U.S. IMPLEMENTING NEW EXPANDED MONEY-LAUNDERING LAW

As part of the U.S. "war against terrorism," Congress has given the President new, far-reaching powers to fight international money laundering, which will result in complicated and extensive new regulations on transactions by all types of "financial institutions."

On October 26, 2001, President Bush signed a significant, far-reaching anti-money-laundering law, the International Money Laundering Abatement and Financial Antiterrorism Act ("the Act"), which amends and expands the Bank Secrecy Act and related criminal statutes. The Act strengthens the federal government's ability to detect money-laundering schemes that use legitimate financial instruments and banking relationships to hide the proceeds of criminal acts and to finance crime and terrorism.

The Act affects the operations of almost every domestic financial institution, many foreign financial institutions operating in the United States, and their customers. The Act applies the existing law's broad definition of "financial institution" to include: securities broker/dealers; investment bankers; private banking concerns; investment companies; insurance companies; dealers in precious metals, stones or jewels; credit unions; futures commission merchants; commodity trading advisors; commodity pool operators; travel agencies; casinos; persons involved in real estate closings and settlements; and other business concerns that the Treasury Department ("Treasury") determines are involved in financial and monetary transactions.

Effective immediately, Treasury can require covered institutions to take "special measures" if they conduct business with countries or institutions, or engage in transactions or types of accounts, that are of "primary money-laundering concern." Such measures may include: additional recordkeeping and reporting of transactions; an obligation to "obtain and retain" information on the beneficial ownership of certain accounts opened or maintained by a foreign person; and restrictions on certain payable-through or correspondent accounts. Treasury may bar certain interbank accounts from especially problematic jurisdictions.

Treasury must issue regulations expanding the definition of "account" to include accounts at non-bank financial institutions. Treasury may apply the "special measures" provisions to accounts at non-bank institutions that are similar to banks' payable-through and correspondent accounts. Any financial institution that establishes, maintains or oversees a private banking account or correspondent account in the United States for a "non-United States person" must establish "appropriate" due diligence policies, procedures, and controls to detect and report money laundering through those accounts. The requirement applies to private banking accounts and correspondent relationships maintained for foreign financial institutions by all types of financial institutions operating in the United States, subject to the authority of Treasury to define these relationships for non-bank financial institutions. A failure to establish such policies and procedures could result in monetary penalties and criminal sanctions in the event money

laundering occurs in an account at such financial institution. Secretary O'Neill has announced that Treasury will publish special rules governing securities firms' accounts later this year.

Additional, "enhanced" due diligence will be required for correspondent accounts requested by or maintained for foreign banks with "profiles" that raise money-laundering concerns -- including banks offshore or in jurisdictions with substandard money-laundering controls. These due diligence requirements will take effect 270 days after enactment, even if Treasury fails to issue regulations to implement them.

All financial institutions must implement "know your customer" procedures. New regulations will set minimum standards and procedures for financial institutions for verifying the identity of customers who open and maintain accounts, maintaining records of customer identity verification, and comparing the identity of new customers against lists of known or suspected terrorists. New regulations will also require that customers provide accurate information to financial institutions and, in appropriate cases, provide for the imposition of penalties on a customer who willfully misleads the financial institution about such customer's identity. The final regulations on these matters must take effect within one year of enactment.

Financial institutions must establish internal anti-money-laundering programs within 180 days of enactment. Treasury will set minimum standards but programs must include: internal policies, procedures, and controls to identify and report possible money-laundering transactions; designation of a money-laundering compliance officer; establishment of an employee training program; and an internal audit system to monitor the effectiveness of the program.

The Act also:

- Extends existing laws requiring certain financial institutions to file suspicious activity reports ("SARs") with Treasury to securities brokers and dealers through new regulations that must be proposed by December 31 of this year and published in final form by July 1, 2002.

- Requires Treasury, the Securities and Exchange Commission, and the Federal Reserve Board to submit joint recommendations to Congress, within one year of enactment, for regulations to apply the SAR provisions and other requirements of the Bank Secrecy Act to both registered and unregistered investment companies.

- Prohibits a financial institution filing a SAR from notifying any person involved about that report.

- Prohibits a U.S. bank from establishing, maintaining or administering -- directly or indirectly -- a correspondent account for a foreign bank that is without a physical presence in any country and that is not otherwise part of a regulated and recognized banking company. This provision takes effect 60 days after enactment.

- Adds to the list of money-laundering crimes the bulk smuggling of more than $10,000 in currency either into or out of the United States.

- Requires Treasury to encourage by regulation an increased level of cooperation among financial institutions, regulators and law enforcement agencies, including permission for financial institutions to share information among themselves involving possible money-laundering or terrorist activity.

- Amends the Right to Financial Privacy Act to allow financial institutions to share certain customer information with the federal government for the conduct of United States intelligence or counterintelligence activities against international terrorism.

- Increases civil and criminal penalties to up to one million dollars per illegal transaction.

- Establishes immunity from civil liability for certain actions taken by a financial institution to comply with the Act.

The Act is a lengthy and complex statute that will effect significant changes in the daily operations of financial institutions in the United States and in the responsibilities of their officers, employees and customers. The anticipated implementing regulations will be numerous and equally complex, and penalties for non-compliance will be substantial. This is an opportune time for clients covered by the Act to begin instituting the required internal training and compliance programs and establishing a monitoring system to follow Treasury implementation of the statute and issuance of the regulations.

Willkie Farr & Gallagher's Business Crimes and Government Relations Departments are in a position to advise clients concerning all aspects of the Act. You can contact Benito Romano at 212-728-8258 or Russell Smith at 202-429-4784 with any questions or concerns.

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