Guidelines for Counter Money Laundering Policies and Procedures in Correspondent Banking

Sponsored by

The New York Clearing House Association L.L.C.

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Preamble

During the last 30 years, the world’s leading banks have developed an international payment system that has been instrumental in fostering economic prosperity throughout the world. Financial and trade transactions can be processed with confidence, speed, and efficiency through this system. At the heart of the international payment system is correspondent banking, whereby banks throughout the world can make payments to and through each other.

The effective functioning of the international payment system is dependent upon three principal attributes: speed, accuracy, and geographic reach. Speed is essential because the underlying transactions require the certainty that payment has been made, because so many payments are dependent upon one another, and because a complex global economy requires constant liquidity. Accuracy is essential in order to create confidence in the payment system. Geographic reach is required in a global economy because any system that omits certain potential users makes that system less valuable, and potentially less viable for all users. Moreover, the prominence of the U.S. dollar as the world’s settlement currency of choice is dependent in large part upon its universality—a facet driven significantly by the broad geographic reach of the payment system.

These very attributes, which are so instrumental to the successful functioning of the payment system, however, also create some vulnerability to money laundering. The volume of payments, the speed at which payments must move, and the indistinguishability of payments combine to make it virtually impossible to identify and intercept payments unless the originator, the recipient, or both are identified as problematic in advance and are clearly identified in the transmittal information. Once a person is able to inject funds into the payment system that are the product of a criminal act or are intended to finance a criminal act, it is highly difficult, and in many cases impossible, to identify those funds as they move from bank to bank. Similarly, the scope necessary for an effective payment system requires broad availability and thereby greatly limits the feasibility of blanket exclusions based on geography or origin.

The member banks of The New York Clearing House Association L.L.C. (the “Clearing House”) and the financial institutions set forth on Appendix II hereto, recognize their responsibility to develop counter money laundering policies, procedures and controls that are reasonably designed to be both feasible and effective, notwithstanding the constraints that are inherent in an effective international payment system, in detecting, deterring and

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1 The member banks of The New York Clearing House Association L.L.C. are: Bank of America, National Association; The Bank of New York; Bank One, National Association; Bankers Trust Company; Citibank, N.A.; First Union National Bank; Fleet National Bank; HSBC Bank USA; JPMorgan Chase Bank; LaSalle Bank National Association; and Wells Fargo Bank, National Association.
reporting payments that involve money laundering or other financial crimes. The establishment of such policies, procedures and controls was recently mandated by Section 312 of the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (the “Act”) (31 U.S.C. § 5318(i)). Although Section 312 is not yet effective, the Banks have agreed to the following guidelines for sound business conduct in correspondent banking (the “Guidelines”), effective immediately, to further the objectives of the Act and to assist U.S. Banks in implementing their compliance with the Act. The Guidelines also seek to establish uniform practices for compliance with Section 313 (Prohibition on U.S. Correspondent Accounts with Foreign Shell Banks) (31 U.S.C. § 5318(j)) and certain provisions of Section 319(b) (Bank Records) (31 U.S.C. § 5318(k)) of the Act. The Guidelines will be supplemented in due course as regulations implementing the Act are published and as industry practice develops over time. The Banks view the Guidelines as an important step in the fight against money laundering and other financial crimes.

The Banks recognize that money laundering can be used to provide funds for terrorist activities. The tragic events of September 11, 2001, have highlighted the need for the international financial community to engage in a rigorous, cooperative effort with governments to develop ways to identify, intercept and ultimately eliminate the flow of funds to and from terrorists and their organizations. The Banks are fully committed to accomplishment of these objectives both by their efforts to counter money laundering and such additional efforts as are required. In this regard, the Clearing House, in concert with financial services trade associations, other financial institutions and U.S. law enforcement and banking agencies, have organized task forces to address particular areas of concern. Certain of the policies and procedures identified in these Guidelines, by enhancing controls in correspondent banking, should operate to advance the counter terrorist financing goals of the Act. The Guidelines will be supplemented in due course as specific industry practice, including policies and procedures that address counter terrorism more directly, develop over time.

In order for the payment system both to function effectively and to counter money laundering and other financial crimes, each bank must be responsible for performing due diligence on its own customers and banks should be permitted to rely on the due diligence performed by their Respondent Banks. Under ordinary circumstances, it is not practicable to require banks to obtain the same information on their Respondent Banks’ customers as they would normally obtain on their own customers, or even to identify their Respondent Banks’ customers. The Act finds, however, that, in certain circumstances, Respondent Banks from jurisdictions identified as presenting a high risk of money laundering or terrorist financing, such as offshore jurisdictions or non-cooperative jurisdictions, require an enhanced degree of due diligence. Under the Guidelines, this enhanced due diligence would include, for example, requesting the

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2 The Guidelines and Appendix I are consistent with the Interim Guidance issued by the United States Department of the Treasury on November 20, 2001 to covered financial institutions to assist them in meeting their compliance obligations under Sections 313 and 319(b) of the Act (66 Fed. Reg. at 59342).
names and addresses of the foreign bank customers for which the Respondent Bank maintains correspondent accounts, and determining whether the Respondent Bank has reasonably designed due diligence policies, procedures and controls in place.

Furthermore, the Banks recognize the urgent need for improved cooperation and information sharing among banks, bank regulators and law enforcement authorities worldwide. The governmental sector has access to information regarding illicit activities that would not normally be available to any bank, much less the banking community as a whole. Information sharing by the governmental sector with banks, and by banks with other banks, would greatly improve the ability of banks to identify illicit activity, and would promote the broader dissemination of information that, if possessed by a single bank, could not be shared freely with other financial institutions. Section 314 of the Act takes significant steps to promote cooperation among financial institutions, regulatory authorities and law enforcement authorities and to permit the sharing of information regarding possible terrorist or money laundering activity.

The Guidelines apply to activities conducted in U.S. dollars through Correspondent Accounts established and operated at a Bank.

The Guidelines are intended to build upon a Bank’s existing due diligence and counter money laundering programs, policies and procedures, and to assist the Bank in the continuing design and development of comprehensive due diligence programs to identify and manage particular risks that may exist. Sound risk management policies and procedures vary among Banks and, therefore, the application of the Guidelines also may vary among Banks.

1. Definitions

Unless otherwise defined, capitalized terms used in the Guidelines have the meanings set forth below:

1.1 “Affiliate” means any Foreign Bank that is controlled by, or is under common control with, a U.S. depository institution, U.S. credit union, or Foreign Bank.

1.2 “Applicant” means a Foreign Bank seeking to establish a Correspondent Account with a Bank.

1.3 “Bank” means any U.S. Bank, or any other financial institution, that subscribes to the Guidelines.

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3 It is anticipated that the United States Department of the Treasury will issue regulations implementing the Act. These Guidelines, including the definitions in Section 1, may be revised in light of those regulations.
1.4. “Certification” means a written certification by a Respondent Bank, signed by a duly authorized representative of the Respondent Bank, substantially in the form of Appendix I hereto.

1.5 “Correspondent Account” means a deposit account established by a Respondent Bank to receive deposits, to make payments, or to otherwise disburse funds.

1.6 “Foreign Bank” means an organization that (i) is organized under the laws of a foreign country; (ii) engages in the business of banking; (iii) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; (iv) receives deposits to a substantial extent in the regular course of its business; and (v) has the power to accept demand deposits, but does not include the U.S. branches or agencies of a foreign bank.

1.7 “High Risk Respondent Bank” means (i) an Offshore Bank; (ii) a Foreign Bank organized or chartered under the laws of a Non-Cooperative Jurisdiction; (iii) a Foreign Bank organized or chartered under the laws of a foreign country that has been designated by the Secretary of the Treasury under Section 312 of the Act (31 U.S.C. § 5318(i)(2)(A)(ii)(II)) as warranting special measures due to money laundering concerns; or (iv) a Foreign Bank organized or chartered under the laws of a jurisdiction that has been designated by the Secretary of the Treasury under Section 311 of the Act (31 U.S.C. § 5318A) as warranting special measures due to money laundering concerns.

1.8 “Key Senior Management” means any person who is a member of the board of directors of an Applicant, excluding an advisory director, or any person who participates or has the authority to participate (other than in the capacity of a member of the board of directors) in major policy making functions of an Applicant.

1.9 “Non-Cooperative Jurisdiction” means any foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization continues to concur.

1.10 “Offshore Bank” means any Foreign Bank that is barred, pursuant to its bank license, from conducting banking activities with the citizens of, or with the local currency of, the country that issued the license, but does not include a Regulated Affiliate.

1.11 “Owner” means a Person that (i) owns, controls or has power to vote, directly or indirectly, 25% or more of the voting shares or other voting interests of a Respondent Bank; or (ii) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a Respondent Bank. For purposes of this

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4 Appendix I is based upon the Interim Guidance published by the United States Department of the Treasury on November 20, 2001. See supra, note 2.
Section 1.11, “voting shares or other voting interests” means shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

1.12 “Payable Through Account” means a Correspondent Account at a U.S. Bank through which the U.S. Bank extends direct access to its products or services to the customers of a Respondent Bank.

1.13 “Person” means any individual, bank, corporation, partnership, limited liability company or any other legal entity. Members of the same family shall be considered one Person (the same family shall include parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, stepparents, parents-in-law, children-in-law and spouses of any of the foregoing).

1.14 “Physical Presence” means a place of business that (i) is maintained by a Foreign Bank; (ii) is located at a fixed address (other than solely an electronic address) in a country in which the Foreign Bank is authorized to conduct banking activities, at which location the Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities; and (iii) is subject to inspection by the banking authority which licensed the Foreign Bank to conduct banking activities.

1.15 “Regulated Affiliate” means a Foreign Bank that (i) is an Affiliate of a U.S. depository institution, U.S. credit union or Foreign Bank that maintains a Physical Presence in the United States or a foreign country, as applicable; and (ii) is subject to supervision by a banking authority in such country regulating such affiliated U.S. depository institution, U.S. credit union or Foreign Bank.

1.16 “Respondent Bank” means any Foreign Bank for which a Bank establishes, maintains, administers or manages a Correspondent Account.

1.17 “Shell Bank” means any Foreign Bank that does not have a Physical Presence in any country, but does not include a Regulated Affiliate.

1.18 “U.S. Bank” means (i) any banking organization organized under the laws of the United States, any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands which accepts demand deposits or deposits that the depositor may withdraw by check or similar means for payment to third parties or others; and (ii) any U.S. branch or agency of a Foreign Bank.
2. Establishment of Correspondent Accounts

2.1 General

It is the policy of the Bank to seek to detect, deter and report any use of its Correspondent Accounts for money laundering, other financial crimes or other illegal purposes.

2.2 Account Opening

2.2.1 Account Opening for Respondent Banks

Prior to the opening of a Correspondent Account for an Applicant, the Bank should conduct due diligence with regard to the Applicant.

2.2.2 Account Opening for High Risk Respondent Banks

Prior to the opening of a Correspondent Account for an Applicant that would be a High Risk Respondent Bank, the Bank should conduct due diligence and enhanced due diligence with regard to such Applicant.

2.3 Risk-Focused Review of Existing Correspondent Accounts

The Bank will undertake reasonable efforts, based on its own risk-assessment, to review the due diligence and enhanced due diligence performed on existing Correspondent Accounts on a periodic basis.

2.4 Shell Banks

The Bank will not establish, maintain, administer or manage a Correspondent Account for a Shell Bank and will take reasonable steps to ensure that its Respondent Bank will not use its Correspondent Account to provide banking services to a Shell Bank. The Bank should obtain a Certification from each Applicant and any Respondent Bank with an existing Correspondent Account (i) that (x) the Respondent Bank has a Physical Presence, (y) the Respondent Bank does not have a Physical Presence, but is a Regulated Affiliate, or (z) the Respondent Bank neither has a Physical Presence nor is a Regulated Affiliate; and (ii) that the Respondent Bank does not provide banking services to Shell Banks, or, if the Respondent Bank provides banking services to Shell Banks, it will not use its Correspondent Account to provide banking services to Shell Banks. The Bank should reaffirm this information on a periodic basis, based on its own risk-assessment.

2.5 Maintenance of Records in the United States

The Bank shall maintain records in the United States, in the form of a Certification, identifying (i) the owners (as defined in the Certification) of each Respondent Bank; and (ii) the name and address of a person who resides in the United States and is authorized to accept service of legal process from the Secretary of the Treasury or the Attorney General.
of the United States for records regarding the correspondent account (as defined in the Certification) maintained on behalf of such Respondent Bank. The Bank should reaffirm this information on a periodic basis, based on its own risk assessment.

2.6 Due Diligence and Enhanced Due Diligence

The Bank shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures and controls that are reasonably designed to detect and report instances of money laundering through Correspondent Accounts.

2.6.1 Due Diligence

The Bank shall establish and maintain due diligence policies, procedures and controls for Correspondent Accounts. These policies, procedures and controls should be reasonably designed to detect and report instances of possible money laundering. The Bank recognizes that the due diligence elements for Correspondent Accounts set forth below are not exhaustive. For example, the Bank may apply some of the elements of its enhanced due diligence policies, procedures and controls for Correspondent Accounts to a specific Respondent Bank, or apply additional measures uniquely tailored for that Respondent Bank. The Bank’s due diligence policies, procedures and controls should include some or all of the following, as appropriate:

- establishing that the Applicant has been duly organized and is in good standing in its jurisdiction of organization;
- obtaining the Applicant’s annual report and financial statements (audited, if available);
- identifying Key Senior Management of the Applicant;
- reviewing the anti-money laundering or due diligence policies, procedures and controls of the Applicant, which review may include, but need not be limited to, a discussion with Key Senior Management of the Applicant;
- reviewing reports by bank rating agencies regarding the Applicant, if available;
- determining the Applicant’s primary lines of business;
- inquiring into the Applicant’s local market reputation, through review of media reports or by other means;
- evaluating the Applicant’s creditworthiness (where credit is being extended);
- obtaining one or more bank references;
- determining the expected activity of the Applicant through the Correspondent Account;
- requesting general information on the Applicant’s categories of customers, including such categories as Shell Banks, Offshore Banks and other High Risk Respondent Banks;
- determining whether the Applicant is a public or private institution;
• for privately held Applicants, ascertaining the identity of each of the Owners of the Applicant, and performing an appropriate level of due diligence with regard to such Owners;
• determining the type of and restrictions under the Applicant’s license;
• ensuring that the Bank remains in full compliance with the requirements established by U.S. bank regulators with regard to Payable Through Accounts;
• taking into account information, if available, from U.S. law enforcement agencies or U.S. banking authorities, as appropriate, with respect to the Applicant; and
• documenting steps taken (for example, by preparing a Respondent Bank due diligence checklist) prior to the opening of a Correspondent Account for the Applicant.

2.6.2 Enhanced Due Diligence

The Bank shall develop and maintain enhanced due diligence policies, procedures and controls to be applied to High Risk Respondent Banks and in other appropriate circumstances.

In accordance with the requirements of Section 312(a)(i)(2) of the Act (31 U.S.C. §5318(i)(2)), the Bank shall apply the following enhanced due diligence policies, procedures and controls to High Risk Respondent Banks before opening a Correspondent Account and with regard to existing Correspondent Accounts of High Risk Respondent Banks:

• taking reasonable steps to ascertain for any such Applicant, the shares of which are not publicly traded, the identity of each of the Owners of the Applicant, and the nature and extent of the ownership interest of each Owner;
• taking reasonable steps, such as the following, to ascertain whether such Applicant provides correspondent accounts to other Foreign Banks and, if so, the identity of those Foreign Banks and related due diligence information, as appropriate:
  • determining if the Applicant has reasonably designed due diligence policies, procedures and controls for correspondent banking, through discussions with Key Senior Management of the Applicant or otherwise;
  • requesting the names and addresses of the Foreign Banks for which the Applicant maintains correspondent accounts, and if such information is not obtained, taking such action (including closing the account or determining not to open the account) as the Secretary of the Treasury directs; and
• whether before or after opening of the Correspondent Account, requesting appropriate due diligence information from the High Risk Respondent Bank on any Foreign Bank for which it maintains a correspondent account where the Bank has reason to suspect that the Foreign Bank is or may be of heightened money laundering concern, whether as a result of information obtained from U.S. law enforcement agencies, U.S. banking authorities or otherwise, and if such information is not obtained, taking such action (including closing the account or determining not to open the account) as the Secretary of the Treasury directs.
In addition, the Bank’s enhanced due diligence policies, procedures and controls should include some or all of the following, as appropriate:

- determining changes in the ownership or Key Senior Management of the Applicant during the past five years;
- determining the relationship between the Applicant and the government of its home country jurisdiction, including whether the Applicant is a government-owned entity;
- reviewing pronouncements of United States governmental agencies and multilateral organizations with regard to the adequacy of bank regulation and supervision and counter money laundering and counter terrorist legislation in the Applicant’s home country jurisdiction;
- to the extent reasonable, reviewing publicly available information to determine whether the Applicant has been the subject of a money laundering or other criminal investigation, criminal indictment or conviction, any civil enforcement action based on violations of counter money laundering laws or regulations or any investigation, indictment, conviction or civil enforcement action relating to financing of terrorists;
- meeting with Key Senior Management of the Applicant at its offices or the offices of an Affiliate of the Applicant, as appropriate, to discuss opening of the Correspondent Account; and
- requiring that the Respondent Bank due diligence checklist regarding the Applicant, or other documentation of the due diligence performed with regard to the Applicant, be reviewed by the Bank’s compliance department, risk management department, or other appropriate department.

2.7 Oversight Approval Responsibility

The Bank should develop and maintain policies, procedures and controls under which all Applicants are approved by at least one person other than the relationship manager primarily responsible for the establishment of the Applicant’s Correspondent Account, which other person may be an officer senior to the relationship manager in the same department as the relationship manager, or an officer in another department (for example, the risk management department or compliance department) of the Bank.

3. Updating Respondent Bank Due Diligence

The Bank should develop and maintain policies, procedures and controls reasonably designed to ensure that:

- Respondent Bank due diligence checklists (or similar documentation) are updated on a periodic basis;
- updated Respondent Bank due diligence checklists (or similar documentation) are independently reviewed by appropriate personnel to ensure consistency and completeness; and
• the Bank’s due diligence policies, procedures and controls are reviewed on a periodic basis.

4. Practices Upon Identification of Suspicious Correspondent Account Activity

The Bank should develop and maintain policies, procedures and controls for identifying, documenting, monitoring, reporting and referring suspicious Correspondent Account activity, which shall include reasonable steps to conduct enhanced scrutiny of Correspondent Accounts of High Risk Respondent Banks, either as independent policies, procedures and controls or as part of the Bank’s existing policies, procedures and controls on the identification, reporting and referral of suspicious activity.

4.1 Examples of Possible Suspicious Correspondent Account Activity

The Bank’s policy on the identification and reporting of suspicious Correspondent Account activity should include examples of the types and patterns of transactions that may require further review to determine whether the activity is suspicious. Such examples should be used to raise awareness and assist Bank personnel in considering whether certain transactions may warrant closer scrutiny. Not all transactions exhibiting some of the characteristics of the example transactions necessarily warrant further investigation. The decision to investigate specific transactions must be based upon the particular facts and circumstances relating to the transactions in question. Furthermore, an illustrative list of possible suspicious Correspondent Account activity is neither exhaustive, nor a substitute for the judgment required to determine whether a particular transaction is suspicious. Generally, in the context of Correspondent Account activity, determining whether a transaction is suspicious requires an examination of the available facts, including the background and possible purpose of the transaction. In conducting such an examination, the Bank will often request that the Respondent Bank provide details regarding the Respondent Bank’s customers and transactions. A Respondent Bank is subject to its local laws which may affect the extent to which it is permitted to provide detailed information in response to inquiries from the Bank, and, in such circumstances, the Bank should inform the appropriate banking or law enforcement authorities that it is unable to obtain requested information.

In some circumstances, the following activities, none of which per se constitutes suspicious Correspondent Account activity, may be indicative of Correspondent Account activity that may require further investigation and a closer review:

• wire transfers in large dollar amounts, where the Correspondent Account has not previously been used for similar transfers;
• unusually large numbers of wire transfers;
• transactions conducted in bursts of activity within a short period of time;
• unexplained repetitive or unusual patterns of wire transfer activity;
• unusual volume of the Respondent Bank’s own bank check or dollar draft activity.
• unusually high numbers of returned or rejected items;
• a request by a Respondent Bank to establish a relationship with, or route a transaction through, a financial institution that is not accustomed to doing business with Foreign Banks and that has not sought out business of that type;
• the routing of transactions involving a Respondent Bank through several jurisdictions and/or financial institutions prior to or following entry into the Bank without any apparent purpose other than to disguise the nature, source, ownership or control of the funds;
• frequent or numerous wire transfers originating from or for the benefit of Shell Banks or High Risk Respondent Banks;
• frequent or numerous wire transfers either to or from the Correspondent Account of a Respondent Bank originating from or going to a Non-Cooperative Jurisdiction;
• beneficiaries maintaining accounts at Foreign Banks that have been the subject of previous suspicious activity reporting due to suspicious wire or other wholesale product activity.
• reappearing beneficiary banks based in offshore locations, the account of at least one of which has been closed by the Bank due to overall suspect activity.
• large currency or bearer instrument transactions either into or out of the Correspondent Account of a Respondent Bank;
• the deposit or withdrawal from a Respondent Bank’s Correspondent Account of multiple monetary instruments (e.g. travelers checks, money order, bank drafts) just below the reporting threshold on or around the same day, particularly if the instruments are sequentially numbered;
• the deposit of U.S. postal money orders in a cash letter coming from a Respondent Bank.
• issuance of large volumes of cashiers checks or bank drafts against the Respondent Bank’s Correspondent Account, particularly when the face amounts are less than local reporting requirements.
• high-value deposits or withdrawals, particularly irregular deposits or withdrawals, not commensurate with the type of Correspondent Account or business of the Respondent Bank;
• wire transfers to accounts of individuals identified by law enforcement agencies as being suspected of engaging in money laundering or terrorist activities; and
• an inquiry by or on behalf of a Respondent Bank regarding exceptions to the reporting requirements of the Bank Secrecy Act (for example, currency transaction reports and suspicious activity reports) or other rules requiring the reporting of suspicious transactions.

4.2 Identification, Reporting and Referral of Suspicious Correspondent Account Activity

The Bank’s policy on the identification, reporting and referral of suspicious Correspondent Account activity should provide for:
• the timely examination of questionable activity to determine and document the reason for the activity and whether the activity constitutes suspicious Correspondent Account activity; and
• the timely referral of suspicious Correspondent Account activity to appropriate personnel as directed by the Bank’s policies and procedures so that appropriate action is taken.

5. Activity Review/ Monitoring

• The Bank should develop and implement appropriate methods of activity review or monitoring, based on its policy set forth in Section 4 of these Guidelines.
• In developing appropriate methods of activity review or monitoring, the Bank is encouraged to take into account:
  • the appropriate time intervals at which the oversight activity is to be conducted;
  • whether the oversight activity should be conducted on an individual Correspondent Account basis or at a product activity level utilizing generic parameters;
  • whether computerized or manual review is suitable and practical, taking into account the size of its correspondent banking portfolio, the risk profile of its customers and the nature of their activity and available technology.

6. Counter Money Laundering Compliance Officers

The Bank shall designate counter money laundering compliance officers or other designated personnel whose responsibilities should specifically include the coordination and monitoring of the day-to-day compliance of its correspondent banking unit with applicable counter money laundering laws, the Guidelines, and the Bank’s own counter money laundering policies, procedures and controls. Counter money laundering compliance officers or other designated personnel may serve other functions and may serve multiple business units.

7. Independent Review

The Bank shall develop an independent review process to review the effectiveness of its counter money laundering policies, procedures and controls on a periodic basis, which may include, without limitation:
• a self-assessment of the Bank’s counter money laundering policies, procedures and controls;
• utilization of the Bank’s compliance department, internal audit department or an outside firm of independent auditors to evaluate its compliance with the Guidelines, its own counter money laundering policies, procedures and controls and applicable counter money laundering laws;
• reporting the results of such self-assessment and/or evaluation to the audit committee of the board of directors of the Bank or similar oversight body.
8. **Record Retention**

The Bank should establish record retention requirements that should include the retention of the following documents for a minimum of five years:

- Respondent Bank due diligence checklists (or similar documentation);
- the financial transaction records associated with each Correspondent Account;
- reports submitted to government authorities concerning suspicious Correspondent Account activity;
- records of all counter money laundering training sessions conducted, including the names and business units of attendees and the dates and locations of the training sessions;
- any other documents relating to its Correspondent Accounts required to be retained by applicable counter money laundering laws.

9. **Counter Money Laundering Training**

- The Bank shall provide counter money laundering training programs on a periodic basis.
- The Bank’s counter money laundering training programs should specifically address correspondent banking, either as part of the general program, or through a program tailored for those employees of the Bank involved in the conduct and support of the Bank’s correspondent banking business.
- The Bank should develop and maintain policies, procedures and controls reasonably designed to ensure that all relationship managers and other personnel associated with its correspondent banking unit attend the counter money laundering training programs.
- The training programs should, among other things, review:
  - applicable counter money laundering laws and recent trends in money laundering, including the ways in which such laws and trends relate to correspondent banking;
  - the Bank’s own policies, procedures and controls to combat money laundering, including how to identify and report suspicious Correspondent Account activity.
CERTIFICATION FOR PURPOSES OF SECTIONS 5318(J) AND 5318(K)

OF TITLE 31, UNITED STATES CODE

[OMB Control Number 1505-0184]

The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by Sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).

The undersigned respondent bank, __________________________________________
____________________________________ (“Respondent Bank”), has established one or more accounts with __________________________________________________________ (“Covered Financial Institution”) to receive deposits from, make payments on behalf of, or handle other financial transactions related to Respondent Bank (the “Correspondent Accounts”). The Respondent Bank hereby certifies, by an individual authorized to make such certification, as follows:

1. Respondent Bank (check appropriate box and complete Annex I):

   □ (a) Maintains a place of business that (i) is located at a fixed address (other than solely an electronic address) in a country in which Respondent Bank is authorized by such country to conduct banking activities, at which location Respondent Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities; and (ii) is subject to inspection by the banking authority that licensed Respondent Bank to conduct banking activities (hereinafter referred to as a “physical presence”);

   □ (b) Does not have a physical presence in any country, but the Respondent Bank (i) is an affiliate of a U.S depository institution, U.S. credit union, or non-U.S. bank that maintains a physical presence in a country; and (ii) is also subject to supervision by the same banking authority in the country that regulates such affiliated depository institution, credit union, or non-U.S. bank (the Respondent Bank is thus a “regulated affiliate”); or

   □ (c) Does not have a physical presence in a country and is not a regulated affiliate.
2. Respondent Bank either (check appropriate box):

☐ (a) does not provide banking services to any non-U.S. bank that does not have a physical presence in any country and that is not a regulated affiliate; or

☐ (b) provides banking services to a non-U.S. bank that does not have a physical presence in any country and that is not a regulated affiliate, but Respondent Bank will not after December 25, 2001 use any Correspondent Account with the Covered Financial Institution to provide banking services to any non-U.S. bank that does not have a physical presence in any country, and that is not a regulated affiliate.

3. Respondent Bank has no owner(s) (as defined below) except as set forth in Annex II. For purposes of this Certification, an owner means any large direct owner, any indirect owner, and certain small direct owners.

A large direct owner is a person who (1) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of the Respondent Bank; or (2) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the Respondent Bank.

A small direct owner is a person who owns, controls, or has power to vote less than 25 percent of any class of voting securities or other voting interests of the Respondent Bank. The identity of a small direct owner need not be set forth in Annex II unless two or more small direct owners (1) in the aggregate own 25 percent or more of the voting securities or interests of the Respondent Bank and (2) are owned by the same indirect owner.

If any direct owner is majority-owned by another person, or a chain of majority-owned persons, an indirect owner is any person in the ownership chain of the direct owner who is not majority-owned by another person.

If any two or more small direct owners (1) in the aggregate own, control, or have power to vote 25 percent or more of any class of voting securities or other voting interests of the Respondent Bank and (2) are majority-owned by the same person, or by the same chain of

[¹ Under the literal words of the Department of the Treasury’s Interim Guidance on compliance with sections 313 and 319(b) of the USA PATRIOT Act, there is an apparent anomaly in the concept of reported owners. If Person A owned 100% of Person B and Person C and each of Person B and Person C owned 20% of Respondent Bank, Person A would be reported as an indirect owner and Person B and Person C would be reported as small direct owners. If, however, Person A directly owned 20% of Respondent Bank and owned 100% of Person B, which also owned 20% of Respondent Bank, it would appear that no owner would be reported. The Treasury Department has indicated that the latter situation should result in both Person A and Person B being reported as owners.]
majority-owned persons, an indirect owner is any person in the ownership chain of such small direct owners who is not majority-owned by another person.\[^[1]\]

For purposes of this Certification, (i) “person” means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) voting securities or other voting interests means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family shall be considered one person.\[^[2]\]

4. The individual or entity (“Agent”) identified in Annex III, resident in the United States at the address (not a post office box) set forth in Annex III, is authorized to accept service of legal process from the Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of Title 31, United States Code.

5. Respondent Bank shall notify in writing within 30 calendar days each financial institution in the United States at which it maintains a Correspondent Account of any change in facts or circumstances as reported in this Certification and the Annexes hereto.

6. Respondent Bank understands that each financial institution in the United States at which it maintains a Correspondent Account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States.

I, ______________________________ (name), certify that I have read and understand this Certification and the Annexes hereto and that the statements made in this Certification and the Annexes hereto are true and correct.

This Certification is made on behalf of ______________________________ (name of Respondent Bank), a banking institution organized under the laws of ______________________________ (specify country).

I understand that the statements contained in this Certification and the Annexes hereto may be transmitted to one or more departments or agencies of the United States of America for purpose of fulfilling such departments’ and agencies’ governmental functions.

\[^[1]\] In a letter to the Department of the Treasury, dated December 3, 2001, the New York Clearing House Association L.L.C. and the Bankers’ Association for Finance and Trade proposed a solution to the question of how Respondent Bank is to determine whether there is an indirect owner in respect of multiple small direct owners. Respondent Bank should report any indirect owner of which it has actual knowledge. With respect to indirect owners of which Respondent Bank has no actual knowledge, Respondent Bank should inquire of each 5% shareholder whether it had a majority owner and the identity of such owner. If the response were positive, Respondent Bank should then ask the majority owner whether it owns a majority of the stock of any other companies that are shareholders of Respondent Bank, the identity of such other companies and the percentage of stock the other companies own in Respondent Bank, as well as whether it had a majority owner.\[^[2]\]

* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing.
[Signature]

[Title]

Executed on this _______ day of ________, 200__.

Received, reviewed and accepted by:

Name: ________________________________
Title: ________________________________
For: ________________________________
[Name of Covered Financial Institution]

________________________
Date
Annex I

1. To be completed if Respondent Bank checked paragraph 1(a) of the Certification:

(A) Respondent Bank maintains a place of business at

[Street Address]

in ____________________________.

[Country]

(B) The banking authority that has the right to inspect the place of business referred to in (A) is

______________________________.

[Name of Banking Authority]

2. To be completed if Respondent Bank checked paragraph 1(b) of the Certification:

(A) Respondent Bank’s affiliate that is regulated is

______________________________, which maintains a physical presence at

[Name of Affiliate]

[Street Address]

in ____________________________.

[Country]

(B) The banking authority that supervises both the Respondent Bank and its affiliate is

______________________________.

[Name of Banking Authority]
Annex II

Name and Address
of Owner(s)

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(No Post Office Boxes)</td>
</tr>
</tbody>
</table>

Attach Additional Sheets if Necessary
Annex III

Name and Address
of Agent Designated to Accept Service of Legal Process

<table>
<thead>
<tr>
<th>Name</th>
<th>Address (No Post Office Boxes)</th>
<th>Phone No.</th>
<th>Fax No.</th>
<th>E-mail Address</th>
</tr>
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-7-
IN ADDITION TO THE MEMBER BANKS OF THE NEW YORK CLEARING HOUSE ASSOCIATION L.L.C., THE FOLLOWING FINANCIAL INSTITUTIONS SUBSCRIBE TO THE GUIDELINES:

1. American Express Bank Ltd.

2. UBS AG, Stamford Branch.