

seeking public comment on a proposal to require Edge and Agreement corporations and U.S. branches, agencies and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder.

DATES: Written comments on all aspects of the proposal are welcome and must be received on or before June 30, 2003.

ADDRESSES: Comments should refer to Docket No. R-1147 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to

regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at 202-452-3819 or 202-452-3102. Members of the public may inspect comments in Room MP-500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Pamela J. Johnson, Senior Anti-Money Laundering Coordinator, (202) 728-5829, or Nina A. Nichols, Counsel, Division of Banking Supervision and Regulation, (202) 452-2961; or Melinda Milenkovich, Counsel, (202) 452-3274, or Thomas Scanlon, Counsel, Legal Division, (202) 452-2594. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

In 1987, the federal bank supervisory agencies amended their respective regulations to require the banks, savings associations, and credit unions they regulated to establish and maintain procedures to assure and monitor compliance with the requirements of subchapter II of chapter 53 of Title 31, United States Code, commonly known as the "Bank Secrecy Act," and the Treasury regulations promulgated thereunder.¹ The Bank Secrecy Act

generally requires financial institutions to, among other things, keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. The 1987 amendments to the supervisory agencies' regulations were adopted to comply with the requirements of section 1359 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, which required the supervisory agencies to prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act and to review such procedures during the course of their examinations.

The amendments to the supervisory agencies' regulations incorporated the minimum components of a Bank Secrecy Act compliance program as determined by the supervisory agencies and as generally set forth in the Bank Secrecy Act at 31 U.S.C. 5318(h). These include: (i) a system of internal controls to assure ongoing compliance; (ii) independent testing of compliance by the institution's personnel or by an outside party; (iii) the designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (iv) training for appropriate personnel.

The amendment to the Board's regulations is now codified in Regulation H at 12 CFR 208.63.² The provision applies to state member banks, but corresponding provisions were not included in Regulation K for branches, agencies and representative offices of foreign banks or Edge and Agreement corporations. Such financial institutions are, however, subject to the Bank Secrecy Act and the regulations promulgated thereunder, and should maintain compliance programs accordingly.

II. Proposed Bank Secrecy Act Program Requirements

The Board is proposing to amend Regulation K to require Edge and Agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Board to establish and maintain procedures reasonably designed to assure and monitor compliance with the Bank Secrecy Act.³

2858. It was effective January 27, 1987, and required programs to be in place by April 27, 1987.

² The amendment was initially made to 12 CFR 208.14, but the provision was moved in subsequent changes to Regulation H.

³ Statutory authority for the proposed rule is found in section 1359 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, and in section 8(s)(1) of the Federal Deposit Insurance Act, as amended by

The Board believes that the proposed regulation will not impose any material additional administrative burden for affected institutions. In supervising branches, agencies and other offices of foreign banks or Edge and Agreement corporations, the Board has, as a matter of safety and soundness, consistently expected such entities to maintain programs to ensure compliance with all applicable provisions of the Bank Secrecy Act.

Moreover, section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act, P.L. 107-56 (USA PATRIOT Act), amended 31 U.S.C. 5318(h) of the Bank Secrecy Act to impose a statutory requirement on all financial institutions to maintain anti-money laundering programs. The amendment to 31 U.S.C. 5318(h) was effective on April 24, 2002.

The Treasury Department issued an interim final rule under section 352 of the USA PATRIOT Act that applies to banking organizations.⁴ The interim rule provides that if a financial institution is in compliance with the anti-money laundering program requirements of its federal functional regulator or self-regulatory organization, the institution will be deemed to be in compliance with the statutory and regulatory requirements of the Treasury under 31 U.S.C. 5318(h). Because branches, agencies and representative offices of foreign banks and Edge and Agreement corporations are subject to the program requirement of 5318(h) of the Bank Secrecy Act, and the Treasury regulation provides that they will be in compliance if they comply with the Board's program requirement, the proposed regulation will provide necessary clarification. The proposed regulation will clarify the existing obligations of branches, agencies, and representative offices of foreign banks and Edge and Agreement corporations under the Board's rules, section 5318(h) and Treasury's interim final rule under section 352 of the USA PATRIOT Act.

Compliance with the proposed rule will help to assure that institutions have

section 2596(a)(2) of the Crime Control Act of 1990, Pub.L. 101-647. The latter requires the Board to, among other things, issue regulations requiring state member banks and other domestic and foreign banking organizations operating in the United States and supervised by the Board, to establish and maintain internal procedures to ensure compliance with the Bank Secrecy Act. Section 8(s)(1) of the Federal Deposit Insurance Act is made applicable to branches and agencies of foreign banks by sections 8(b)(3) and 8(b)(4).

⁴ Treasury's interim final rule was published at 67 FR 21110 (April 29, 2002). The requirement for banks, savings associations, and credit unions is codified in Treasury's Bank Secrecy Act regulations at 31 C.F.R. 103.120(b).

¹ The notice was issued by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration on January 27, 1987, 52 FR