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FINANCIAL INSTITUTIONS LAW UPDATE

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Intelligence Reform Act Includes Anti-Money Laundering Provisions Concerning Cross-Border Electronic Funds Transmittals and Increased Funding of AML Enforcement, But Patriot Act Regulations Still Pending

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On December 17, 2004, President Bush signed the Intelligence Reform and Terrorism Prevention Act of 2004 ("Reform Act"). The Reform Act includes one anti-money laundering ("AML") provision of potential significance to financial institutions: the provision authorizes the Treasury Department to issue rules requiring financial institutions to report cross-border electronic transmittals of funds.

Currently, there are record-keeping requirements applicable to certain types of electronic funds transmittals (some of these requirements are referred to as "Travel Rule" requirements because certain information must "travel with" funds transmittal orders), but there is no general requirement to report cross-border electronic funds transmittals to the US government. A requirement to report such information would constitute a significant new AML regulation. In light of the fact that Treasury still has not finalized many of the AML rules proposed pursuant to the USA Patriot Act of 2001 ("Patriot Act"), however, it is not clear that new AML rules will be forthcoming, notwithstanding the new statutory authorization.

Many of the Reform Act's other AML provisions concern increased funding of

the government's AML regulatory and enforcement efforts. Such provisions reflect the continuing congressional view that AML regulation and enforcement is an important part of the war on terrorism. Even before the Reform Act, calendar year 2004 was one of the most active AML enforcement years ever, with several high-profile AML enforcement actions, including a \$50 million penalty against AmSouth Bancorporation and AmSouth Bank. This trend toward vigorous AML enforcement is not likely to abate in the near future.

The Reform Act provision concerning funds transmittals permits but does not require Treasury to adopt new regulations. It provides that if Treasury deems it necessary, Treasury shall, within three years, prescribe regulations requiring certain financial institutions (which institutions are to be specified by Treasury) to report to the Financial Crimes Enforcement Network information regarding "cross-border electronic transmittals of funds." The information required to be reported, if such rules are issued, also is delegated by statute to Treasury.

The Treasury Department, however, may not be eager to propose yet additional AML rules beyond those required or

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authorized by the Patriot Act. Among the Patriot Act AML rules that have been proposed but have not been finalized are: (i) rules to require increased scrutiny of foreign correspondent and private banking accounts; (ii) rules requiring mutual funds to report suspicious activities; and (iii) a set of rules requiring the adoption of AML programs by insurance companies, investment advisers, hedge funds, and various other types of financial institutions.

These pending rules are not the only items that may slow the proposal of additional rules. Recent academic commentary, including a new report from the Institute for International Economics, has begun to question the efficacy of many AML provisions and to suggest that cost-benefit analyses are needed before new AML rules are proposed.

What AML actions, if any, Treasury takes pursuant to the Reform Act may signal whether Treasury is content to focus on the enforcement of existing rules or whether it plans to pursue the issuance of additional AML rules.

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