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U.S. FINANCIAL CRIMES ENFORCEMENT NETWORK ISSUES GUIDANCE REGARDING RECENT EVENTS IN TUNISIA

To Our Clients and Friends:

A popular uprising ended the 23-year old regime of former Tunisian president Zine El Abidine Ben Ali, who recently fled to Saudi Arabia. It is estimated that he and his family may have amassed a fortune in excess of \$5 billion as a result of the misappropriation of state assets and public corruption. Many of these assets are believed to have been secreted abroad.

In response, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued guidance to financial institutions on January 20, 2011. FinCEN's guidance reminds U.S. financial institutions to take reasonable steps to guard against the potential flow of funds that could potentially represent misappropriated or diverted state assets and the proceeds of bribery, public corruption, and other illegal payments originating or diverted from Tunisia. The guidance encourages consideration of current events, including the possible impact of the political and social arrest in Tunisia, on patterns of financial activity when assessing customer and transaction risks in the region, and reminds U.S. financial institutions of the requirements under the Bank Secrecy Act to conduct enhanced due diligence for foreign private banking accounts and to monitor transactions to identify and report suspicious activity, including:

- i) Conducting enhanced scrutiny for private banking accounts held by or on behalf of current or former senior foreign political figures;
- ii) monitoring transactions that could potentially represent misappropriated or diverted state assets, proceeds of bribery or other illegal payments, or other public corruption proceeds originating in or diverted from Tunisia; and
- iii) filing Suspicious Activity Reports, where required, *e.g.*, 31 C.F.R.103.19 (for banks).

In particular, FinCEN calls attention to the regulations implementing section 312 of the USA PATRIOT Act. The regulations, in 31 C.F.R. 103.178, require certain financial institutions to maintain written due diligence programs for private banking accounts held for non-U.S. persons, including conducting enhanced scrutiny for senior foreign political figures, designed to detect and report any known or suspected money laundering or other suspicious activity. Financial institutions also may want to consider conducting enhanced scrutiny of other accounts for senior foreign political figures that pose heightened money laundering risks, including accounts for former president Zine El Abidine Ben Ali and members of his family, and monitoring of transactions in the region. The Tunisia guidance refers to FinCEN's April 2008 guidance highlighting potential indicators of suspicious activity associated with transactions relating to foreign corruption.

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Gibson, Dunn & Crutcher's lawyers are available to assist with any questions you may have regarding these issues. For further information please contact the Gibson Dunn lawyer with whom you work or any of the following lawyers in the firm's Washington, D.C. office:

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