



# OCC BULLETIN

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Comptroller of the Currency  
Administrator of National Banks

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Subject: Bank Secrecy Act/Anti-Money Laundering

Description:

Final Rule: Imposition of Special Measures Against the Commercial Bank of Syria including its subsidiary, the Syrian Lebanese Commercial Bank as a Financial Institution of Primary Money Laundering Concern

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**TO:** Chief Executive Officers and Compliance Officers of All National Banks, Federal Branches and Agencies, Department and Division Heads, and All Examining Personnel

The Financial Crimes Enforcement Network (FinCEN) issued a final rule on March 9, 2006, that imposes special measures against Commercial Bank of Syria (CBS), including its subsidiary, Syrian Lebanese Commercial Bank. The rule follows the Secretary of the Treasury's May 11, 2004, designation, under section 311 of the USA PATRIOT Act, of CBS, along with its subsidiary, Syrian Lebanese Commercial Bank, as a financial institution of primary money laundering concern (see OCC Bulletin 2004-27). A copy of the Federal Register notice, dated March 15, 2006, is attached.

Effective April 14, 2006, national banks must terminate any correspondent account that is established, maintained, or payable-through in the United States for, or on behalf of, CBS. Also, national banks are required to apply due diligence to correspondent accounts that is reasonably designed to guard against indirect use by CBS. At a minimum, that due diligence must include notifying correspondent account holders that the correspondent account may not be used to provide CBS with access to the correspondent account; taking reasonable steps to identify any indirect access and appropriate steps to prevent such indirect access; and documenting compliance with the notice requirement to correspondent account holders.

For further information, please contact your examiner-in-charge, your OCC supervisory office, or the Compliance Department at (202) 874-4428.

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Ann F. Jaedicke  
Deputy Comptroller for Compliance Policy

Attachment-71 FR 13260  
[<http://www.occ.treas.gov/fr/fedregister/71fr13260.pdf>]

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**DEPARTMENT OF THE TREASURY**
**31 CFR Part 103**

RIN 1506-AA64

**Financial Crimes Enforcement  
Network; Amendment to the Bank  
Secrecy Act Regulations—Imposition  
of Special Measure Against  
Commercial Bank of Syria, Including  
Its Subsidiary, Syrian Lebanese  
Commercial Bank, as a Financial  
Institution of Primary Money  
Laundering Concern**

**AGENCY:** Financial Crimes Enforcement Network, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Financial Crimes Enforcement Network is issuing a final rule imposing a special measure against Commercial Bank of Syria as a financial institution of primary money laundering concern, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

**DATES:** This final rule is effective on April 14, 2006.

**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 (USA PATRIOT Act). Title III of the USA PATRIOT Act

amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103.<sup>1</sup> The authority of the Secretary of the Treasury (“the Secretary”) to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.<sup>2</sup> The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>3</sup>

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the authority, after finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,”

<sup>1</sup> The statute generally referred to as the “Bank Secrecy Act,” Titles I and II of Public Law 91-508, as amended, is codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332. In pertinent part, regulations implementing Title II of the Bank Secrecy Act appear at 31 CFR Part 103.

<sup>2</sup> Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

<sup>3</sup> Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (“USA PATRIOT”) Act of 2001, Public Law 107-56 (October 26, 2001).

to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before we may find that reasonable grounds exist for concluding that a jurisdiction, institution, class of transactions, or type of account is of primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give us the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money-laundering threats and allow us to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required by the Bank Secrecy Act to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, when finding that a foreign financial institution is of primary money laundering concern, the Secretary is required by section 311 to consider “such information as [we] determine to

be relevant, including the following potentially relevant factors:"

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the Bank Secrecy Act continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If we determine that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, we must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, or jointly, in any combination, and in any sequence.<sup>4</sup> In the imposition of special measures, we follow procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but we also engage in additional consultations and consider additional factors. Section 311 requires us to consult with other appropriate Federal agencies and parties<sup>5</sup> and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage,

<sup>4</sup> Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

<sup>5</sup> Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, and, in our sole discretion, "such other agencies and interested parties as the Secretary may find to be appropriate." The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern.

including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

- 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 institution; and
- The effect of the action on U.S. national security and foreign policy.<sup>6</sup>

In this final rule, we are imposing the fifth special measure (31 U.S.C. 5318A(b) (5)) against Commercial Bank of Syria. The fifth special measure prohibits or imposes conditions upon the opening or maintaining of correspondent or payable-through accounts for or on behalf of the foreign financial institution of primary money laundering concern. This special measure may be imposed only through the issuance of a regulation.

#### B. Commercial Bank of Syria

Commercial Bank of Syria is based in Damascus, Syria, and maintains approximately 50 branches and employs about 4,500 persons. All of the branches are located in Syria. It was established in Syria in 1967 as the single, government-owned bank specializing in servicing foreign trade and commercial banking, including foreign exchange transactions. Commercial Bank of Syria maintains correspondent accounts with banks in countries all over the world, but we are not aware of any correspondent accounts with U.S. financial institutions.<sup>7</sup>

Commercial Bank of Syria has one subsidiary, Syrian Lebanese Commercial Bank, located in Beirut, Lebanon. The subsidiary offers banking services, with the emphasis on providing import/export facilities to individuals in Lebanon and Syria. Syrian Lebanese Commercial Bank has two branches in Beirut and two representative offices, one in Aleppo and another in Damascus, Syria. We are not aware of any correspondent accounts maintained by the Syrian Lebanese Commercial Bank with U.S. financial institutions.<sup>8</sup>

<sup>6</sup> Classified information used in support of a section 311 finding of primary money laundering concern and imposition of special measure(s) may be submitted by Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Public Law 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

<sup>7</sup> Several U.S. banks terminated their correspondent accounts with the Commercial Bank of Syria after we found the foreign bank to be of primary money laundering concern and proposed imposing the fifth special measure.

<sup>8</sup> For purposes of this document and unless the context dictates otherwise, references to

In February 2006, Syria reportedly switched all of its foreign currency transactions to euros from U.S. dollars to avoid possible settlement problems involving dollar payment systems, apparently in anticipation of possible future U.S. Government action. Most of the government's foreign currency transactions are conducted through Commercial Bank of Syria. Commercial Bank of Syria reportedly has also stopped dealing in U.S. dollars for international transactions, such as imports, exports, and letters of credit.

## II. The 2004 Finding and Subsequent Developments

### A. The 2004 Finding

In May 2004, the Secretary, through the Director of the Financial Crimes Enforcement Network, found that reasonable grounds exist for concluding that Commercial Bank of Syria, a Syrian government-owned bank, is a financial institution of primary money laundering concern. This finding was published in the notice of proposed rulemaking, which proposed prohibiting U.S. financial institutions from, directly or indirectly, opening and maintaining correspondent accounts for Commercial Bank of Syria, and any of its branches, offices, and subsidiaries, pursuant to the authority under 31 U.S.C. 5318A.<sup>9</sup> The notice of proposed rulemaking outlined the various factors supporting the finding and proposed prohibition. In finding Commercial Bank of Syria to be of primary money laundering concern, we determined that:

- Commercial Bank of Syria was used by criminals to facilitate or promote money laundering. In particular, we determined Commercial Bank of Syria had been used as a conduit for the laundering of proceeds generated from the illicit sale of Iraqi oil and had been used by terrorists or persons associated with terrorist organizations.<sup>10</sup>
- Any legitimate business use of Commercial Bank of Syria was significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.
- The finding and proposed special measure would prevent suspect account holders at Commercial Bank of Syria from accessing the U.S. financial system to facilitate money laundering and would bring criminal conduct occurring at or through Commercial

Commercial Bank of Syria include Syrian Lebanese Commercial Bank, and any other branch, office, or subsidiary of Commercial Bank of Syria or Syrian Lebanese Commercial Bank.

<sup>9</sup> 69 FR 28098 (May 18, 2004).

<sup>10</sup> For a more detailed analysis of the finding of primary money laundering concern, see the notice of proposed rulemaking.

Bank of Syria to the attention of the international financial community and thus serve the purposes of the Bank Secrecy Act.

We also stated in our finding that Commercial Bank of Syria is licensed in Syria, a jurisdiction with very limited money laundering controls. Finally, in the notice of proposed rulemaking containing our finding, we further stated that Commercial Bank of Syria, as a financial entity under the control of a designated State Sponsor of Terrorism, provides cause for real concern about terrorist financing and money laundering activities.

#### B. Subsequent Developments

Commercial Bank of Syria and Syria did not dispute any of these grounds for our May 2004 finding of Commercial Bank of Syria as a primary money laundering concern. Following this finding, however, Commercial Bank of Syria and Syrian government financial authorities did engage in initial discussions with the U.S. Department of the Treasury to learn more about the bases for the finding and to consider developing effective money laundering controls.

Pursuant to this engagement, Syria has taken certain steps to develop an anti-money laundering regime, although these steps are not sufficient to address our concerns about money laundering and terrorist financing issues within Commercial Bank of Syria. In response to international pressure to improve its anti-money laundering regime, Syria passed Decree 33 in May 2005, which strengthened an existing Anti-Money Laundering Commission (the "Commission")<sup>11</sup> and laid the foundation for the development of a financial intelligence unit.<sup>12</sup> Under this law, all banks and non-bank financial institutions are required to keep records on transactions exceeding an amount specified by the Commission and also on transactions where it is suspected that money laundering or terrorist financing is involved. In September 2005, the Commission informed banks that they must use *know your customer*

<sup>11</sup> The Anti-Money Laundering Commission, created by legislation passed in 2003, is the financial intelligence unit for Syria and is charged with overseeing all issues related to money laundering and terrorist financing, including unveiling bank secrecy; establishing memoranda of understandings with counterpart financial intelligence units; conducting money laundering and terrorist financing inquiries; and freezing suspected accounts.

<sup>12</sup> Financial intelligence units are specialized governmental agencies created to combat money laundering and terrorist financing. The Egmont Group is an international body comprised of Financial Intelligence Units from 101 member countries. See <http://www.egmontgroup.org>.

procedures to follow up on their customers every three years and that they must maintain records on closed accounts for five years. Recent legislation has also provided the Central Bank of Syria, the entity that issues the national currency, new authority to oversee the banking sector and to investigate financial crimes. Finally, Syria is working on integrating its anti-money laundering efforts with other countries in the Middle East and North Africa Financial Action Task Force ("MENA FATF").<sup>13</sup> Syria will host a team of assessors from the MENA FATF in early 2006, which will assess its progress in developing and implementing an effective anti-money laundering regime.

Despite these recent enhancements, there remain significant jurisdictional anti-money laundering vulnerabilities that have not been addressed by necessary legislation or other governmental action. Some of these vulnerabilities include the lack of regulation for hawaladars,<sup>14</sup> the failure to address cash smuggling and other criminal movement across the country's porous borders and the rampant corruption among Syria's political and business elite. In addition, Syrian law does not establish terrorist financing as a predicate offense for money laundering. Furthermore, Syria's free trade zones<sup>15</sup> provide significant opportunities for laundering the proceeds of criminal activities because the Syrian General Directorate of Customs does not have effective oversight procedures to monitor goods that move through the zones. Finally, Syria faces serious ongoing challenges in implementing its anti-money laundering regime. Syria has failed to issue implementing rules for Decree 33, making adequate implementation and enforcement of the law questionable. Syria does not appear to have taken any significant regulatory, law enforcement or prosecutorial action with respect to any money laundering or terrorist financing activity in Syria, despite the terrorist financing and money laundering concerns associated with

<sup>13</sup> In November 2004, the governments of 14 countries decided to establish a Financial Action Task Force regional style body for the Middle East and North Africa. The body is known as the Middle East and North Africa Financial Action Task Force, or MENA FATF, and is headquartered in the Kingdom of Bahrain. See <http://www.menafatf.org>.

<sup>14</sup> Hawala is an alternative or parallel trust-based remittance system. It exists and operates outside of, or parallel to 'traditional' banking or financial channels. The person who operates a hawala is commonly referred to as a hawaladar.

<sup>15</sup> An area of a country specifically set apart or an adjacent port where there is an exemption of duty rights for foreign goods.

Commercial Bank of Syria as identified in our May 2004 finding.

These jurisdictional money laundering and terrorist financing vulnerabilities are exacerbated by Syria's ongoing support for terrorist activity. Syria has been designated by the U.S. Government as a State Sponsor of Terrorism since 1979.<sup>16</sup> As of 2006, the Syrian Government continued to provide material support to Lebanese Hizballah and Palestinian terrorist groups. HAMAS, Palestinian Islamic Jihad (PIJ), and the Popular Front for the Liberation of Palestine (PFLP), among others, continue to maintain offices in Damascus, from which their members direct public relations and fundraising activities and provide guidance to terrorist operatives and fundraisers in the West Bank, Gaza, and across the region. For example, according to a significant volume of information available to the U.S. Government, PIJ leadership in Damascus, Syria controls all PIJ officials, activists and terrorists in the West Bank and Gaza. Syria-based PIJ leadership was implicated in the February 2005 terrorist attack in Tel Aviv, Israel that killed five and wounded over 50.

As late as 2005, Syrian Military Intelligence (SMI) official Assef Shawkat met with terrorist leaders Hassan Nasrallah of Hizballah, Ahmed Jibril of Popular Front for the Liberation of Palestine, and Abdullah Ramadan Shallah of Palestinian Islamic Jihad, in addition to Hamas officials, to discuss coordination and cooperation with the Syrian government. Shawkat managed a branch of SMI charged with overseeing liaison relations with major terrorist groups resident in Damascus.<sup>17</sup> In January 2006, the Syrian Government facilitated a meeting in Damascus between Iranian government officials

<sup>16</sup> Syria is designated as a state sponsor of terrorism, under section 6(j) of the Export Administration Act ("EAA") of 1979, 50 U.S.C. App. 2405. Section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Public Law 104-132, makes it a criminal offense for U.S. persons, except as provided in regulations issued by the Secretary of the Treasury in consultation with the Secretary of State, knowingly to engage in a financial transaction with the government of any country designated under section 6(j) of the EAA as supporting international terrorism. For the purpose of implementing section 321 of AEDPA, regulations issued and administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury effectively prohibit U.S. persons from engaging in financial transactions with the government of Syria that constitute unlicensed donations to U.S. persons or are such financial transactions that the U.S. person knows or has reasonable cause to believe pose a risk of furthering terrorist acts in the United States. See 31 CFR parts 596, 504, 542.102.

<sup>17</sup> In January 2006, Assef Shawkat was named a Specially Designated National by the U.S. Government under Executive Order 13338.

and several designated terrorist leaders, including, Abdullah Ramadan Shallah, Ahmed Jibril, Hassan Nasrallah, and Khaled Mishal of Hamas. The Syrian Government also continues to permit Iran to use Damascus as a transshipment point for re-supplying Lebanese Hizballah in Lebanon.

These ongoing terrorist activities supported by Syria as a designated State Sponsor of Terrorism, coupled with the continuing jurisdictional vulnerabilities associated with Syria's weak money laundering and terrorist financing controls, continue to be directly relevant to our 2004 finding that Commercial Bank of Syria is of primary money laundering concern. As stated above, Commercial Bank of Syria is a Syrian government-owned and controlled bank. As such, Commercial Bank of Syria presents a direct and ongoing opportunity for the Syrian government to continue to support and finance terrorist activity. This risk, in addition to the uncontested and ongoing money laundering and terrorist financing concerns associated with Commercial Bank of Syria as described in our May 2004 finding, further substantiates our belief that Commercial Bank of Syria is of primary money laundering concern. Accordingly, our finding remains that Commercial Bank of Syria is a financial institution of primary money laundering concern.

### III. Imposition of the Fifth Special Measure

Consistent with the finding that Commercial Bank of Syria is a financial institution of primary money laundering concern, and based upon additional consultations with required Federal agencies and departments and consideration of additional relevant factors, including the comments received for the proposed rule, we are imposing the special measure authorized by 31 U.S.C. 5318A(b)(5) with regard to Commercial Bank of Syria.<sup>18</sup> That special measure authorizes the prohibition of, or the imposition of conditions upon, the opening or maintaining of correspondent or payable-through accounts<sup>19</sup> by any domestic financial institution or domestic financial agency for, or on behalf of, a foreign financial institution found to be of primary money laundering concern. A discussion of the

additional section 311 factors relevant to the imposition of this particular special measure follows.

#### 1. *Similar Actions Have Not Been or May Not Be Taken by Other Nations or Multilateral Groups Against Commercial Bank of Syria*

At this time, other countries have not taken any action similar to the imposition of the fifth special measure of section 311, that which prohibits U.S. financial institutions and financial agencies from opening or maintaining a correspondent account for or on behalf of Commercial Bank of Syria or that requires those institutions and agencies to guard against indirect use by Commercial Bank of Syria. Especially in response to Syria's recent conversion from U.S. dollars to euros for foreign currency transactions, we encourage other countries to take similar action based on our finding that Commercial Bank of Syria is a financial institution of primary money laundering concern.

#### 2. *The Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States*

The fifth special measure imposed by this rule prohibits covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, Commercial Bank of Syria. As a corollary to this measure, covered financial institutions also are required to take reasonable steps to apply due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to Commercial Bank of Syria. The burden associated with these requirements is not expected to be significant, given that we are not aware of any U.S. financial institutions that maintain correspondent accounts directly for Commercial Bank of Syria. Moreover, there is a minimal burden involved in transmitting a one-time notice to all correspondent accountholders concerning the prohibition on providing services to Commercial Bank of Syria indirectly.

In addition, U.S. financial institutions generally apply some degree of due diligence in screening their transactions and accounts, often through the use of commercially available software, such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control of the Department of the Treasury. As explained in more detail in the section-by-section analysis below,

financial institutions should be able to adapt their existing screening procedures to comply with this special measure. Thus, the due diligence that is required by this rule is not expected to impose a significant additional burden upon covered financial institutions.

#### 3. *The Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of the Commercial Bank of Syria*

Commercial Bank of Syria is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Furthermore, since the issuance of the notice of proposed rulemaking in 2004, we have become aware of additional financial institutions that have been established in Syria to engage in international transactions. Thus, the imposition of the fifth special measure against Commercial Bank of Syria will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In addition, we believe that any legitimate use of Commercial Bank of Syria is significantly outweighed by its reported use to promote or facilitate money laundering and terrorist financing.

#### 4. *The Action Enhances the United States' National Security and Complements the United States' Foreign Policy*

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and that participate in other financial crime enhances national security by making it more difficult for criminals to access the substantial resources and services of the U.S. financial system. In addition, the imposition of the fifth special measure against Commercial Bank of Syria complements the U.S. Government's overall foreign policy strategy of making entry into the U.S. financial system more difficult for high-risk financial institutions located in jurisdictions with weak or poorly enforced anti-money laundering controls.

### IV. Notice of Proposed Rulemaking and Comments

We have not become aware of any information inconsistent with our determination that there are reasonable grounds to find that Commercial Bank of Syria is a financial institution of a primary money laundering concern. In response to the 2004 notice of proposed

<sup>18</sup> *Supra* footnote 4.

<sup>19</sup> For purposes of the rule, 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 (31 U.S.C. 5318A(e)(1)(B) as implemented in 31 CFR 103.175(d)(1)(ii)).

rulemaking, we did not receive any comments from Commercial Bank of Syria or any other entity disputing that the imposition of the fifth special measure was warranted. We did receive two comment letters, both from domestic associations representing segments of the U.S. financial industry, which supported the finding and special measure, but sought clarification regarding particular obligations of domestic institutions, as detailed below.

One trade association comment stated that the relative unavailability of certain banking services in Syria through institutions other than Commercial Bank of Syria, particularly with respect to foreign currency transactions, would cause undue burden on legitimate U.S. business activities in Syria, as well as on Syrian diplomatic activities in the United States. In response to this comment, we note that during the past year, private banks have been established in Syria to conduct foreign transactions. Accordingly, Commercial Bank of Syria is no longer the only financial institution in Syria that can engage in international transactions, and legitimate U.S. businesses may continue transacting with other institutions.

In the notice of proposed rulemaking, we specifically solicited comment on the impact of the fifth special measure on legitimate business involving Commercial Bank of Syria, and we understand that this measure may require legitimate businesses to make alternative banking arrangements. Since the issuance of the notice of proposed rulemaking, however, the privately owned Syrian banking sector has expanded significantly, increasing the availability of alternative banking services as mentioned above.

One trade association comment letter requested clarification of the proposed rule with regard to standby letters of credit.<sup>20</sup> The commenter stated that a U.S. business might have contracts in Syria guaranteed by renewable standby letters of credit issued by a U.S. bank. The commenter sought clarification as to whether this rulemaking would require the U.S. bank to terminate the letter of credit, which would then require payment by the U.S. bank to Commercial Bank of Syria.

As described by the commenter, the issuance of a standby letter of credit by

a covered financial institution does not create a correspondent account relationship as defined in 31 CFR 103.175(d)(1)(ii) between the covered financial institution and Commercial Bank of Syria. The commenter described a scenario in which a U.S. business seeks a standby letter of credit in favor of Commercial Bank of Syria so that Commercial Bank of Syria is ultimately not at risk should the U.S. business fail to perform on a services contract. In such a situation, no formal banking or business relationship is established between the covered financial institution and Commercial Bank of Syria. Thus, this final rule—which only applies to correspondent account relationships—does not require the termination of standby letters of credit described by the commenter.

The first trade association commenter requested clarification on whether a final rule could require a covered financial institution to reject a funds transfer involving Commercial Bank of Syria. The fifth special measure imposed in this rule prohibits covered financial institutions from opening or maintaining correspondent accounts for or on behalf of Commercial Bank of Syria. As explained in detail below, a covered financial institution must take reasonable steps to identify indirect use of its correspondent accounts by Commercial Bank of Syria through other foreign banks. Institutions that detect such indirect access, such as identifying a funds transfer involving Commercial Bank of Syria, must take all appropriate steps to prevent such indirect access, including, if necessary, the termination of the correspondent account.

The same commenter also sought guidance on whether there is an expectation for banks to file suspicious activity reports merely because a transaction with a connection to Commercial Bank of Syria was attempted or completed. A covered financial institution is not required to automatically and without inquiry file a suspicious activity report based solely on the fact that a transaction involves Commercial Bank of Syria. However, a covered financial institution must file a suspicious activity report if it becomes aware, after further investigation, that the triggers for filing such a report and the applicable thresholds have been met.<sup>21</sup>

The second trade association comment, addressing the requirement that a covered institution provide notice to its foreign correspondents regarding

this rule, is addressed in the section-by-section analysis below.

## V. Section-by-Section Analysis

The final rule prohibits covered financial institutions from opening or maintaining any correspondent account for, or on behalf of, Commercial Bank of Syria. Covered financial institutions are required to apply due diligence to their correspondent accounts to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include two elements. First, a covered financial institution must notify its correspondent account holders that the account may not be used to provide Commercial Bank of Syria with access to the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, 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 its correspondent accounts by Commercial Bank of Syria, based on risk factors such as the type of services offered by, and geographic locations of, its correspondents.

### A. 103.188(a)—Definitions

#### 1. Commercial Bank of Syria

Section 103.188(a)(1) of the rule defines Commercial Bank of Syria to include all branches, offices, and subsidiaries of Commercial Bank of Syria operating in Syria or in any other jurisdiction. The one known subsidiary of Commercial Bank of Syria, Syrian Lebanese Commercial Bank, and any of its branches or offices, is included in the definition. We will provide information regarding the existence or establishment of any other subsidiaries as it becomes available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a subsidiary, branch, or office of Commercial Bank of Syria.

#### 2. Correspondent Account

Section 103.188(a)(2) defines the term “correspondent account” by reference to the definition contained in 31 CFR 103.175(d)(1)(ii). Section 103.175(d)(1)(ii) defines a correspondent account to mean an account established for a foreign bank to

<sup>20</sup> A standby letter of credit is a credit instrument issued by a bank that represents an obligation by the issuing bank on a designated third party (the beneficiary), that is contingent on the failure of the bank's customer to perform under the terms of a contract with the beneficiary. A standby letter of credit is most often used as a credit enhancement, with the understanding that, in most cases, it will never be drawn against or funded. *Barron's Dictionary of Banking Terms* (Fourth Edition).

<sup>21</sup> Suspicious Activity Reporting rules are promulgated at 31 CFR 103.17–103.21.

receive deposits from, or make payments or other disbursements on behalf of, the foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank, established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), we are using the same definition of "account" for purposes of this rule as that established in the final rule implementing section 312 of the USA PATRIOT Act.<sup>22</sup>

### 3. Covered Financial Institution

Section 103.188(a)(3) of the rule defines covered financial institution by reference to 31 CFR 103.175(f)(1). Thus a covered financial institution includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);
- A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;
- A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;
- A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and
- A mutual fund, which means an investment company (as defined in

section 3(a)(1) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-3(a)(1)) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1)) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

In the notice of proposed rulemaking, we defined "covered financial institution" by reference to 31 CFR 103.175(f)(2), the operative definition of that term for purposes of the rules implementing sections 313 and 319 of the USA Patriot Act, and also included in the definition futures commission merchants, introducing brokers, and mutual funds. The definition of "covered financial institution" we are adopting for purposes of this final rule is substantially the same.

#### B. 103.188(b)—Requirements for Covered Financial Institutions

For purposes of complying with the rule's prohibition on the opening or maintaining of correspondent accounts for, or on behalf of, Commercial Bank of Syria, we expect a covered financial institution to take steps analogous to those that a reasonable and prudent financial institution would take to protect itself from loan or other fraud or loss based on misidentification of a person's status.

##### 1. Prohibition on Direct Use of Correspondent Accounts

Section 103.188(b)(1) of the rule prohibits all covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Commercial Bank of Syria. The prohibition requires all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Commercial Bank of Syria.

##### 2. Due Diligence of Correspondent Accounts To Prohibit Indirect Use

As a corollary to the prohibition on the opening or maintaining of correspondent accounts directly for Commercial Bank of Syria, section 103.188(b)(2) requires a covered financial institution to apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include notifying correspondent account holders that the account may not be used to provide Commercial Bank of Syria with access to the covered financial institution. For

example, a covered financial institution may satisfy this requirement by transmitting the following notice to all of its correspondent account holders:

*Notice:* Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.188, we are prohibited from opening or maintaining a correspondent account for, or on behalf of, Commercial Bank of Syria or any of its subsidiaries (including Syrian Lebanese Commercial Bank). The regulations also require us to notify you that your correspondent account with our financial institution may not be used to provide Commercial Bank of Syria or any of its subsidiaries with access to our financial institution. If we become aware that Commercial Bank of Syria or any of its subsidiaries is 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.

The purpose of the notice requirement is to help ensure that Commercial Bank of Syria is denied access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Commercial Bank of Syria. However, we do not require or expect a covered financial institution to obtain a certification from its correspondent account holders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail to a covered financial institution's correspondent account holders, informing those holders that the accounts may not be used to provide Commercial Bank of Syria with indirect access to the covered financial institution, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders.

In its comment letter, one trade association requested that we consider permitting other methods of providing notice to correspondent account holders or allowing sufficient flexibility so that covered financial institutions can use systems already established under other provisions of the USA PATRIOT Act to provide notice. As we stated in the notice of proposed rulemaking, a covered financial institution is not obligated to use any specific form or method in notifying its correspondent account holders of the special measure. We suggested the provision of written notice containing certain language as only one example of how a covered financial institution could comply with its obligation to notify its

<sup>22</sup> See 71 FR 496, 512-13 (January 4, 2006), codified at 31 CFR 103.175(d)(2)(ii)-(iv).

correspondents. The trade association further suggested that we specifically consider means such as including the notice within the certificates used by financial institutions to comply with the rules issued under sections 313 and 319 of the USA PATRIOT Act. While there may be circumstances where this would be appropriate, we note that those certificates are renewable every three years, and that relying solely on the certification process for notice purposes would not be reasonable where a re-certification would not be made within a reasonable time following the issuance of this final rule. Furthermore, we are not requiring that covered financial institutions obtain a certification regarding compliance with the final rule from each correspondent accountholder.

This rule also requires a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, 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. For example, a covered financial institution is expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that, on its face, lists Commercial Bank of Syria as the originator's or beneficiary's financial institution, or otherwise references Commercial Bank of Syria in a manner detectable under the financial institution's normal business screening procedures. We acknowledge that not all institutions are capable of screening every field in a funds transfer message, and that the risk-based controls of some institutions may not require such comprehensive screening. Alternatively, other institutions may perform more thorough screening as part of their risk-based determination to perform "additional due diligence," as described below. An appropriate screening mechanism could be the mechanism currently used by a covered financial institution to comply with various legal requirements, such as the commercially available software used to comply with the sanctions programs administered by the Office of Foreign Assets Control.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria in the manner discussed above are the minimum due diligence requirements under this final rule. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the

indirect use of its correspondent accounts by Commercial Bank of Syria, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

A covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Commercial Bank of Syria must take all appropriate steps to prevent such indirect access, including, when necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. We have added language in the final rule clarifying that should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will not be available to Commercial Bank of Syria, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under this rule if it determines that the account will not be used to provide banking services indirectly to Commercial Bank of Syria.

### 3. Reporting Not Required

Section 103.188(b)(3) of the rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution, however, must document its compliance with the requirement that it notify its correspondent account holders that the accounts may not be used to provide Commercial Bank of Syria with access to the covered financial institution.

### VI. Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. Commercial Bank of Syria no longer holds correspondent accounts in the United States. The U.S. correspondent accounts that the bank previously held, as well as the U.S. correspondent accounts of foreign banks that still maintain a correspondent relationship with Commercial Bank of Syria, were with large banks. Thus, the prohibition on establishing or

maintaining such correspondent accounts will not have a significant impact on a substantial number of small entities. In addition, all covered financial institutions currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by the Office of Foreign Assets Control, can be modified to monitor for the use of correspondent accounts by Commercial Bank of Syria. Thus, the due diligence that is required by this rule—*i.e.*, the one-time transmittal of notice to correspondent account holders and screening of transactions to identify any indirect use of a correspondent account—is not expected to impose a significant additional economic burden upon small U.S. financial institutions.

### VII. Paperwork Reduction Act of 1995

The collection of information contained in the final rule has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and assigned OMB Control Number 1506-0036. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The only requirements in the final rule that are subject to the Paperwork Reduction Act are the requirements that a covered financial institution notify its correspondent account holders that the correspondent accounts maintained on their behalf may not be used to provide Commercial Bank of Syria with access to the covered financial institution and the requirement that a covered financial institution document its compliance with its obligation to notify its correspondents. The estimated annual average burden associated with this collection of information is one hour per affected financial institution. We received no comments on this information collection burden estimate.

Comments concerning the accuracy of this information collection estimate and suggestions for reducing this burden should be sent (preferably by fax (202-395-6974)) to Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (or by the Internet to [Alexander.T.Hunt@omb.eop.gov](mailto:Alexander.T.Hunt@omb.eop.gov)), with a copy to the Financial Crimes Enforcement Network by paper mail to



FinCEN, P.O. Box 39, Vienna, VA 22183, "ATTN: Section 311—Imposition of Special Measure Against Commercial Bank of Syria" or by electronic mail to [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov) with the caption "ATTN: Section 311—Imposition of Special Measure Against Commercial Bank of Syria" in the body of the text.

#### VIII. Executive Order 12866

This rule is not a significant regulatory action for purposes of Executive Order 12866, "Regulatory Planning and Review."

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, and Foreign banking.

#### Authority and Issuance

■ For the reasons set forth in the preamble, part 103 of title 31 of the Code of Federal Regulations is amended as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FINANCIAL TRANSACTIONS

■ 1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

■ 2. Subpart I of part 103 is amended by adding new § 103.188 as follows:

#### § 103.188 Special measures against Commercial Bank of Syria.

(a) *Definitions.* For purposes of this section:

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* includes:

- (i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
- (ii) A commercial bank;
- (iii) An agency or branch of a foreign bank in the United States;
- (iv) A federally insured credit union;
- (v) A savings association;
- (vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a–3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a–5(a)(1))) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is open or maintained in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when

deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this section shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: March 9, 2006.

**Robert Werner,**

*Director, Financial Crimes Enforcement Network.*

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