

special measure against Commercial Bank of Syria (CBS) 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:** Written comments on the notice of proposed rulemaking must be submitted on or before June 17, 2004.

**ADDRESSES:** You may submit comments, identified by RIN 1506-AA64, by either of the following methods:

- Federal e-rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov). Include RIN 1506-AA64 in the subject line of the message.

- Mail: FinCEN, PO Box 39, Vienna, VA 22183. Include RIN 1506-AA64 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 (RIN) for this rulemaking. All comments received will be posted without change to <http://www.fincen.gov>, including any personal information provided.

Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of Regulatory Programs, FinCEN, at (202) 354-6400; and Office of Chief Counsel, FinCEN, at (703) 905-3590 (not toll-free numbers).

**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 (USA PATRIOT Act) Act of 2001 (the USA Patriot Act), Public Law 107-56. Title III of the USA Patriot Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Part 103. The

authority of the Secretary of the Treasury (Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA Patriot Act (section 311) added section 5318A to the BSA, granting the Secretary the authority to find that a foreign jurisdiction, institution, class of transactions, or type of account is of "primary money laundering concern" and to require domestic financial institutions and financial agencies to take certain "special measures" against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and agencies to consult before the Secretary may conclude that a jurisdiction, institution, or transaction is of primary money laundering concern. The statute also provides similar procedures, *i.e.*, factors and consultation requirements, for selecting the imposition of specific special measures 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 the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; can more effectively monitor the respective jurisdictions, institutions, transactions, and accounts; and/or can 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 to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary, when finding that a foreign financial institution is of primary money laundering concern, is required by statute to consider "such information as the Secretary determines to be relevant, including the following potentially relevant factors":

- The extent to which the financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which the financial institution is used for legitimate

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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 a 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 (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing this notice of proposed rulemaking to impose a

business purposes in the jurisdiction; and

- The extent to which the finding that the institution is of primary money laundering concern is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that a foreign financial institution is of primary money laundering concern, the Secretary 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, jointly, in any combination, and in any sequence.<sup>1</sup> The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties<sup>2</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, 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 United States national security and foreign policy.<sup>3</sup>

#### B. CBS

In this rulemaking, FinCEN proposes to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against CBS. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts. This special measure may be imposed only through the issuance of a regulation.

CBS is based in Damascus, Syria, and maintains approximately 50 branches and employs about 4,500 persons. All of the branches are located in Syria. CBS was established in Syria in 1967 as the single, government-owned bank specializing in servicing foreign trade and commercial banking, including foreign exchange transactions. CBS maintains correspondent accounts with banks in countries all over the world, including the United States. CBS has one subsidiary, Syrian Lebanese Commercial Bank, located in Beirut, Lebanon, of which CBS maintains approximately an 84% ownership interest. Syrian Lebanese Commercial Bank has two branches and two offices—its main branch in Beirut, a branch in Moussaitbeh, and representative offices in Aleppo and Damascus, Syria. Syrian Lebanese Commercial Bank also maintains correspondent accounts with a few banks in the United States. For purposes of this document and unless the context dictates otherwise, references to CBS include Syrian Lebanese Commercial Bank, and any other branch, office, or subsidiary of CBS.

Syria has very limited money laundering controls in place. In September 2003, Syria passed Legislative Decree No. 59, creating an Anti-Money Laundering Commission and criminalizing money laundering for a small category of offenses. These specified offenses do not meet the minimum categories of offenses as provided in the Financial Action Task Force (FATF) 40 Recommendations on Money Laundering. The law also creates an Anti-Money Laundering Commission (referred to as the “Anti-Money Laundering Board” in the law’s implementing regulation) to investigate

suspicious money laundering transactions, but the Commission is composed of both regulators and members of the banking community, thus automatically creating a conflict of interest. Further, the law continues to maintain strict bank secrecy, which can only be lifted through formal action by the Commission. The law and the implementing regulation also fail to provide an enforcement mechanism to ensure that anti-money laundering controls are implemented by the financial sector. On the whole, the law and the implementing regulation fail to meet the international standards established by the FATF 40 Recommendations and thus do not create an effective anti-money laundering regime. Furthermore, Syria does not participate in any exchange of information with foreign nations or foreign financial institutions, severely hampering the ability to obtain information about transactions involving CBS. Finally, as a financial entity under the control of a designated state sponsor of terrorism, CBS provides cause for real concern about terrorist financing and money laundering activities.

## II. Imposition of Special Measure Against CBS, Including Its Subsidiary, Syrian Lebanese Commercial Bank, as a Financial Institution of Primary Money Laundering Concern

### A. Finding

Based upon a review and analysis of relevant information, consultations with relevant agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary, through his delegate, the Director of FinCEN, has determined that CBS is a financial institution of primary money laundering concern. FinCEN has reason to believe that CBS: (1) Has been used by terrorists and/or persons associated with terrorist organizations; and (2) has been used as a conduit for the laundering of proceeds generated from the illicit sale of Iraqi oil. In addition, CBS is licensed in Syria, a jurisdiction with very limited money laundering controls. A discussion of the section 311 factors relevant to this finding follows.

#### 1. The Extent to Which CBS Has Been Used to Facilitate or Promote Money Laundering in or Through the Jurisdiction

FinCEN has reason to believe, based upon a variety of sources, that CBS is used to facilitate or promote money laundering. First, the U.S. Government has information through classified

<sup>1</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>2</sup> Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, “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 on domestic financial institutions maintaining correspondent account relationships with the designated entity.

<sup>3</sup> Classified information used in support of a section 311 finding and 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, Pub. L. 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

sources that CBS may have been used by terrorists and/or persons associated with terrorist organizations. Because the crime of money laundering includes the use of financial institutions to promote the carrying on of terrorist activity, the use of CBS by terrorists demonstrates that it is being used to promote money laundering.

In addition, CBS has maintained accounts containing the proceeds from the illicit sale of Iraqi oil in violation of comprehensive U.N. sanctions. The U.S. Government has information that more than \$1 billion was illegally diverted by Saddam Hussein's regime from the U.N.'s Oil-for-Food program.<sup>4</sup> Some of that money appears to have been used to purchase military weapons, which may now be in use against U.S. and other coalition troops in Iraq. The sale of Iraqi oil outside the U.N.'s Oil-for-Food Program, in violation of applicable U.N. sanctions, was overseen by the Iraqi State Oil Marketing Organization (SOMO). SOMO maintained at least two accounts at CBS through which proceeds from the illicit sale of Iraqi oil flowed. Further, the Government of Syria has not taken any steps to transfer the CBS accounts containing the proceeds generated from the illicit sale of Iraqi oil to the Development Fund for Iraq, as required under U.N. Security Council Resolution (UNSCR) 1483.

UNSCR 1483 requires Member States in which there are funds or other financial assets of the previous Government of Iraq or its state bodies, corporations, or agencies, located outside Iraq, to freeze those assets and, unless they are the subject of prior judicial, administrative, or arbitral lien or judgment, to transfer them to the Development Fund of Iraq.

Finally, numerous transactions that may be indicative of terrorist financing and money laundering have been observed transiting CBS. This financial activity includes several transactions through accounts at CBS that reference a reputed financier for Osama bin Laden. The observed activity also includes classic indicia of money laundering such as: Large deposits into U.S. financial institutions of sequentially-numbered monetary instruments that reference CBS; large and/or structured deposits of funds into bank accounts, followed immediately by the transfer of those funds to CBS; and

<sup>4</sup>In 1995, the U.N. Security Council adopted Resolution 986, establishing the Oil-for-Food Program. The Program provided Iraq with an opportunity to sell oil to finance the purchase of medicines, health supplies, food, and other humanitarian goods, notwithstanding the U.N.-imposed sanctions then in effect with respect to Iraq. The first Iraqi oil under the Program was exported in December 1996 and the first shipments of food arrived in March 1997.

a number of structured or otherwise suspicious wire transfers, totaling more than \$1 million, transmitted through U.S. financial institutions to accounts at CBS over the past several years.

## 2. The Extent to Which CBS Is Used for Legitimate Business Purposes in the Jurisdiction

Until very recently, CBS had been the only bank in Syria authorized to provide commercial banking services and to engage in foreign currency transactions. Consequently, a significant number of transactions through CBS are likely legitimate. Indeed, some U.S. financial institutions appear to have legitimate correspondent relationships with the Bank. However, given that CBS is subject to extremely limited anti-money laundering controls, and because it is owned and controlled by a government that sponsors terrorism,<sup>5</sup> the extent of the Bank's legitimate activities is ultimately difficult to quantify. FinCEN specifically solicits comment on the impact of the proposed special measure upon legitimate transactions with CBS involving, for example, the U.S. Embassy, U.S. companies, United Nations agencies, and non-governmental and private voluntary organizations doing business in Syria, including the availability of alternative banking facilities for such legitimate transactions, and the need for an exception if suitable alternatives are not available.

FinCEN has identified numerous instances where substantial amounts of illicit funds passed through CBS. Additionally, CBS continues to hold Iraq-related accounts that should have been transferred to the Development Fund for Iraq, as required by UNSCR 1483. Thus, any legitimate use of CBS is significantly outweighed by the apparent use of the Bank to promote or facilitate terrorist financing or money laundering.

<sup>5</sup>Syria is designated as a state sponsor of terrorism, under section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. 2405. Section 321 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 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 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.

## 3. The Extent to Which Such Action is Sufficient to Ensure, With Respect to Transactions Involving CBS, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes

As detailed above, FinCEN has reasonable grounds to believe that CBS is being used to promote or facilitate money laundering. At the moment, there are no protective measures that specifically target CBS. Thus, finding CBS to be a financial institution of primary money laundering concern and prohibiting the opening or maintaining of correspondent accounts for that institution, is a necessary step to ensure that CBS is not able to access the U.S. financial system to facilitate terrorist financing or money laundering, or to engage in any other criminal purpose.

### B. Imposition of Special Measure

As a result of the finding that CBS is a financial institution of primary money laundering concern, and based upon the additional consultations and the consideration of all relevant factors, the Secretary, through his delegate, the Director of FinCEN, has determined that reasonable grounds exist for the imposition of the special measure authorized by section 5318A(b)(5).<sup>6</sup> That special measure authorizes the prohibition of the opening or maintaining of correspondent accounts<sup>7</sup> by any domestic financial institution or agency for or on behalf of a targeted financial institution. A discussion of the additional section 311 factors relevant to imposing this particular special measure follows.

#### 1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against CBS

Although Syria has been designated by the United States as a state sponsor of terrorism, other countries have not made a similar designation. In addition, other countries have not taken an action similar to the one proposed in this rulemaking that would prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of CBS, which is owned and controlled by the Government of Syria. The U.S.

<sup>6</sup>In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the State Department.

<sup>7</sup>For purposes of the proposed 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.

Government hopes that other countries will take similar action based on the findings contained in this rulemaking. In the meantime, lack of similar action by other countries makes it even more imperative that the fifth special measure be imposed in order to prevent access by CBS to the U.S. financial system.

## 2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening or maintaining correspondent accounts for, or on behalf of, CBS. As a corollary to this measure, covered financial institutions also would be required to apply special due diligence to all of their correspondent accounts to ensure that no such account is being used indirectly to provide services to CBS. The burden associated with these requirements is not expected to be significant, given that only a few U.S. banks currently maintain correspondent accounts for CBS. In addition, all U.S. persons (including financial institutions) currently apply some degree of due diligence to all transactions or accounts involving the government of Syria, as a means of complying with the sanctions currently imposed against Syria. As explained in more detail in the section-by-section analysis below, financial institutions should be able to adapt their current screening procedures to comply with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

## 3. The Extent to Which the Proposed Action or Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of CBS

This rulemaking targets CBS specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. CBS 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. Thus, the imposition of the fifth special measure against CBS will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. As until recently CBS was the only

financial institution in Syria that could conduct commercial and foreign exchange transactions, the imposition of this special measure likely will affect some legitimate business activities. Two private banks have recently been established that are permitted to conduct foreign exchange and foreign currency transactions. However, the Government of Syria is still developing implementing regulations to permit these banks to conduct the full range of foreign transactions. The imposition of this measure may in fact act as a catalyst in the process of opening the Syrian banking sector. On balance, FinCEN does not believe that imposition of the fifth special measure will place an undue burden on legitimate business transactions in light of the reasons for imposing this measure.

## 4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and other financial crimes enhances national security, making it more difficult for criminals to access the substantial resources of the U.S. financial system. In addition, the imposition of the fifth special measure against CBS would complement the U.S. Government's overall foreign policy strategy of enhancing national security through comprehensive economic and political sanctions against Syria, as demonstrated by the recent enactment of the Syria Accountability Act.<sup>8</sup>

Therefore, after conducting the required consultations and weighing the relevant factors, FinCEN has determined that reasonable grounds exists for concluding that CBS is a financial institution of primary money laundering concern and for imposing the special measure authorized by 31 U.S.C. 5318A(b)(5).

## III. Section-by-Section Analysis

The proposed rule would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the

<sup>8</sup> On December 12, 2003, the President signed into law the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (the Syria Accountability Act), Pub. L. 108-175. Section 5 requires the President to impose a number of different sanctions on Syria until such time that the President certifies to Congress that Syria, among other things, no longer provides support for international terrorist groups. The President may refrain from imposing any sanction specified in the Syria Accountability Act if he determines that it is in the national security interest of the United States to do so and submits to the appropriate congressional committee a report containing the reasons for the determination.

United States any correspondent account for, or on behalf of, CBS. As a corollary to this prohibition, covered financial institutions would be required to apply special due diligence to their correspondent accounts to guard against their indirect use by CBS. At a minimum, that special due diligence must include two elements. First, a covered financial institution must notify its correspondent account holders that they may not provide CBS with access to the correspondent account maintained at the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by CBS, 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 CBS, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

### A. 103.188(a)—Definitions

#### 1. Correspondent Account

Section 103.188(a)(1) 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 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.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign bank, including payable-through accounts.

In the case of securities broker-dealers, futures commission merchants and introducing brokers, and investment companies that are open-end companies (mutual funds), a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions.

FinCEN is using the same definition for purposes of the proposed rule as that established in the final rule implementing sections 313 and 319(b)

of the USA Patriot Act<sup>9</sup> except that the term is being expanded to cover such accounts maintained by mutual funds and by futures commission merchants and introducing brokers.

## 2. Covered Financial Institution

Section 103.188(a)(2) of the proposed rule defines covered financial institution to mean all of the following: Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to register with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3)) that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is registered, or required to register, with the SEC under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a-8).

## 3. CBS

Section 103.188(a)(3) of the proposed rule defines CBS to include all headquarters, branches, and offices of CBS operating in Syria or in any other jurisdiction. All subsidiaries of CBS, including Syrian Lebanese Commercial Bank and its branches, are included in the definition, although FinCEN understands that CBS currently only has one subsidiary, Syrian Lebanese Commercial Bank. FinCEN will provide updated information as it becomes available; however, the responsibility for determining whether a customer is a subsidiary of CBS ultimately rests with the covered financial institution. For purposes of complying with the proposed rule's prohibition on the opening or maintaining of correspondent accounts for or on behalf of CBS or any of its subsidiaries, FinCEN expects that a covered financial institution will take such steps 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.

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

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

Section 103.188(b)(1) of the proposed rule prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, CBS. The prohibition would require all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, CBS.

### 2. Special 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 CBS, section 103.188(b)(2) requires a covered financial institution to apply special due diligence to its correspondent accounts<sup>10</sup> that is reasonably designed to guard against their indirect use by CBS. At a minimum, that special due diligence must include notifying correspondent account holders that they may not provide CBS with access to the correspondent account maintained at 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, please be informed that you are prohibited from providing Commercial Bank of Syria or any of its subsidiaries (including Syrian Lebanese Commercial Bank) with access to the correspondent account(s) that we maintain for or on behalf of your institution. Any failure to comply with this prohibition may result in the termination of the affected correspondent account.

The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying CBS access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of CBS. However, FinCEN does 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 customers, informing them that they may not provide CBS with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. FinCEN specifically solicits comments on the appropriate form and scope of the notice that would be required under the rule.

A covered financial institution also would be required under this rulemaking to take reasonable steps to identify any indirect use of its correspondent accounts by CBS, 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 would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed CBS as the originator's or beneficiary's financial institution, or otherwise referenced CBS. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with sanctions programs imposed under other federal law. FinCEN specifically solicits comments on the requirement under the proposed rule that a covered financial institution take reasonable steps to screen its correspondent accounts in order to identify any indirect use of such accounts by CBS.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by CBS in the manner discussed above are the minimum due diligence requirements under the proposed 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 correspondents accounts by CBS, 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 CBS must take all appropriate steps to block such

<sup>9</sup> See 67 FR 60562 (September 26, 2002), codified at 31 CFR 103.175(d)(1).

<sup>10</sup> Again, for purposes of the proposed 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.

indirect access, including, where 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. Should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account within a commercially reasonable time. A covered financial institution may reestablish an account closed under the proposed rule if it determines that the account will not be used to provide banking services indirectly to CBS. FinCEN specifically solicits comment on the requirement under the proposed rule that a covered financial institution block indirect access to CBS, once such indirect access is identified.

### 3. Reporting Not Required

Section 103.188(b)(3) of the proposed rule clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify its correspondent account holders that they may not provide CBS with access to the correspondent account maintained at the covered financial institution.

### IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to prohibit the opening or maintaining of correspondent accounts for or on behalf of CBS, and specifically invites comments on the following matters:

1. The appropriate form and scope of the notice to correspondent account holders that would be required under the rule;
2. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by CBS;
3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by CBS; and
4. The impact of the proposed special measure upon legitimate transactions with CBS involving, for example, the U.S. Embassy, U.S. companies, multilateral organizations, and non-governmental and private voluntary organizations doing business in Syria, the availability of alternative banking

facilities, and the need for an exception if suitable alternatives are not available.

### V. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. FinCEN understands that CBS currently maintains only a handful of correspondent accounts in the United States, and that those accounts are maintained at very large banks. Thus, the prohibition on maintaining such accounts will not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently exercise some degree of due diligence in order to comply with U.S. sanctions programs, including sanctions against Syria. Thus, the special due diligence that would be required by this rulemaking—*i.e.*, the one-time transmittal of notice to correspondent account holders—is not expected to impose a significant additional economic burden upon small U.S. financial institutions. FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities.

### 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 e-mail to [jlackey@omb.eop.gov](mailto:jlackey@omb.eop.gov)), with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments on the collection of information should be received by June 17, 2004. 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 as required by 31 CFR 103.188 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 103.188(b)(2)(i) and 31 CFR 103.188(b)(3)(i). The disclosure requirement in 31 CFR 103.188(b)(2)(i) is intended to ensure cooperation from

correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of CBS. The information required to be maintained by 31 CFR 103.188(b)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 103.188. The class of financial institutions affected by the disclosure requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

*Description of Affected Financial Institutions:* Banks, broker-dealers in securities, futures commission merchants and introducing brokers, and mutual funds maintaining correspondent accounts.

*Estimated Number of Affected Financial Institutions:* 5,000.

*Estimated Average Annual Burden Hours Per Affected Financial Institution:* The estimated average burden associated with the collection of information in this proposed rule is 1 hour per affected financial institution.

*Estimated Total Annual Burden:* 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

### VII. Executive Order 12866

This proposed 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 proposed to be 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 proposed to be amended by adding new § 103.188 to read 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 headquarters, 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* has the same meaning as provided in § 103.175(f)(2) and also includes:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or is required to register, with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

(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 established, maintained, administered, or managed in the United States for, or on behalf of, Commercial Bank of Syria.

(2) *Special due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply special 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 special due diligence must include:

(A) Notifying correspondent account holders that they may not provide Commercial Bank of Syria with access to the correspondent account maintained at 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 block such indirect access, including, where necessary, terminating the correspondent account.

(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: May 11, 2004.

**William J. Fox,**

*Director, Financial Crimes Enforcement  
Network.*

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