury's proposed regulations have failed to fully incorporate such an approach in one important area – namely, the ability of securities firms to rely on the due diligence and anti-money laundering compliance efforts of intermediaries and other financial institutions with whom they have a customer or business relationship. The importance of adopting a risk-based approach in this area cannot be

³ A complete list of the Patriot Act comment letters submitted by SIA is annexed in appendix B to this letter.

⁴ Letter dated August 30, 2002 to FATF by SIA and other trade associations regarding the Review of the FATF Forty Recommendations Consultation Paper. http://www.sia.com/2002_comment_letters/pdf/fatf40.pdf

over-emphasized since intermediary and shared business relationships are a common and legitimate part of the securities industry and the U.S. capital markets. Regulations that impose unnecessarily burdensome and duplicative obligations on firms are likely to have an adverse effect on these legitimate relationships and the efficient functioning of the markets. Accordingly, we strongly recommend that Treasury review its implementing regulations and make appropriate modifications so that firms are able to apply a truly risk-based approach to anti-money laundering compliance with respect to their intermediary relationships.⁵

- ***SIA's Recommendations***

Our primary recommendations, based on the current status of the Patriot Act rules, are listed below. We would welcome the opportunity to submit additional recommendations once final rules implementing sections 326 (identification and verification) and 312 (correspondent and private banking due diligence) are issued.

We recommend that:

- 1) **Broker-dealers (and other financial institutions) be able to rely on intermediaries** (including other financial institutions and affiliates) to conduct certain anti-money laundering functions. Such reliance will avoid duplication of efforts and inefficient allocation of significant resources;
- 2) **The information flow between regulators/law enforcement and the industry should be improved**, and a process should be established to provide guidance to the industry on Patriot Act interpretive issues as well as additional and more comprehensive information to assist in detecting suspicious activity; and
- 3) **Increased coordination among regulators, both domestically and on an international level** is necessary both to avoid duplication of efforts and to harmonize the various anti-money laundering requirements.

We also have listed in appendix A to this letter more particularized concerns that we continue to have regarding specific Patriot Act rules.

⁵ Many of our comments in this regard are based on the proposed rules implementing Sections 312 and 326 of the Patriot Act. We recognize that some or all of our concerns may be addressed in the final rules, which as of the date of this letter have not been issued. As stated below, we would welcome the opportunity to submit additional comments once these final rules are released.

I. Reliance on Intermediaries and Other Financial Institutions

- ***The Patriot Act's Rules Should Allow Reliance on Intermediaries to Avoid Duplication of Efforts and Inefficient Allocation of Resources***

SIA strongly believes that Treasury should clarify the proposed regulations to permit broker-dealers to rely, in appropriate circumstances, on intermediaries to perform customer identification, conduct necessary due diligence, and carry out other appropriate anti-money laundering functions. In our view, such reliance permits efficient allocation of anti-money laundering compliance responsibilities, is necessitated by the role that broker-dealers play in transactions involving intermediaries, and is consistent with the approach taken by Treasury in the Patriot Act rules that apply to other financial institutions, such as mutual funds and futures commission merchants and introducing brokers. It is also consistent with the European Union's anti-money laundering directives, the United Kingdom's anti-money laundering rules, and the regulations adopted by other robust anti-money laundering regimes.

In recommending this approach, SIA recognizes that reasonable reliance requires that risk-based distinctions should be made with regard to differently situated intermediaries; they cannot all be treated equally. SIA recommends that Treasury adopt a framework that grants broker-dealers the flexibility to adopt a risk-based approach and permits them to conduct different levels of due diligence for different types of intermediaries, depending on various risk factors, including the anti-money laundering regime within which the intermediary operates.

In the securities industry, it is commonplace for broker-dealers to maintain accounts for, execute trades for, perform custody and settlement services for, and/or transact business with, financial institutions and other entities that are acting on behalf of their own third party clients. Routine transactions involving these intermediaries include purchases or redemptions of mutual fund shares that are conducted through a broker or other intermediary, brokers clearing trades on behalf of another broker's customers in an omnibus account, and brokers executing transactions on behalf of large institutions investing funds for third-parties. The intermediaries involved in these transactions are typically well-regarded, highly regulated financial institutions such as banks, other broker-dealers, pension funds, and investment advisers. Many, if not most, of these intermediaries are themselves subject to the Bank Secrecy Act, (and the amendments pursuant to the Patriot Act and the implementing regulations) or, in the case of foreign institutions, to similarly comprehensive anti-money laundering laws and regulations.

In intermediated situations, it is the intermediaries that are best positioned to perform initial customer identification and due diligence. This is the case because the intermediaries interface with clients, accept transaction orders from them, and are best able to obtain necessary documentation and information from and about their customers. Thus, typically, any information that the broker-dealer obtains about a client comes from and through the intermediary. Moreover, often intermediaries are unable to disclose customer information because of local privacy laws, or are reluctant to share their client information because they view the other institutions as their competitors. As a result of the realities of these businesses, the broker-dealers are simply not in a position to perform initial customer identification and due

diligence. Accordingly, it would be unreasonable to expect that the broker-dealer could perform due diligence superior to that conducted by the intermediary.

Given these considerations, SIA respectfully recommends – as it has in its prior comment letters – that broker-dealers (and other financial institutions) be permitted to treat intermediaries as their customers and not be required to “look through” the intermediaries to obtain information regarding the customers on whose behalf the intermediary is acting. In so doing, broker-dealers would be permitted to reasonably rely on the representations and due diligence efforts of eligible intermediaries such as broker-dealers, banks, fund vehicles, investment advisors, and hedge funds that bring their own clients to the broker-dealer and maintain communication with those clients. As discussed below, the reasonableness of the broker-dealer’s reliance would turn on the nature of the intermediary and, where appropriate, the results of the broker-dealer’s due diligence into the intermediary.

SIA believes that broker-dealers should be able to reasonably rely on intermediaries that are “financial institutions” subject to the full range of anti-money laundering requirements under the Patriot Act or similar regulatory regime (such as the European Union’s anti-money laundering directives). Given the legal and regulatory obligations of these intermediaries, they must perform substantially the same (if not identical) customer identification and verification as broker-dealers and will conduct similar levels of on-going due diligence thereafter on intermediated accounts. There is no reason to require broker-dealers to duplicate the intermediaries’ efforts. Of course, such reliance may be inappropriate where a firm is aware of information that makes it unreasonable to rely on a particular intermediary.

Broker-dealers may need to perform some further due diligence with respect to intermediaries in the United States, the European Union, or another FATF-member country (or jurisdiction that has procedures consistent with the FATF standards) that are not subject to the full range of anti-money laundering requirements. In such cases, a broker-dealer should be permitted to rely on the intermediary after: (i) conducting appropriate risk-based due diligence with respect to the intermediary to satisfy itself that the intermediary is a legitimate, reputable entity that can be relied on with respect to anti-money laundering procedures; and (ii) obtaining a certification (that is periodically renewed) from the intermediary that it has customer identification and verification and account monitoring procedures in place.

The type and scope of due diligence that is necessary under the first of these two steps would depend on a risk-based evaluation of the intermediary conducted by the broker-dealer that assesses various factors, including: (i) the depth and duration of the intermediary’s relationship with the broker-dealer; (ii) whether the intermediary is part of a regulated group or is subject to comprehensive consolidated supervision; (iii) whether the intermediary is in “good standing” in its country of domicile; (iv) the reputation and background of the intermediary; (v) whether the intermediary is publicly held; and (vi) whether the particular type of intermediary has been known to raise money laundering concerns. If a review of these factors gives rise to concerns about a particular intermediary, the broker-dealer may need to conduct additional due diligence.

Broker-dealers may need to conduct more detailed due diligence with respect to certain other less well regulated intermediaries. Such efforts could include requiring the intermediary to obtain an independent review of its anti-money laundering procedures, which review indicates that the intermediary has implemented identification and verification procedures that are comprehensive and rigorous. Where appropriate, the broker-dealer also could request that the intermediary re-certify its identification and verification procedures periodically (perhaps annually) and obtain further independent reviews (perhaps bi-annually).

The risk-based approach described above affords broker-dealers and other financial institutions with the flexibility to allocate anti-money laundering responsibilities in a manner that is risk-based and efficient. In sum, broker-dealers that engage in reasonable reliance under this framework would not be required to “look through” intermediaries and perform due diligence on underlying customers and would not be responsible – beyond taking the steps set forth above – for auditing intermediaries to determine whether they have undertaken appropriate efforts to properly identify their customers.

The approach of reasonably relying on intermediaries makes good sense and has been adopted in other anti-money laundering regimes. For example, implementation of the European Union's anti-money laundering directive (Council Directive 91/308/EEC) has permitted such reliance at a national member state level when a customer is introduced to a financial or credit institution by another institution that is also subject to the directive. In the United Kingdom, the Financial Services Authority has extended this exception from the usual customer identification obligation where the intermediary or agent is subject to regulatory oversight exercised by “a relevant overseas regulatory authority” and to legislation at least equivalent to that required by the Money Laundering Directive (which will, therefore, include institutions based in FATF-member countries). This means that when a customer is introduced to a U.K. financial institution by a U.S. financial institution, a second round of customer identification generally will not be required by the U.K. institution (see Rule 3.2.5 of the Money Laundering module of the FSA's Handbook).

Finally, SIA believes that it is particularly important – and appropriate – for Treasury to permit broker-dealers to rely on the anti-money laundering steps taken by their affiliates. In this and other contexts, no purpose is served by having two affiliated financial institutions – that operate under essentially the same anti-money laundering policies and procedures and that are fully capable of sharing customer information – duplicate efforts to perform the same identification steps on the same customer. Similarly, absent the ability to rely, the two institutions will, of necessity, be forced to conduct parallel and redundant verification and monitoring efforts.

II. Improve Information Flow between Industry and Regulators

- ***Regulators Should Provide Interpretations on the New Regulations and More Information to Help Identify Suspicious Activity***

SIA has been urging greater and more meaningful information sharing with law enforcement and regulators since well before the passage of the Patriot Act. In fact, early in the debate that shaped the Patriot Act, we advocated that the new law should facilitate communication between financial institutions when they are investigating suspicious activity. While Treasury's rule implementing section 314 should increase the flow of information, we believe there is still much room for enhanced and more effective communication.

Pursuant to Patriot Act section 314(a), Treasury adopted regulations for the "specific purpose of encouraging regulatory and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in . . . terrorist acts or money laundering." By including this provision, Congress clearly intended the federal government, as part of the coordinated effort against money laundering and terrorist financing, to share information with the industry to help it identify suspicious activity. We believe the 314(a) rule misses that mark. Instead, the rule merely provides the government with an additional means for investigating suspected illegal activity by requiring a financial institution to check its records for names provided to it by FinCEN. As we pointed out in our April 3, 2002 comment letter, the rule merely formalizes the "control list" process, begun in the aftermath of September 11, by which financial institutions voluntarily checked their records for lists of names and entities supplied by law enforcement. As a result, it falls short of the congressional mandate and, in our view, represents a missed opportunity to enhance meaningfully the anti-money laundering efforts of industry participants.

Accordingly, we recommend that Treasury establish a formal process to share information related to money laundering and terrorism with financial institutions. We believe that to combat such illicit activity effectively industry and law enforcement efforts must be united in a truly cooperative effort. Perhaps more than any other Patriot Act reform, information sharing – both from law enforcement to industry and between financial institutions – has the potential to strengthen the ability of broker-dealers and other financial institutions to identify potentially suspicious activity.

Moreover, the government's resources and information should be used to aid financial institutions in identifying suspicious activity. Information within the government's possession that would be beneficial to the industry could include known havens for money laundering and shell banks, the names of identified shell banks, as well as any trends or transactions in money laundering or the financing of terrorism for which the industry should be on the alert. We think the government's sharing of such information would be extremely beneficial in the identification of possible suspicious activity, and would allow precious resources to be focused on the areas that present the most significant risk.

One area in particular that could be improved is the coordination of efforts among government and industry to monitor accounts of “senior foreign political officials.” Both the Patriot Act and the Interagency Guidance have emphasized that accounts for, and transactions with, such figures may pose a higher money laundering risk. *See* Patriot Act Section 312; *Guidance on Enhanced Scrutiny For Transactions That May Involve the Proceeds of Foreign Official Corruption*, issued in January 2001. In the past, we have urged the government to help industry identify senior foreign political figures. *See* SIA letter to Stuart E. Eizenstat, Deputy Secretary of the Treasury, dated January 10, 2001. There is currently no resource or database available that identifies such persons as senior foreign political officials. Thus, we continue to believe that the government is more able, through its worldwide intelligence network and with the vast law enforcement resources at its disposal, to identify such political figures. The industry’s efforts in this area would be aided greatly if government provided a list of all such individuals to financial institutions (perhaps via FinCEN’s website). Such a list could be similar to those issued by the Office of Foreign Assets Control (“OFAC”) and would permit industry to focus more of its resources on “know your customer” practices and monitoring accounts, rather than trying to duplicate the efforts of the federal government and prepare its own list of such persons. It could also be updated on a regular or ongoing basis, similar to the way in which OFAC issues its updates.

Second, we recommend that Treasury continue to work to improve the feedback and information provided to financial institutions on suspicious activity reports that are filed with FinCEN. While the SAR Activity Review reports are very useful, we believe that more can be done by the government. We believe that there should be greater coordination on suspicious activity reporting to make this process even more effective. With respect to SAR feedback, improvement is also needed in the type and amount of information, and how quickly that information is made available. This process is particularly important because the Patriot Act requires broker-dealers to monitor for activity that is difficult to detect – activity that appears to serve no business or lawful purpose or is not the sort in which the particular customer would be expected to engage – as well as the funding of terrorist activity. Because the activities – and the money trail – of money launderers is becoming more sophisticated, and at times under “radar” levels, to maximize industry efforts to assist law enforcement efforts, we strongly urge the government to provide feedback to us on what suspicious activity was helpful in law enforcement efforts. We also recommend that Treasury continue working with industry to further refine the SAR-SF form.⁶

Third, to assist firms to comply with their new anti-money laundering obligations, Treasury should establish a process to provide guidance to the industry on issues that arise under the Patriot Act regulations. This is necessary because various questions have already emerged from firms’ compliance efforts and more are likely to arise. This process could be similar to the NASD’s Notice to Members, the Interagency Questions and Answers issued under the Gramm-Leach-Bliley Act’s privacy provisions, or the Federal Reserve’s Supervision and Regulation Letter process. Such a process would allow Treasury to address important policy, procedural,

⁶ See our comments in addendum A.

and interpretation matters that arise under the Patriot Act rules (without having to utilize further formal rulemaking) and would significantly assist industry compliance efforts by eliminating the guesswork that may exist with respect to various issues and problems. In sum, such an approach would allow the industry to seek clarification of ambiguities under the rules and ask for additional guidance on how to deal with practical difficulties, limitations of technological solutions, and resource constraints.

III. Increased Coordination Among Regulators

- ***Domestic and International Cooperation Needed to Harmonize Anti-Money Laundering Requirements***

We strongly recommend that there be increased coordination between and among regulators, both on domestic and international levels. Greater coordination is essential to ensure harmonization of anti-money laundering requirements, to enhance effective compliance, and to avoid duplication of efforts and misuse of resources. We note that Treasury itself has stressed the need for interagency coordination in conducting anti-money laundering policy in its 2002 National Money Laundering Strategy.

Coordination is particularly necessary with respect to the securities industry because broker-dealers are subject to regulation not only by Treasury, but also by the SEC, the New York Stock Exchange, the National Association of Securities Dealers, and other regulators. The division of responsibility between Treasury, which has primary responsibility for anti-money laundering policy, and the SEC (in conjunction with the SROs), which is the primary and functional regulator, makes this coordination crucial. While Treasury is intimately familiar with the mandates of the Patriot Act, it is the SEC that fully understands the securities business, the diverse types of broker-dealers, and the many ways in which the securities business operates. Effective anti-money laundering policies that fully appreciate the impact on broker-dealers – the changes to their systems, the resources available and the time needed to adjust – can only be achieved if there is complete collaboration between and among the various regulators.

On a practical level, “coordination” means that the regulation of anti-money laundering policies must be effected so that securities firms are not subject to duplicative rules, overlapping examinations, varying interpretations and multiple enforcement actions. To achieve streamlined and effective regulation, the regulators must not only work hand-in-hand, but delegate appropriate functions to one another. Such streamlined and coordinated efforts will lead to an effective partnership with the industry, culminating, hopefully, in the resources of each maximized to their fullest extent to combat illicit activity.

We also recommend greater coordination by regulators on the international level. SIA and its member institutions are committed to assisting the U.S. government and international cooperating bodies, such as FATF, in deterring and preventing money laundering and terrorist financing. To this end, we believe it is essential to develop international anti-money laundering standards that promote uniformity, cooperation and efficacy while, at the same time, respecting the unique concerns of each jurisdiction and the particular financial industry at issue. This is

especially so because our markets and our member firms are becoming increasingly global and less defined by jurisdictional boundaries.

Given the above, anti-money laundering policymaking should also take into account the extra-territorial application and effect of the Patriot Act and other U.S. anti-money laundering laws. Our members have well-founded concerns that their obligations under the Patriot Act could well conflict with obligations under the laws of other jurisdictions. We have similar concerns about the impact of the Patriot Act on the foreign operations of U.S.-based firms. These issues must be considered in the formulation of U.S. anti-money laundering policy, and industry input should be solicited. In short, we should be partners in this effort.

We believe all of these issues can be best approached if anti-money laundering regulation affords the industry flexibility and follows a risk-based approach. We appreciate that Treasury has recognized the importance of a risk-based approach in many of the Patriot Act rules. We also note that FATF has recognized the utility of such an approach when establishing an anti-money laundering regime, and that the Financial Services Authority in the United Kingdom has adopted such a risk-based approach. We strongly believe that a financial institution can implement an effective anti-money laundering program only by conducting an assessment of the varying risks associated with the different types of businesses, clients, accounts, and transactions it handles and communicating openly with government. Such an approach makes it more likely that resources can be focused on those customers, accounts, and transactions that are most vulnerable to money laundering and terrorist financing without creating a regime that will result in inefficient resource allocation and an increased risk that necessary communications go unshared or that unlawful activity goes undetected.

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The SIA and its member firms are firmly committed to doing everything that we can to be effective in preventing this country's financial system from being used by money launderers or terrorists. The infiltration of ill-begotten funds into our financial system only serves to undermine our economy and investor confidence. We look forward to continuing to work with Treasury on those Patriot Act provisions that have not yet become final.

We greatly appreciate the opportunity to share our views on the Patriot Act and anti-money laundering regulation. If you wish to receive additional information related to these comments, please feel free to contact the undersigned.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
Securities Industry Association
(202) 296-9410

Attachments

Appendix A
SIA's Additional Comments on Particular Patriot Act Rules

Sections 313/319(b) Rule (Shell bank prohibitions and foreign bank ownership/agent requirements):

- We continue to recommend the creation of an Internet site containing a listing of foreign banks, known shell banks, countries that permit shell banks and foreign banks that indirectly provide banking services to shell banks. We also recommend the creation of an Internet site where foreign banks can post and update their model certification forms, which could be relied upon by covered financial institutions, or any comparable methods. These mechanisms would greatly help eliminate unnecessary duplication in recordkeeping that is occurring throughout the industry as firms comply with the shell bank and recordkeeping provisions.

Section 356 Rule (Suspicious Activity Reporting)

- We request guidance on how to detect a transaction without a lawful or valid business purpose, or that is not the sort in which a customer would be expected to engage. We are aware of no available technological solutions that address these issues.

Suspicious Activity Reporting Form (SAR-SF)

- We recommend revisions to the new SAR-SF form, as we suggested when the form was proposed for comment. See SIA comment letter, dated October 4, 2002. Because of ambiguities on the current form, FinCEN will likely receive forms with incomplete or inaccurate data. As the recent audit report by the Treasury's Inspector General reflected, more complete and accurate data would enhance the SAR system. See Inspector General's Report, dated December 18, 2002. Our recommendations are aimed at enhancing the effectiveness of suspicious activity reporting and making the SAR form simpler to use. Given the increasing need for the government to act swiftly in response to money laundering and terrorist financing activity, the SAR form should allow firms to record the relevant information regarding the suspicious activity and timely report it to the government. We do not believe law enforcement purposes are advanced if, in filling out the SAR form, firms have to labor over which boxes to check.

Section 326 Rule (Identification and Verification)

- We strongly urge Treasury to consider these recommendations from our comment letter:

- The rule should fully adopt a risk-based approach, which focuses on areas where the risk is the most meaningful and which includes reliance in appropriate circumstances on intermediaries.
- The rule must allow for a reasonable implementation period that recognizes the very significant changes broker-dealers will be required to make to their systems, operations and procedures.
- The regulators should provide guidance that the focus of customer identification procedures for accounts with intermediaries is the intermediary itself, and not the underlying participants.
- The rule should recognize the ability of a broker-dealer to rely on an affiliate with similar verification procedures.
- The regulators should clarify that the rule's provision that a firm can rely on the identification and verification procedures performed by another broker-dealer for shared accounts includes prime broker/executing broker and similar "give-up" arrangements, and extending the rule to include similar relationships with banks and other entities.
- The rule should also be harmonized with the obligations imposed on broker-dealers by the SEC's new books and records rule.
- The rule should provide guidance on how to verify non-natural persons, especially foreign non-natural persons.

Section 312 Rule (Correspondent and private banking account due diligence)

- The rule should fully adopt a risk-based approach, which focuses on areas where the risk is the most meaningful and which includes reliance in appropriate circumstances on intermediaries.
- The definition of "correspondent account" as proposed is excessively broad by extending to almost every relationship a covered financial institution has with a foreign financial institution. Accordingly, the concept of correspondent account should be applicable to only those accounts where the risk of money laundering is meaningful.
- Our joint comment letter raises a number of important issues with respect to the range of accounts that are subject to the private banking requirements and the definitions of certain key terms in the proposed rule. These definitional points are particularly important because private banking is not well known to the securities industry, and many firms may find it difficult to determine how to apply the rule.

Appendix B
SIA Comment Letters on Patriot Act Rules

- 1) Letter dated February 11, 2002 to Treasury regarding sections 313 and 319(b) prohibiting “correspondent accounts” with foreign shell banks and certain recordkeeping for “correspondent accounts” with foreign banks;
http://www.sia.com/2002_comment_letters/pdf/shellbanks.pdf
- 2) Letter dated March 1, 2002 to Treasury regarding section 356 requiring broker-dealers to file suspicious activity reports;
http://www.sia.com/2002_comment_letters/pdf/SIASAR.pdf
- 3) Letter dated March 18, 2002 to the SEC regarding rules under section 352 by the New York Stock Exchange and NASD requiring firms to establish anti-money laundering compliance programs;
http://www.sia.com/2002_comment_letters/pdf/SEC-3-18.pdf
- 4) Letter dated April 3, 2002 to Treasury regarding section 314 requiring financial institutions to respond to requests from Treasury’s Financial Crimes Enforcement Network for information concerning persons or entities suspected of terrorist activities or money laundering, and authorizing financial institutions to share with each other information concerning persons or entities suspected of terrorist activities or money laundering;
http://www.sia.com/2002_comment_letters/pdf/314_SIA_letter.pdf
- 5) Letter dated July 1, 2002 filed by SIA and other trade associations regarding section 312 establishing enhanced due diligence requirements on foreign correspondent and private banking accounts;
http://www.sia.com/2002_comment_letters/pdf/312jointtrade.pdf
- 6) Letter dated August 22, 2002 to Treasury regarding the interim rule under section 312 requiring broker-dealers to establish enhanced due diligence requirements for private banking accounts;
http://www.sia.com/2002_comment_letters/pdf/section312.pdf
- 7) Letter dated September 10, 2002 to Treasury and the SEC regarding section 326 establishing identification and verification procedures for all new account openings; and
http://www.sia.com/2002_comment_letters/pdf/patriotact-326.pdf
- 8) Letter dated October 4, 2002 to Treasury regarding the proposed suspicious activity form for the securities and futures industry (Form SAR-SF)
http://www.sia.com/2002_comment_letters/pdf/SARSF.pdf

- 9) Letter dated January 27, 2003 to Treasury filed by the New York Clearing House, SIA and the Bankers' Association for Finance and Trade regarding designations under section 311 of certain jurisdictions as primary money laundering concerns.
http://www.sia.com/2003_comment_letters/pdf/NY_Clearing_House.pdf