#23

July 1, 2002

FinCEN
P.O. Box 39
Vienna, VA 22183
Attn: Section 312 Regulations

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

Dear Sir or Madam:

The Charles Schwab Corporation ("Schwab") appreciates the opportunity to submit this comment letter on the above-captioned Notice of Proposed Rulemaking issued by the Department of Treasury and FinCEN (the "Department") under Section 312 of the USA Patriot Act. Schwab is among the largest financial services companies in the United States, with $858 billion in client assets in nearly 8 million customer accounts at the end of the first quarter of 2002. Schwab is a financial holding company, as defined in the Gramm-Leach-Bliley Act, serving broker-dealer clients through its Charles Schwab & Co., Inc., Schwab Capital Markets LLP and CyberTrader, Inc. subsidiaries, and bank clients through U.S. Trust Corporation and its depository institution subsidiaries.

Schwab strongly supports the goals of the USA Patriot Act and is committed to having a rigorous program in place for deterring and preventing money laundering and terrorist financing. To that end, Schwab generally concurs in the comment letter on the proposed rules submitted by the financial services industry trade associations (including the ABA, FSR, SIA, BMA and ICI, of which we are members). We believe the associations' letter presents a number of important and constructive recommendations designed to make compliance with the proposed rules more feasible without diminishing their effectiveness in combating money laundering. We write separately, however, in order to raise several additional issues.

Application of the Proposed Rules

Section 312 and the proposed rules impose special, and in some cases enhanced, due diligence requirements on a subset of specifically defined accounts, namely, correspondent accounts maintained for foreign financial institutions and private banking accounts maintained for non-U.S. persons. The reason they do so is that Congress

identified these accounts as generally posing special money laundering risks. For all other types of accounts and customers, Congress chose not to dictate specific due diligence requirements, but rather gave firms significant discretion in designing due diligence programs based on the firm's evaluation of the money laundering risks associated with such accounts and customers.[1]

We write to make the perhaps obvious but important point that the special due diligence requirements in these proposed rules should not be applied by implication, in whole or in part, to accounts that do not meet the definitions of correspondent accounts for foreign financial institutions or private banking accounts for non-U.S. persons. This would include, for example, accounts maintained for domestic clients that would meet the definition of private banking account were the clients non-U.S. persons. It would also include programs where firms offer enhanced services, including access to a dedicated service team, to customers who maintain an account with a required minimum balance that is less than $1 million (such as our Schwab Private Client program, which has a minimum requirement of $500,000). Although these programs may be directed to affluent customers, they do not have the same level of risks that Congress determined were associated with the types of private banking accounts explicitly covered by Section 312.

To be sure, firms must still assess the money laundering risks posed by their accounts and design their anti-money laundering programs to adequately address them. In particular, firms must monitor all accounts for potential suspicious activities and must respond appropriately (including in some cases by gathering additional due diligence information) if monitoring indicates the possible presence of suspicious activity in a particular account. Our concern, however, is that regulators not expand the proposed rules beyond their intended scope by considering them as a de facto standard for judging the reasonableness of the policies and procedures a firm adopts for these other types of accounts. The due diligence requirements of Section 312 and the proposed rules are designed to address the specific risks posed by correspondent accounts and private banking accounts maintained for high net-worth foreign clients. A firm may thus reasonably conclude that other types of accounts require different, and lower, levels of initial due diligence than that imposed by the proposed rules. Thus, for example, the regulators should not use these regulations by analogy to require Schwab to obtain source of funds/anticipated use of funds due diligence at the initial account-opening stage for

[1] Of course, as pointed out in the associations' comment letter, there should still be room for firms to follow a risk-based approach in applying the special and enhanced due diligence requirements of the proposed Section 312 regulations.

domestic Schwab Private Client accounts (which, as noted above, have an account minimum below $1 million and are for U.S. persons).

This point – that the 312 regulations should only apply to accounts that meet the explicit terms of those regulations – may seem obvious. However, we note that prior to the USA Patriot Act, the banking regulators used the examination and enforcement process to impose a source of funds/anticipated use of funds due diligence requirement on domestic private banking accounts, based upon the general requirement to file suspicious activity reports. Now there is an explicit statutory provision requiring this type of enhanced due diligence on certain types of private banking accounts. It would be inappropriate for the regulators to attempt to impose an enhanced due diligence requirement on other types of accounts that are not explicitly within this statutory definition. Should the Department believe that specific enhanced due diligence requirements should apply to other types of accounts, it should impose them explicitly by rule, subject to full notice and comment, rather than have them imposed implicitly through the examination and enforcement process. Schwab of course will comply with whatever rules the Department ultimately issues, however, firms need to know in advance what the requirements are so they can develop their policies and procedures accordingly.

Minor Clarifications

We recommend that two minor clarifications be made to remove potential ambiguities in the definition of private banking account and in the use of "non-U.S. person" in Rule 103.178.

First, the definition of private banking account requires that the account be assigned to, administered by, or managed by "an officer, employee, or agent of a covered financial institution acting as liaison between the covered financial institution and the direct or beneficial owner of the account." We believe that both references to "covered financial institution" are intended to refer to the same firm; that is, the firm holding the account must assign one of its officers, employees or agents to act as a liaison between it and the direct or beneficial owner of the account.[2] To remove any potential ambiguity, we recommend that "the covered financial institution" be changed to "that covered financial institution" or "such covered financial institution."

[2] See, e.g., *Minority Staff Report for Permanent Subcommittee on Investigations, Hearing on Private Banking and Money Laundering: A Case Study of Opportunities and Vulnerabilities* (November 9, 1999) at p. 3: "To open an account in a private bank, prospective clients usually must deposit a substantial sum, often $1 million or more. In return for this deposit, the private bank assigns a 'private banker' or 'relationship manager' to act as a liaison between the client and the bank…."

Second, Rule 103.178 applies only to private banking accounts that are maintained by or on behalf of "a non-U.S. person." Rule 103.175(i) defines "non-U.S. person" as an individual who is neither a U.S. citizen nor a lawful permanent resident as defined in the Internal Revenue Code. However, Rule 103.175(l) defines "person" as including non-individuals. In order to avoid any ambiguity, we recommend that the Department clarify that, for purposes of Rule 103.178, the term "non-U.S. person" is to be defined solely by reference to Rule 103.175(i).

* * *

Schwab strongly supports the goal of both the USA Patriot Act and the proposed rules, namely, to eliminate money-laundering from the U.S. and world financial systems. Our comments are intended to assist the Department in making these regulations as effective as possible in achieving this goal. We look forward to working with the Department on these and other aspects of its implementation of the USA Patriot Act.

Sincerely,

W. Hardy Callcott
SVP and General Counsel
Charles Schwab & Co., Inc.

cc: Additional copy filed electronically
regcomments@fincen.treas.gov