

Notice to Members

AUGUST 2006

INFORMATIONAL

SUGGESTED ROUTING

Legal & Compliance

Operations

Senior Management

NASD and NYSE Joint Release on Section 311 of the USA PATRIOT Act Special Measures against Specified Banks Pursuant to Section 311 of the USA PATRIOT Act

KEY TOPICS

Anti-Money Laundering

Discussion

This *Notice* reminds member organizations that the Financial Crimes Enforcement Network (FinCEN) has issued a final rule imposing a special measure,¹ which becomes effective August 14, 2006, against the Latvian bank VEF Banka and its subsidiaries, including Veiksmes lizings.² This measure is comparable to that imposed against the Commercial Bank of Syria and its subsidiaries, including Syrian Lebanese Commercial Bank, which became effective April 14, 2006.³

The special measures have been imposed in response to findings that these entities and their subsidiaries (the "Specified Banks") are financial institutions of primary money laundering concern. Under the special measures, covered financial institutions, which includes broker-dealers, are subject to the following two primary requirements with respect to the Specified Banks:

Prohibition of the Direct Use of Correspondent Accounts by the Specified Banks

Covered financial institutions are prohibited from opening or maintaining a correspondent account⁴ in the United States for, or on behalf of, the Specified Banks. This prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, the Specified Banks.

Due Diligence to Prevent Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for the Specified Banks, each covered financial institution is required to apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by the Specified Banks. At a minimum, such due diligence must include two elements:

1) Notification to Correspondent Accountholders

A covered financial institution must notify its correspondent accountholders that the account may not be used to provide the Specified Banks with access to the covered financial institution. The purpose of the notice requirement is to help ensure that the Specified Banks are denied access to the United States financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of the Specified Banks. However, the final rules emphasize that FinCEN is not requiring or expecting financial institutions to obtain a certification from their correspondent accountholders that indirect use will not be provided.

Although FinCEN makes clear that covered financial institutions have flexibility in choosing their method of notification, sample notification language which may be used for this purpose is provided, as follows:

"Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.192, we are prohibited from opening or maintaining a correspondent account for, or on behalf of, [the Specified Banks]. The regulations also require us to notify you that your correspondent account with our financial institution may not be used to provide [the Specified Banks] with access to our financial institution. If we become aware that [the Specified Banks] are indirectly using the correspondent account you hold at our financial institution, we will be required to take appropriate steps to prevent such access, including terminating your account."

Methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent accountholders. Each covered financial institution must document its compliance with the requirement that it notify its correspondent accountholders that the accounts may not be used to provide the Specified Banks with access to the covered financial institution.

2) Identification of Indirect Use

A covered financial institution must take reasonable steps in order to identify any indirect use of its correspondent accounts by the Specified Banks, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered financial institution must take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of correspondent accounts by the Specified Banks, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents. Unlike the duties imposed under the one-time notification requirement, covered financial institutions have an ongoing obligation to take reasonable steps to identify all correspondent account services they may directly or indirectly provide to the Specified Banks.

Members are urged to consult the following links for further details:

- www.fincen.gov/vef_final_rule_070706.pdf (for additional information regarding the final rule issued against VEF Bank and its subsidiaries);
- www.fincen.gov/noticeoffinalrule03152006.pdf (for additional information regarding the final rule issued against the Commercial Bank of Syria and its subsidiary, Syrian Lebanese Commercial Bank); and
- www.fincen.gov/reg_section311.html (for information on all special measures issued by FinCEN).

Questions/Further Information

Questions or comments concerning this *Notice* may be directed as follows:

NASD: Brant K. Brown, Assistant General Counsel, Regulatory Policy and Oversight, at (202) 728-6927.

NYSE: Stephen Kasprzak, at (212) 656-5226.

Endnotes

- 1 The rule was issued pursuant to the authority contained in 31 U.S.C. § 5318A. Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act and granted the Secretary of the Treasury the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, international class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern.
- 2 See 71 FR 39554 (July 13, 2006) available at www.fincen.gov/vef_final_rule_070706.pdf.
- 3 See 71 FR 13265 (Mar. 15, 2006) available at www.fincen.gov/noticeoffinalrule03152006.pdf.
- 4 For purposes of these final rules, a “correspondent account” is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank (see 31 U.S.C. § 5318A(e)(1)(B) as implemented in 31 C.F.R. § 103.175(d)(1)(ii)).

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