American Express Australia Limited
175 Liverpool Street
GPO Box 1582
SYDNEY NSW 1131
AUSTRALIA

By e-mail: legcon.sen@aph.gov.au

22 March 2006

Jonathan Curtis
Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
Parliament House
Canberra ACT

Dear Mr Curtis

Inquiry into the Exposure Draft of the Anti-Money Laundering and Counter-Terrorism (AML/CTF) Bill 2005 (Bill)

We are pleased to provide the following information relating to the matters taken on notice during the Committee's public hearing in Sydney on Tuesday 14 March, 2006.

The Committee invited American Express to provide further information relating to identification and verification.

1. Customer identification

Based on our global experience in implementing and complying with AML legislation, American Express believes the customer identification requirement is critical.

If the law does not allow ample flexibility and adaptability for financial institutions to adopt customer identification methodologies that are feasible within their business models, the legislation may have extremely negative impacts on competitiveness, business growth and expansion, without assisting the task of identifying and preventing unlawful activity. This will create an unnecessary burden on financial institutions and businesses that operate in a non face-to-face environment and will curb business growth and expansion into non traditional channels – such as internet banking, global payments solutions and many other products & services that are provided in a non face-to-face environment.

Customer Identification Programme ("CIP")

American Express believes the US and the UK approaches have proved very sound and workable. Section 326 of the USA PATRIOT Act requires financial institutions to design and implement CIPs that create "reasonable" standards for financial institutions to know their clients. The regulators did not attempt to prescribe how each industry

type or business model should identify their customers but rather, they required institutions to design, document and implement CIPs that detailed:

1. What information would be collected for each customer (The US Regulator did set minimum information requirements for natural persons but it was a very basic list of name, address, DOB and tax file number); and

2. How the information would be verified/authenticated; and

3. How the information would be stored and for what length of time.

The CIP must be documented and approved by the Company Board. American Express has set up numerous such programs within our various businesses and they are properly risk-based with appropriate focus on products/services with high money laundering risk.

American Express believes customer identification processes should be risk-based, for example, allowing a small, private unregulated corporation (non-ASIC or non-APRA) to wire transfer funds internationally has an entirely different AML risk profile than a corporate card account (for a publicly owned, licensed and already ASIC/APRA regulated corporation) set up to manage travel and entertainment expense.

To require these two corporations to have identical CIPs is flawed. It is important that the legislation is sufficiently risk-based and flexible to allow institutions to focus resources and technologies on products/services/customers with increased money laundering risk typologies.

Electronic Verification ("EV")

The ability to identify and verify customer's identity using electronic media is critical to businesses that have non face-to-face operating environments. There are two reasons for this:

- Firstly, EV is equally if not more robust than human inspection of documents such as passports and drivers licences which may be forged or manipulated.
- Secondly, it is impracticable, overly expensive and unfair to require companies which do not have a branch network or the ability to operate in a face-to-face environment to establish facilities for doing so in the absence of any cogent business reason for this.

We also strongly support EV as an effective and robust methodology for customer identification. American Express invested USD12 million in the US to comply with the customer identification program requirements under the PATRIOT Act. In the first year alone, we identified and avoided over USD7 million in fraudulent applications. It is important to note that regulators in two of the largest financial markets (US and UK) would not allow a customer identification process that they believed was ineffective or somehow contributed to financial crime to continue in their jurisdictions.

The US Regulator, FinCEN issued a report at the end of 2005 with summary data for all suspicious activity reports since the implementation of the CIP requirements. As you already know, the US model allows for EV. Suspicious activity report filings related to identity theft totalled less than 2% of all suspicious filings. This is clear numerical

evidence that the use of EV does not contribute to identity theft. Our experience, on the contrary, is that EV is a powerful tool to thwart illicit activity.

American Express has previously stated that AUSTRAC has initially adopted a *very* prescriptive approach in respect of customer identification. While we understand the desire to ensure adequate controls are in place to maintain robust identification processes, we believe this approach will prove unworkable. For example, in the area of identification of customers that are non-natural persons, there are many types of business structures in existence, and we believe it will be impossible for AUSTRAC to effectively prescribe an identification process for each customer type.

In our experience in creating CIPs in global markets driven by the USA PATRIOT Act requirements, we have found that institutions need maximum flexibility to meet the number of variables involved in the customer identification process. Some of these variables include:

- Does the corporate entity have a licence requirement? Can this be verified?
- Can the entity be verified via a credit provider such as D&B or Experian?
- Is this a publicly listed company or a private company? If publicly listed, is current regulation not sufficient?
- If a private corporate entity, what is the structure – sole proprietorship, partnership, limited-liability, etc. What sources are available to identify and verify beneficial owners and source of funds?
- If it is a Holding Company, how many beneficial owners are there? (It can be in the hundreds).
- The ways/means to identify international corporate customers will vary by originating market, size of business and verification tools available.

There are numerous other factors that may come into play but these highlight a few of the many variances that need to be considered when identifying non-natural persons. Each of these individual variables will determine what information an institution collects for a corporate entity and how one can verify/authenticate the information and lastly how often you will monitor the KYC information.

2. Foreign countries

The Committee in discussing the proposed section 83 of the Bill asked whether American Express had any information about regulation of transactions with particular countries under the relevant US legislation.

American Express, as a global financial services provider, has developed internal policies and processes which dictate how we will manage risk when engaging in businesses in countries with increased money laundering risk.

We have developed an "AML Geographic Risk" tool for all countries where we do business. The risk tool incorporates an extensive list of publicly available databases and resources including but not limited to:

- US State Dept. Sponsor of Terrorism list
- FATF Designated NCCT List

- FinCEN Advisory
- USAPA s311 Jurisdiction
- IMF Designated
- International Narcotics Control Strategy Report
- OECD Designated Tax Haven
- Transparency International Corruption Perceptions Index
- Heritage Foundation Bank & Financial Rating
- UN Convention Signatory – Narcotic Drugs, Organized Crime, Terrorism Financing

Each of our businesses is assessed using this model and, if a jurisdiction is determined to have increased money laundering risk then the business is required to engage in enhanced due diligence to ensure it explicitly understands matters such as beneficial ownership, source of funds and integrity of business model.

In a risk-based approach, we also deploy more resources and focus in our AML transaction monitoring programs for business conducted in jurisdictions with increased money laundering risk.

Section 311 of the USA PATRIOT Act

We believe for a number of reasons that s311 of the US PATRIOT Act clearly sets out a more appropriate and practicable approach to the issues s83 of the Bill (in conjunction with the Rules and Guidelines yet to be released) attempts to address.

Section 311 (the text of which has been replicated and attached to this letter as an Appendix) grants special powers to the Secretary of the Treasury to identify countries, financial institutions, classes of transactions or types of accounts as having primary money laundering concern.

Additionally, it grants the Treasury powers to impose specific measures including; recordkeeping and reporting, information relating to beneficial ownership, information relating to certain payable-through accounts, information relating to certain correspondent accounts on these entities, accounts or transactions.

The US Department of the Treasury can also prohibit US banks or businesses from engaging in financial transactions with an entity or jurisdiction of primary money laundering concern. Two recent examples where these powers were exercised are as follows.

- **Banco Delta Asia** has recently been designated by the United States Treasury Department, under s311, as a bank "of primary money laundering concern." The Secretariat cited several of Treasury's findings (drug money laundering, money laundering for the North Korean government, counterfeiting activities). The bank has correspondent banking relationships in Europe, Australia, Asia, Canada and the US, with representative offices in Japan.
- **Commercial Bank of Syria ("CBS")** as testified by Brett Knight at the Committee's public hearing - the U.S. Department of the Treasury has finalised its proposed rule against the CBS along with its subsidiary, the Syrian Lebanese Commercial Bank, requiring U.S. financial institutions to terminate all correspondent accounts involving CBS.

The Treasury found that the CBS was owned and controlled by the Syrian government, a designated State Sponsor of Terrorism since 1979. The Bank had been used by terrorists to move funds and had acted as a conduit for the laundering of proceeds generated from the illicit sale of Iraqi oil.

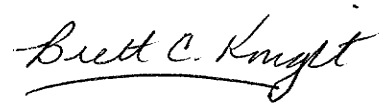
Stuart Levey, the Treasury's Under Secretary for Terrorism and Financial Intelligence (TFI) said:

> *"The Commercial Bank of Syria has been used by terrorists to move their money and it continues to afford direct opportunities for the Syrian government to facilitate international terrorist activity and money laundering ... today's action is aimed at protecting our financial system against abuse by this arm of a state-sponsor of terrorism."*

In May 2004, the Treasury found CBS to be of "primary money laundering concern" pursuant to s311 of the USA PATRIOT Act, and FinCEN issued a notice of proposed rulemaking. No-one disputed the grounds for the finding or the need for protective measures.

We hope this further information is useful to the Committee and would be pleased to comment on any additional questions or matters as the Committee thinks fit.

Yours faithfully



Brett Knight
Head of Compliance

Appendix: s311 US PATRIOT Act - SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) IN GENERAL- Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following new section:

Sec. 5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern

`(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS-

`(1) IN GENERAL- The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

`(2) FORM OF REQUIREMENT- The special measures described in--

`(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

`(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

`(C) subsection (b)(5) may be imposed only by regulation.

`(3) DURATION OF ORDERS; RULEMAKING- Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)--

`(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

`(B) may not remain in effect for more than 120 days, except pursuant to a rule promulgated on or before the end of the 120-day period beginning on the date of issuance of such order.

`(4) PROCESS FOR SELECTING SPECIAL MEASURES- In selecting which special measure or measures to take under this subsection, the Secretary of the Treasury--

`(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, as defined in section 3 of the Federal Deposit Insurance Act, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board,

and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate; and

`(B) shall consider--

`(i) whether similar action has been or is being taken by other nations or multilateral groups;

`(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

`(iii) the extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions; and

`(iv) the effect of the action on United States national security and foreign policy.

`(5) NO LIMITATION ON OTHER AUTHORITY- This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

`(b) SPECIAL MEASURES- The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

`(1) RECORDKEEPING AND REPORTING OF CERTAIN FINANCIAL TRANSACTIONS-

`(A) IN GENERAL- The Secretary of the Treasury may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

`(B) FORM OF RECORDS AND REPORTS- Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including--

`(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

`(ii) the legal capacity in which a participant in any transaction is acting;

`(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

`(iv) a description of any transaction.

`(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP- In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

`(3) INFORMATION RELATING TO CERTAIN PAYABLE-THROUGH ACCOUNTS- If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a payable through account through which any such transaction may be conducted, as a condition of opening or maintaining such account--

`(A) to identify each customer (and representative of such customer) of such financial institution who is permitted to use, or whose transactions are routed through, such payable-through account; and

`(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

`(4) INFORMATION RELATING TO CERTAIN CORRESPONDENT ACCOUNTS- If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a

jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account--

`(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

`(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

`(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS- If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable- through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

`(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN-

`(1) IN GENERAL- In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.