Government of the District of Columbia
Department of Insurance and Securities Regulation

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NOTICE

NOTICE TO ALL SECURITIES PROFESSIONALS REGARDING THE USA PATRIOT ACT of 2001

TO: **ALL SECURITIES PROFESSIONALS**

FROM: **Theodore A. Miles, Director of Securities**

DATE: **May 3, 2002**

The Terrorist events of September 11, 2001, prompted a series of subsequent legislative actions. One legislative action was enactment of the USA PATRIOT Act of 2001[1], signed into law by President Bush on October 26, 2001. The Act is designed to deter and punish terrorists in the United States and abroad, and enhance law enforcement investigative tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws. Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 ("Money Laundering Act"), focuses on strengthening the anti-money laundering provisions established by earlier legislation, particularly with respect to crimes by foreign nationals and foreign financial institutions. The Money Laundering Act requires securities broker-dealers and other financial institutions, by **April 24, 2002**, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and implementing regulations. Securities firms are currently subject to a number of statutory and regulatory requirements that are designed to assist the federal government in combating money laundering. The Money Laundering Act adds to the anti-money laundering requirements presently imposed on securities firms and other financial institutions, and one such provision requires all securities firms and financial institutions to establish anti-money laundering programs containing the following minimum standards:

- The development of internal policies, procedures and controls for the detection and reporting of suspicious transactions.
- The designation of a compliance officer.
- An ongoing employee-training program.
- An independent audit function to test the program.

The ***National Association of Securities Dealers Regulation, Inc. (NASDR)*** has issued notices to its members about compliance with the anti-money laundering provisions of the USA PATRIOT Act of 2001, and anti-money laundering guidance is located on its Internet Web site at http://www.nasdr.com/money.asp.

[1] The full text of the law can be obtained at www.acess.gpo.gov/congress. Scroll to public and private laws and select 107th Congress, and select Public Law 107-56.

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Additionally, the ***Securities Industry Association's (SIA)*** Anti-Money Laundering Committee has published anti-money laundering guidance titled, *Preliminary Guidance For Deterring Money Laundering Activity (February 2002).* The SIA's Anti-Money Laundering Committee "believes the Guidance highlights the key elements for a broker-dealer to consider in developing an effective anti-money laundering program."

Further, the U.S. Department of Treasury has issued an interim rule[2] [http://www.ici.org/interim_rule.html] and three rule proposals to implement provisions of the US PATRIOT Act of 2001. The proposed rules address the following topics.

- Broker-dealer suspicious activity reporting;
- Correspondent accounts for foreign banks, including a prohibition on correspondent accounts for foreign shell banks; and
- Reporting of cash and certain cash equivalents transactions by nonfinancial trades or businesses.

The first two rule proposals apply to all broker-dealers, including mutual fund principal underwriters. The third rule proposal applies to nonfinancial trades or businesses, including mutual fund transfer agents that are not "financial institutions" as defined under the Bank Secrecy Act.

Broker-Dealer Suspicious Activity Reporting Rule Proposal

Section 356 of the Act required the Treasury Department, in consultation with the Securities and Exchange Commission and the Board of Governors of the Federal Reserve System, to have published by January 1, 2002, proposed rules requiring broker-dealers to report suspicious transactions. Pursuant to this provision and existing authority under the Bank Secrecy Act, the Treasury has issued a proposed rule that would require "broker or dealer in securities" to file with the Treasury's Financial Crimes Enforcement Network (FinCEN) a report of any suspicious transaction relevant to a possible violation of law or regulation. The proposed rule states that this includes any known or suspected violation of Federal law, or a suspicious transaction related to a money laundering violation or a violation of the Bank Secrecy Act. The definition of "transaction" is very broad and would expressly include transactions involving any "security," as defined in Section 3(a)(10) of the Securities Exchange Act of 1934.

Under the proposal, a transaction would be reportable if it is conducted or attempted by, at, or through a broker-dealer; involves or aggregates funds or other assets of at least $5,000; and is either a transaction involving a known or suspected Federal criminal violation committed or attempted against or through a broker-dealer; or a transaction that the broker-dealer knows, suspects, or has reason to suspect:

- involves funds derived from illegal activity or intended or conducted in order to hide or disguise funds or assets derived from illegal activity;
- is designed, whether through structuring or other means, to evade the requirements of the Bank Secrecy Act; or
- appears to serve no business or apparent lawful purpose, and for which the broker-dealer knows of no reasonable explanation after examining the available facts relating to the transaction and the parties.

[2] Federal Register: December 31, 2001 (Volume 66, Number 250), Pages 67679-67684.

The proposed rule provides that the new requirements would take effect 180 days after the date on which final regulations are published in the Federal Register. Comments on the proposal were required to be filed with FinCEN by March 1, 2002.

Requirements for Broker-Dealers Related to Correspondent Accounts for Foreign Banks

The Treasury also has issued a proposed rule to implement provisions of the Act that:

- Prohibit certain financial institutions, including broker-dealers, from providing correspondent accounts to foreign shell banks and require such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks; and
- Require certain financial institutions that provide correspondent accounts to foreign banks to maintain records of the ownership of such foreign banks and of their agents in the United States designated for service of legal process, and require the termination of correspondent accounts of foreign banks that fail to turn over their account records in response to a lawful request by the Treasury Secretary or the U.S. Attorney General.

The proposed rule would codify, with some modifications, interim guidance that Treasury issued on November 20, 2001, for depository institutions, and extend the same requirements to broker-dealers. Further, the notice of proposed rulemaking sought comments on a number of topics including, in particular, the breadth of the definition of "correspondent account." In this regard, it inquired about:

- the extent to which different types of accounts may be used to provide financial services directly or indirectly to foreign shell banks,
- the extent to which different types of accounts may be used to facilitate money laundering, terrorist financing, or other criminal transactions,
- whether particular types of accounts pose so little vulnerability to criminal transaction to merit exclusion from the broad definition of "correspondent account," and
- the adverse business implications, if any of adopting a broad definition of "correspondent account."

Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions

Section 365 of the Act added a currency transaction-reporting requirement for nonfinancial trades or businesses to the Bank Secrecy Act. Pursuant to this section, the Treasury has issued identical interim and proposed rules requiring nonfinancial trades and businesses to file reports with the Treasury if they receive more than $10,000 in cash and, in certain circumstances, cash equivalents in a single transaction or two or more related transactions. The rule is substantially similar to the requirements currently imposed on nonfinancial trades or businesses under Internal Revenue Code Section 60501 and its implementing regulation, and should have virtually no practical impact on entities required to file reports under those provisions. Section 60501 remains in effect, and the Internal Revenue Code has been amended to state that the filing of Form 8300 with the Internal Revenue Service will satisfy reporting requirements under the Bank Secrecy Act.

Requests for additional information or questions regarding this bulletin may be directed to:

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