DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA29

Financial Crimes Enforcement Network; Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Financial Crimes Enforcement Network is issuing this proposed Bank Secrecy Act regulation to implement section 312 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 ("Act"), which requires U.S. financial institutions to conduct enhanced due diligence with regard to correspondent accounts established, maintained, administered, or managed for certain types of foreign banks. We originally published a notice of proposed rulemaking seeking to implement section 312 in its entirety on May 30, 2002. Due to the significant number of issues raised during the comment period, we have determined that it is necessary and appropriate to issue another notice of proposed rulemaking ("Proposal") to address issues associated with the enhanced due diligence provisions. A final rule implementing all other provisions of section 312 is published elsewhere in this separate part of the **Federal Register**.

DATES: Written comments must be submitted on or before March 6, 2006.

ADDRESSES: You may submit comments, identified by Regulatory Information Number 1506–AA29, by any of the following methods:

- Federal e-rulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regcomments@fincen.treas.gov*. Include "Regulatory Information Number 1506–AA29" in the subject line of the message.
- Mail: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include "Regulatory Information Number 1506–AA29" in the body of the text.

Instructions: It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC, area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number for this rulemaking. All comments received will be posted without change to *http://www.fincen.gov*, including any personal information provided. We will consider all comments postmarked before the close of the comment period in developing a final regulation. Comments received after the close of the comment period will be considered if possible, but their consideration cannot be assured. Comments may be inspected at the Financial Crimes Enforcement Network between 10 a.m. and 4 p.m. in the Financial Crimes Enforcement Network reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephone at (202) 354–6400 (not a toll-free number).

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

SUPPLEMENTARY INFORMATION:

I. Background

Section 312 of the Act amended the Bank Secrecy Act to add a new subsection (i) to 31 U.S.C. 5318. This provision requires each U.S. financial institution that establishes, maintains, administers, or manages a correspondent account or a private banking account in the United States for a non-U.S. person to subject such accounts to certain anti-money laundering measures. In particular, financial institutions must establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls that are reasonably designed to enable the financial institution to detect and report instances of money laundering through these accounts.

In addition to the general due diligence requirements, which apply to all correspondent and private banking accounts for non-U.S. persons, section 5318(i)(2) requires enhanced due diligence measures for correspondent accounts established, maintained, managed, or administered for a foreign bank operating under an offshore banking license,[1] operating under a license issued by a country designated as being non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States concurs, or operating under a license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns. This Proposal addresses these enhanced due diligence requirements.

A. The 2002 Proposal

On May 30, 2002, we published in the **Federal Register** a notice of proposed rulemaking ("2002 Proposal") to implement section 5318(i).[2] In the 2002 Proposal, we sought to take the broad statutory mandate of section 5318(i) and to translate it into specific regulatory directives for financial institutions to apply. The 2002 Proposal set forth a series of due diligence procedures that financial institutions subject to the rule must apply to correspondent accounts and private banking accounts for non-U.S. persons.

B. The Interim Rule

We received comments in response to the 2002 Proposal that raised many significant concerns regarding the numerous definitions in the 2002 Proposal, the scope of the requirements of section 5318(i), and the financial institutions that would be subject to them. Section 312(b)(2) of the Act provides that section 5318(i) of the Bank Secrecy Act took effect on July 23, 2002, regardless of whether final rules had been issued by that date. In order to have adequate time to review the comments, to determine the appropriate resolution of the many issues raised, and to give direction to the affected financial institutions, we issued an interim final rule ("Interim Rule")[3] on July 23, 2002, in which we exercised our authority under 31 U.S.C. 5318(a)(6) to defer temporarily the application of 31 U.S.C. 5318(i) to certain financial institutions. For those financial institutions that were not subject to the deferral, we set forth interim guidance for compliance with the statute by delineating the scope of coverage, duties, and obligations under that provision, pending issuance of a final rule.

C. The Final Rule

Published elsewhere in this separate part of the **Federal Register** is a final rule implementing all of the provisions of section 5318(i) with the exception of section 5318(i)(2)'s enhanced due

[1] "Offshore banking license" is defined in 31 CFR 103.175(k) (which was adopted in the final rule published elsewhere in this separate part of the **Federal Register**) to mean a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

[2] See 67 FR 37736 (May 30, 2002).

[3] 67 FR 48348 (July 23, 2002).

diligence requirement for correspondent accounts established or maintained for certain foreign bank customers.

Due to the issuance of this Proposal, the final rule maintains the status quo that existed under the Interim Rule with respect to the enhanced due diligence provisions of section 5318(i)(2). Specifically, until otherwise provided in a final rule issued pursuant to this Proposal, most banking organizations must continue to comply with 31 U.S.C. 5318(i)(2), which requires enhanced due diligence for certain correspondent accounts. However, securities broker-dealers, futures commission merchants, introducing brokers, and mutual funds, as well as trust banks and trust companies that have a federal regulator, continue to be exempt from compliance with the enhanced due diligence provisions for correspondent accounts until a final rule is issued pursuant to this Proposal.

II. The Proposed Rule

A. Overview

Section 5318(i) generally requires U.S. financial institutions to apply appropriate, specific, and, where necessary, enhanced due diligence to correspondent accounts established or maintained for foreign banks. Section 5318(i)(2) specifies enhanced due diligence procedures that must be performed with regard to foreign banks operating under any of the following three types of licenses: (1) An offshore banking license; (2) a license issued by a foreign country designated as non-cooperative with international money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to that group or organization concurs; or (3) a license issued by a country designated by the Secretary of the Treasury as warranting special measures due to money laundering concerns. The enhanced due diligence procedures required by section 5318(i)(2) include taking reasonable steps to: (1) Conduct enhanced scrutiny of the correspondent account to guard against money laundering and to report suspicious activity; (2) ascertain whether the foreign bank provides correspondent accounts to other foreign banks that use in any way the correspondent account established or maintained by the covered financial institution, and, if so, conduct appropriate due diligence; and (3) identify the owners of the foreign bank if the foreign bank's shares are not publicly traded.

The 2002 Proposal recommended the exclusion of certain foreign banks operating under offshore banking licenses from the enhanced due diligence requirements. Specifically, we recommended excluding from the enhanced due diligence requirements offshore-licensed branches of foreign banks chartered in a jurisdiction where one or more foreign banks have been determined by the Board of Governors of the Federal Reserve System ("Federal Reserve") to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction ("the Consolidated Exception"), so long as such foreign banks did not fall within either of the other two categories of foreign banks for which the enhanced due diligence requirements apply.[4]

Commenters were strongly divided over the Consolidated Exception. A joint comment letter from several members of Congress urged us to eliminate the Consolidated Exception, calling it unfounded and contrary to the legislative intent of section 5318(i), which, in the congressional commenters' view, did not provide for any exceptions. The congressional comment letter reiterated concerns about the money laundering risks associated with offshore banks, such as the lack of regulatory oversight, excessive secrecy laws, and the general lack of transparency. Other commenters supported the Consolidated Exception as a reasonable basis to focus anti-money laundering programs on higher-risk offshore banks, but suggested that the exception was not broad enough because a determination by the Federal Reserve that one or more foreign banks are subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in a jurisdiction is limited to those foreign banks that have sought to establish U.S. banking operations since 1991. These commenters asked that we address this potential inequity by, for example, expanding the jurisdictions included in the exception or by implementing a process for evaluating the level of supervision in other jurisdictions and determining whether banks chartered in such jurisdictions should also be exempted from mandatory enhanced due diligence. In addition, some commenters requested that we extend the Consolidated Exception to offshore-licensed subsidiaries and affiliates, in addition to the branches, of foreign banks that are chartered in a jurisdiction where one or more foreign banks have been determined to be subject to comprehensive supervision on a consolidated basis.

We recognize, as reflected in many of the comments, that most categorical exemptions, including the proposed Consolidated Exception, may be both over- and under-inclusive, thereby creating anomalies in the level of scrutiny to be applied to offshore banks. Further, we have some concerns as to whether the Consolidated Exception sufficiently accounts for the risks associated with offshore banking. We also understand that the Federal Reserve's determination that a foreign bank is subject to comprehensive supervision on a consolidated basis in its home jurisdiction does not focus primarily on the quality, risks, or appropriateness of the foreign jurisdiction's anti-money laundering regime, although those factors are taken into consideration as a general matter.

Consequently, we have not adopted the Consolidated Exception as described in the 2002 Proposal. Under the current Proposal, all correspondent accounts for foreign banks set forth in 5318(i)(2) would be subject to a certain degree of enhanced due diligence.

At the same time, we recognize that not all such correspondent accounts present the same type or level of risk, and that to impose an obligation of applying the same enhanced due diligence procedures in every case would require covered financial institutions to allocate limited resources inefficiently, thereby undermining the effectiveness of their anti-money laundering programs and the objectives of this statutory provision. Accordingly, we have determined that it is appropriate to propose a final rule that makes it clear that covered financial institutions should apply enhanced due diligence with regard to the three categories of foreign banks on a risk-basis, as contemplated by the statute.

Under this risk-based approach, covered financial institutions would determine the nature and extent of the risks posed by the correspondent accounts for the foreign banks identified in 31 U.S.C. 5318(i)(2)(A) and the corresponding extent of the enhanced due diligence that is necessary and appropriate to apply to control those risks. Such an approach tailors the

[4] As of October 2005, the Federal Reserve has made a determination that one or more foreign banks in the following jurisdictions are subject to comprehensive supervision or regulation on a consolidated basis: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Finland, France, Germany, Greece, Hong Kong Special Administrative Region, Ireland, Israel, Italy, Japan, Korea, Mexico, the Netherlands, Norway, Portugal, Spain, Switzerland, Taiwan, Turkey, and the United Kingdom.

required due diligence to the specific risks, enhancing protection and avoiding the problems created by a categorical exemption. This approach is consistent with the overall risk-based approach of the Bank Secrecy Act's anti-money laundering program and suspicious activity reporting rules and is consistent with the plain language and legislative intent of the statute.

B. Enhanced Due Diligence

Pursuant to the proposed rule, a covered financial institution must establish procedures to assess the risks involved with each correspondent account that is subject to enhanced due diligence and must take reasonable steps to accomplish the following.

i. Enhanced scrutiny to guard against money laundering. Section 103.176(b)(1) requires that a covered financial institution's due diligence program ensure that the institution takes reasonable steps to conduct certain risk-based enhanced scrutiny of any correspondent account statutorily deemed to be high-risk in order to guard against money laundering and to report any suspicious transactions. The enhanced due diligence will vary based on the covered financial institution's assessment of the money laundering risk posed by the particular correspondent account established or maintained for a foreign correspondent bank.

Pursuant to section 103.176(b)(1)(i) and (ii), the covered financial institution, shall, when appropriate based on its risk assessment, obtain and review documentation relating to the foreign correspondent bank's anti-money laundering program, and shall consider and evaluate the extent to which that program appears to be reasonably designed to detect and prevent money laundering. We do not contemplate that the covered financial institution would conduct an audit of the foreign correspondent bank's anti-money laundering program. Rather, we expect that the covered financial institution would conduct, as appropriate, a review of the foreign correspondent bank's written anti-money laundering program (or a description of the program) to determine whether the program appears to be reasonably designed to accomplish its purpose. With regard to this requirement, we have determined that it may not be necessary in every instance, especially with a well-regulated foreign correspondent bank that the covered financial institution knows well and has been doing business with for an extended time, for the covered financial institution to actually obtain and analyze that foreign bank's anti-money laundering program.

Under section 103.176(b)(1)(iii), the covered financial institution shall, as appropriate, monitor transactions to, from or through the correspondent account in a manner reasonably designed to detect money laundering and other suspicious activity. This requirement means that, at a minimum, a covered financial institution should have reasonable procedures to monitor the overall activity through the account and to enable the covered financial institution to detect unusual and suspicious activity, including activity that is not in accord with the type, purpose, and anticipated activity of the account. In some cases, covered financial institutions will be expected to apply greater due diligence, as appropriate, in accordance with their risk assessment. Monitoring accounts is an important element of an enhanced due diligence program, and the covered financial institution must determine, on a risk-basis, the most effective scope and manner for such monitoring (e.g., computerized or manual, on an individual account basis or a product activity level). The monitoring procedures must be designed to reflect the additional risk posed by these categories of accounts above and beyond those posed by accounts not subject to the enhanced due diligence requirement.

Section 103.176(b)(1)(iv) requires a covered financial institution to obtain information about the identity of persons with authority to direct transactions through the correspondent account and the sources and beneficial ownership of funds or other assets in the account. This obligation, however, applies only to payable-through accounts.[5]

The extent to which enhanced scrutiny may be appropriate will depend on the covered financial institution's risk assessment of the particular correspondent account. For example, foreign banks operating under an offshore banking license pose a range of money laundering risks, and covered financial institutions will need to consider a variety of factors in determining the appropriate level of enhanced scrutiny. Such factors could include whether such banks are branches or affiliates of financial institutions that are subject to supervision in their home jurisdiction, which might reduce the risks of money laundering, or whether they are offshore banks unaffiliated with any other supervised financial institution, in which case the risks may well be greater.

ii. Foreign Bank Customers. Section 103.176(b)(2) requires that a covered financial institution determine whether the foreign correspondent bank in turn maintains correspondent accounts for other foreign banks ("nested banks") for which the U.S. correspondent account is used to process transactions. If so, the covered financial institution must take reasonable steps to obtain information relevant to assess and minimize money laundering risks associated with the nested banks, including, as appropriate, obtaining the identity of the nested bank customers and conducting due diligence with regard to them.

Under this provision, reasonable steps would include collecting information sufficient to describe the foreign bank customers of the foreign correspondent bank. We expect that a covered financial institution will request its foreign correspondent banks to provide information about their foreign bank customer base and will consult readily available banking reference guides. Such information will enable covered financial institutions to identify potential risks and to determine whether it is necessary to take the additional steps of identifying and conducting due diligence with regard to individual nested banks. Monitoring wire transfer activity originating from the foreign correspondent bank, for example, can be an important component of a robust program, as U.S. banks may be able to identify nested correspondent account activity through a review of wire transfers and payment instructions.

The covered financial institution's due diligence program should contain procedures for assessing when the covered financial institution will identify nested banks and for assessing the risk posed by any such nested accounts. Relevant factors may include the type of nested bank, the anti-money laundering and supervisory regime of the nested bank's home jurisdiction, and the activity taking place through the U.S. correspondent account. The program should also contain procedures for determining the circumstances when due diligence with regard to the nested bank would be appropriate. Further, the covered financial institution should consider the extent to which the foreign correspondent bank's anti-money

[5] Section 311 of the Act defines a payable-through account as "an account * * * opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States." 31 U.S.C. 5318A(e)(1)(C).

laundering program appears adequate to prevent the nested bank account from being used for money laundering. If the program does not appear adequate, then the covered financial institution may itself need to perform due diligence on the nested bank.

Finally, if a foreign correspondent bank refuses to provide information about its nested banks, the covered financial institution will have to determine whether, in light of the reasons given for such refusal and the risk associated with the foreign correspondent bank, it is prudent to establish or maintain the correspondent account.

iii. Identification of foreign correspondent banks' owners. Pursuant to section 103.176(b)(3), the covered financial institution must obtain the identity of owners of any foreign correspondent bank whose shares are not publicly traded. The 2002 Proposal defined the term "owner" for this purpose to mean any person who directly or indirectly owns, controls, or has the power to vote five (5) percent or more of any class of securities of a foreign bank, and defined the term "publicly traded" to mean shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority, as defined in the Securities Exchange Act of 1934. Several commenters suggested that the definition of ownership should be consistent with the definition contained in the rule implementing sections 313 and 319 of the Act, which requires a 25 percent threshold for ownership. Others thought that the threshold should be at least 10 or 15 percent. In our view, because this requirement applies to foreign banks that are deemed to present a high risk of money laundering by virtue of their location or the license under which they operate, the threshold should be lower than the threshold that applies for determining the ownership of foreign banks having correspondent accounts with covered financial institutions under the rules implementing sections 313 and 319 of the Act. However, we agree that a five (5) percent threshold is too low. Accordingly, we propose a 10 percent threshold in this Proposal.

C. Foreign Banks To Be Accorded Enhanced Due Diligence

Pursuant to 103.176(c), a covered financial institution would be required to apply enhanced due diligence measures to three categories of foreign banks listed in 31 U.S.C. 5318(i)(2). These categories consist of foreign banks operating under three types of licenses: (1) An offshore banking license; (2) a license issued by a foreign country designated as non-cooperative with international money laundering principles or procedures by an intergovernmental group or organization, of which the United States is a member, and with which designation the U.S. representative concurs; [6] or (3) a license issued by a country that the Secretary of the Treasury has designated as warranting special measures due to money laundering concerns.

D. Special Procedures

We are proposing to modify 103.176(d) slightly simply to take into account that the special procedures required in this paragraph must be incorporated into the covered financial institution's enhanced due diligence program as well as its general due diligence program.

III. Request for Comments

We invite comments on all aspects of this proposal.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 610 *et seq.*), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule provides guidance to financial institutions concerning certain mandated enhanced due diligence requirements in section 312 of the Act. Moreover, most of the financial institutions covered by the rule tend to be larger institutions. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Accordingly, a regulatory assessment is not required.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information 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, Paperwork Reduction Project (1506), Washington, DC 20503 (or by the Internet to *ahunt@omb.eop.gov*), with a copy to the Financial Crimes Enforcement Network by mail or the Internet at the addresses previously specified. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 31 CFR 103.176(b)(i) and 103.176(b)(iv)(A). The information will be used by federal agencies to verify compliance by covered financial institutions with the provisions of 31 CFR 103.176. The collection of information is mandatory. The likely recordkeepers are mostly banking institutions; (2) securities broker-dealers; (3) futures commission merchants and introducing brokers in commodities; and (4) mutual funds.

Description of Recordkeepers: Covered financial institutions as defined in 31 CFR 103.175(f)(1);

Estimated Number of Recordkeepers: There are approximately 28,163 covered financial institutions, consisting of 9,000 commercial banks and savings associations, 10,000 credit unions, 2,400 mutual funds, 1,452 introducing brokers, 151 futures commission merchants, 5,160 securities broker-dealers.

Estimated Average Annual Burden Hours Per Recordkeeper: The estimated average burden associated with the recordkeeping requirement in this proposed rule is one hour per recordkeeper.

Estimated Total Annual Recordkeeping Burden: 28,163 annual burden hours.

We specifically invite comments on: (a) Whether the proposed recordkeeping requirement is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, and whether the information shall have practical utility; (b) the accuracy of our estimate of the burden of the proposed recordkeeping requirement; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the recordkeeping requirement, including through the use of automated collection techniques or other forms of information technology;

[6] The only intergovernmental organization that currently designates countries as non-cooperative with international anti-money laundering standards is the Financial Action Task Force on Money Laundering. The Financial Action Task Force designation of non-cooperative jurisdictions can be found on the Financial Action Task Force Web site (*www.oecd.org/fatf*). The United States has concurred in all Financial Action Task Force designations made to date.

and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

List of Subjects in 31 CFR Part 103

Banks, Banking, Brokers, Counter money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, we are proposing to amend subpart I of 31 CFR part 103 as follows:

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

1. The authority citation for part 103 continues to read as follows:

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

2. In subpart I, amend § 103.176 as follows:

a. Revise paragraph (b),

b. Revise paragraph (c), and

c. Revise paragraph (d).

The revisions read as follows:

§ 103.176 Due diligence programs for correspondent accounts for foreign financial institutions.

* * * * *

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and reviewing documentation relating to the foreign bank's anti-money laundering program;

(ii) Considering whether such program appears to be reasonably designed to detect and prevent money laundering;

(iii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iv)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iv)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution, and, if so, take reasonable steps to obtain information relevant to assess and minimize money laundering risks associated with the foreign bank's correspondent accounts for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(*1*) Members of the same family shall be considered to be one person; and

(*2*) *Same family* has the meaning provided in § 103.175(l)(2)(ii).

(B) *Publicly traded* means shares that are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

* * * * *

Dated: December 15, 2005.

William J. Fox,

Director, Financial Crimes Enforcement Network.

[FR Doc. 06–6 Filed 1–3–06; 8:45 am]

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