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COMMENT

September 6, 2002

Financial Crimes Enforcement Network,
 Section 326 Bank Rule Comments,
 P.O. Box 39,
 Vienna, VA 22183

Attention: Section 326 Bank Rule Comments
Regcomments@fincen.treas.gov

RE: Proposed Rule on Customer Identification Programs for Banks,
Savings Associations and Credit Unions

Ladies and Gentlemen:

Wells Fargo & Company ("Wells Fargo") is writing to provide comments on the joint notice of proposed rulemaking issued by the Department of the Treasury, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation and the National Credit Union Administration (collectively, the "Agencies") to implement Section 326 of Title III of the USA PATRIOT Act (the "Act") for banks, savings associations and credit unions (the "Bank Rule"). 67 Fed. Reg. 48,290 (July 23, 2002). Concurrently, with the Bank Rule, the relevant federal functional regulators also issued for public comment proposed rules to implement Section 326 of the Act for (i) certain banks that do not have federal functional regulators (67 Fed. Reg. At 48,299); (ii) broker dealers (67 Fed. Reg. At 48,306); (iii) mutual funds (67 Fed. Reg. At 48,318); and (iv) futures commission merchants and introducing brokers (67 Fed. Reg. At 48,328) (collectively with the Bank Rule, the "Proposed Rules"). Through its subsidiary Wells Fargo Bank, N.A., Wells Fargo is a member of the New York Clearing House Association (the "Clearing House") and has participated in the preparation of, and fully supports the comments presented in, the Clearing House letter, which is being filed electronically, and is incorporated herein. Wells Fargo believes there are certain matters meriting additional comment and is providing this letter to share Wells Fargo's position on these matters.

At the outset, Wells Fargo wants to state its full support for the USA PATRIOT Act and the government's efforts to detect and prevent money laundering and financing of terrorist activities. Wells Fargo believes in the policies underpinning Section 326 and the need for effective identification of customers at account opening. Wells Fargo supports a "risk based" approach, which will achieve the desired result in a feasible and effective manner. Wells Fargo has some concern that certain of the provisions of the Proposed Rules may create a level of burden on compliance with Section 326 that is not commensurate with achieving the desired result of detecting and preventing money laundering or terrorist financing. The balance of this letter will reiterate those

requirements which Wells Fargo believes need to be reconsidered and, hopefully, changed to find a better balance of impact and results.

1. "Intermediated Accounts; Reliance on Affiliates"

Wells Fargo strongly supports the position of the Clearing House that an effective component of a risk based due diligence program is the ability to rely, when appropriate, on the due diligence undertakings of an intermediary or of an affiliate. Given the multiple parties and relationships that may occur in a typical financial transaction, due diligence often is more effectively accomplished by the party closest to the customer and/or closest to the pertinent information. To have redundant inquiries of customers will not provide any new meaningful information and will result in unnecessary burden to the financial system. This concept of reasonable reliance is even more appropriate in the case of affiliates and Wells Fargo feels strongly that it should be able to rely on the due diligence undertakings of the financial institution affiliates of Wells Fargo. Wells Fargo believes that its responsibility in such situations should be to focus on the intermediary, service provider or affiliate and to determine that the due diligence programs of such parties are effective in identifying the customers.

Wells Fargo requests that the final regulations specifically state that a financial institution's customer identification program may provide that identification and verification of a customer is satisfied if: (i) an affiliated entity has previously verified the customer's identity in accordance with procedures that are consistent with the regulation and the affiliate continues to believe that it knows the true identity of the customer; or (ii) an unaffiliated intermediary has represented to the institution that it has previously verified the customer's identity and that it will advise the institution if it subsequently determines that it no longer believes that it knows the true identity of the customer.

2. "Account"

The definition of Account is a very important component of this regulation. Account means a formal banking or business relationship established to provide ongoing services, dealings or other financial transactions. Wells Fargo reiterates the importance of a clear articulation that infrequent or isolated transactions do not trigger the identification requirements of the Proposed Rules. Additional examples of infrequent transactions that do not arise to an "account" would be helpful.

3. "Customer"

The definition of customer likewise is a critical aspect of the Proposed Rules as it establishes the scope of the regulations. The definition of customer is really two part: (i) the person (entity) opening the account (the traditional concept of customer), and (ii) any signatory on the account. Wells Fargo is concerned with the breadth of the identification requirements resulting from subjecting "any signatory" on the account to the identification process. This is especially problematic in the business or commercial account context. The letter of the Clearing House succinctly articulates the immense burden placed on financial institutions without commensurate benefit if signatories on an account are included in the definition of customer. Wells Fargo believes that a more effective process to detect and prevent money laundering or terrorist financing is a risk based compliance program that determines, from a risk-based perspective, which persons (including signatories or other control persons) should be subject to the identification requirements. The focus should be on the business and the business control persons, not just signatories on the account.

Section 326(a)(2)(A) of the Act provides that the regulations require institutions to verify "the identity of any person seeking to open an account to the extent reasonable and practicable". By including any signatory on an account within the definition of "customer", the proposed regulation goes far beyond that which is required by the Act. Wells Fargo believes that most institutions currently do not have systems or procedures in place to identify every person (including collecting the specified information) who is a signatory on an account. Furthermore, Wells Fargo believes that imposing such a requirement on institutions is contrary to the statutory mandate that the verification procedures be both reasonable and practicable. Finally, it is Wells Fargo's view that the economic cost of changing processes and systems, employment of new employees to perform the additional work and training of all personnel to address the requirement of identifying "signatories" on an account is significantly underestimated by the "impact assessment" set forth in the preamble to the Proposed Rule. From Wells Fargo's perspective, this enormous cost to financial service firms and the corollary costs to customers will not result in commensurate benefit in the fight against money laundering and terrorist financing.

Wells Fargo also requests clarity on the term "seeking" to open an account. Wells Fargo is concerned that without more clarity persons may be subjected to the full identification process prematurely resulting in unnecessary expense to the institution and a dissatisfied public.

4. "Recordkeeping"

Subpart 103.121(b)(3) sets forth requirements that institutions maintain records of the information used to verify identification for a period of five years after the account is closed. Wells Fargo is concerned that tying the retention period to the closing of the account may result in unnecessary burden and inadvertent non-compliance. Wells Fargo suggests that the record retention tie to the account open date, which is the date that the identification and verification process is most relevant. It is likely that existing systems can be used to monitor retention time frames based on data already stored with respect to date of account opening. Obviously, institutions would retain appropriate information related to the ongoing use of the account (name, address, signature cards, and tax identification number) and this should be sufficient information on customers.

Wells Fargo also requests that the final rule provide that there is no recordkeeping requirement for withdrawn or declined applications.

5. "Required Dates for Implementation"

The process changes and related systems changes resulting from final rules implementing Section 326 likely will be significant. As stated in the Clearing House letter, absent some phase in of the required dates for implementation financial institutions, for practical purposes, will not be able to comply with the new requirements. Until final rules are published, Wells Fargo, and presumably all other financial institutions, cannot accurately assess, plan or schedule implementation of all the process and system changes. Wells Fargo strongly supports the request that the effective date for required implementation be extended for at least one year after the effective date of the final rules. Wells Fargo believes that the approach suggested by the ClearingHouse: initial implementation plan in 90 days; final implementation plan in 180 days; and implementation within a year is a realistic schedule that will enable financial institutions to comply with the mandate of Section 326.

6. Transition Rules For Existing Customers

Under the proposed regulation, an institution need not verify the identifying information of an existing customer if it has previously verified the customer in accordance with procedures consistent with the regulation. "Customer" is defined to include both the person opening the account and each signatory on the account. Wells Fargo does not believe that most institutions verify the identity of every signatory on a business or commercial account in a manner that is consistent with the proposed regulations. Consequently, Wells Fargo believes that most, if not all, existing commercial customers will need to be subjected to the institution's customer identification program whenever a new account is opened. This will

have a significant adverse effect on institutions and their existing customers. The difficulties presented for existing customers by the proposed regulation could be dealt with in several ways.

First, the final regulation could exempt all existing customers from the institution's customer identification problem. This would completely eliminate the problems institutions will face with respect to their existing customer base.

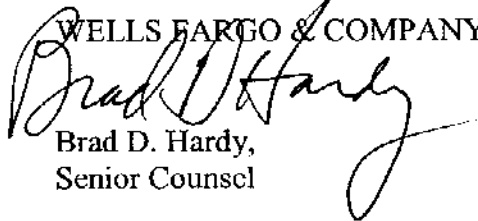
Second, the final regulation could modify the definition of "customer" to exclude signatories on an account. As noted above, Wells Fargo believes that such a revision is required by section 326 of the Act. Furthermore, since most institutions verify the identity of the person opening the account in a manner that is consistent with the regulation, revising the definition of "customer" as recommended is likely to eliminate the problem of existing customers for most institutions.

Third, if the final regulation does not modify the definition of "customer" for all purposes, the regulation could provide that institutions need not verify the identifying information of an existing customer so long as the customer is merely a signatory on the new account and identity of the owner of the account was previously identified in accordance with procedures that are consistent with these regulations.

Finally, the final regulations could identify instances in which a new service is so tightly coupled to an existing service that it does not constitute a new "account" for purposes of these regulations. For instance, a number of services are very tightly tied to a deposit account (e.g., ongoing wire transfer services, debit card services, account reconciliation services, controlled disbursement services, etc.). If a customer with a deposit account obtains a new account reconciliation service from the bank, Wells Fargo does not believe that such an event should trigger the requirement that the bank determine whether every signatory has been identified in a manner that is consistent with these regulations. Wells Fargo therefore requests guidelines regarding when one service may be considered to be so tightly tied to another service that it need not be considered a new service. Although guidance of the sort will not eliminate the problems that institutions will face with respect to existing customers, it could have the effect of easing the transition period by reducing the situations in which an existing customer is deemed to have opened a new account.

Thank you in advance for your consideration of these comments. If you have any questions concerning these comments or would like additional dialogue, please contact the undersigned at 801-246-5976.

Very truly yours,

WELLS FARGO & COMPANY

Brad D. Hardy,
Senior Counsel

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