

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

RIN 1506-AA91

**Financial Crimes Enforcement Network; Withdrawal of the Notice of Proposed Rulemaking Against the Republic of Nauru****AGENCY:** Financial Crimes Enforcement Network, Treasury.**ACTION:** Withdrawal of the notice of proposed rulemaking.**SUMMARY:** This document withdraws the April 17, 2003 Notice of Proposed Rulemaking proposing to impose a special measure pursuant to 31 U.S.C. 5318A.**DATES:** The notice of proposed rulemaking is withdrawn as of April 18, 2008.**FOR FURTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732.**SUPPLEMENTARY INFORMATION:****I. Background**

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 (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, 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 Bank Secrecy Act appear at 31 CFR part 103. 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>1</sup>

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

institutions and domestic financial agencies to take certain "special measures" against the primary money laundering concern.<sup>2</sup>

Taken as a whole, section 5318A 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 provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats and the ability 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, financial institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, financial institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, financial institutions, transactions, or accounts that pose a money laundering concern.

**II. The 2002 Notice of Proposed Rulemaking and Subsequent Developments***A. The 2002 Notice of Proposed Rulemaking*

On December 20, 2002, the Department of the Treasury issued a finding that Nauru was a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A.<sup>3</sup> After the December 20, 2002 finding, based upon review and analysis of relevant information, consultations with relevant federal agencies and departments, and after consideration of the factors enumerated in section 5318A, on April 17, 2003, the Secretary, through his delegate, the Director of the Financial Crimes Enforcement Network issued a Notice of Proposed Rulemaking that would impose the fifth special measure

under section 5318A.<sup>4</sup> The fifth special measure would prohibit all covered U.S. financial institutions from establishing, maintaining, administering or managing correspondent accounts<sup>5</sup> for or on behalf of any financial institution from or in Nauru.<sup>6</sup>

*B. Subsequent Jurisdictional Developments*

Since the Department of the Treasury's December 20, 2002 finding of Nauru as a jurisdiction of primary money laundering concern and our April 17, 2003 issuance of the Notice of Proposed Rulemaking, Nauru has taken steps to address the deficiencies in its anti-money laundering regime that led to those actions. First, Nauru amended its anti-money laundering law to abolish the offshore banking sector and as a result, there are currently no offshore banks licensed to operate in Nauru. In particular, Nauru's Corporation Amendment Act of 2004 caused offshore banking licenses to expire without the possibility of renewal. Second, the legal framework was amended to criminalize money laundering. Third, Nauru law now mandates suspicious transaction reporting.

In October 2004, the Financial Action Task Force withdrew counter-measures against Nauru due to its efforts to reform its banking system, progress made in that regard, and its resolve to continue addressing any remaining anti-money laundering deficiencies.<sup>7</sup> On October 13, 2005, the Financial Action Task Force removed Nauru from the Non-Cooperative Countries and Territories list due to the closure of its offshore financial center, which was the primary reason for Nauru being placed on the list.<sup>8</sup> In consideration of Nauru's remedial measures that addressed deficiencies in its anti-money laundering regime, and in light of

<sup>4</sup> 68 FR 18917 (Apr. 17, 2003, RIN 1506-AA43).

<sup>5</sup> A correspondent account is defined as an account established by a bank for a foreign bank to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank. See 31 CFR § 103.175(d).

<sup>6</sup> After the expiration of the comment period, we received one comment letter on the notice of proposed rulemaking from the Republic of Nauru.

<sup>7</sup> Financial Action Task Force, "FATF Targets Cross-Border Cash Movements By Terrorists and Criminals" (Financial Action Task Force members have withdrawn the counter-measures against Myanmar and Nauru.) (Oct. 2004).

<sup>8</sup> October 2005 Financial Action Task Force Plenary Meeting, "FATF will explore the symbiotic relationship among corruption, money laundering and terrorist financing" (The Financial Action Task Force removed Nauru from its list of non-cooperative countries and territories after Nauru abolished its 400 shell banks, thus removing this major money laundering risk.) (Oct. 13, 2005).

<sup>1</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>2</sup> If the Secretary of the Treasury determines that a foreign jurisdiction, financial institution, class of transactions, or type of account is of primary money laundering concern, the Secretary or his delegate, the Director of the Financial Crimes Enforcement Network, must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 of the USA PATRIOT Act provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence. 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).

<sup>3</sup> 67 FR 78859 (Dec. 26, 2002).

actions taken by the Financial Action Task Force, we have decided to withdraw the notice of proposed rulemaking imposing the fifth special measure and the related finding of Nauru as a jurisdiction of primary money laundering concern under 31 U.S.C. 5318A.<sup>9</sup>

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<sup>9</sup> See Financial Crimes Enforcement Network; Withdrawal of Notice of the Finding of the Republic

### III. Withdrawal of the Notice of Proposed Rulemaking

For the foregoing reasons, the notice of proposed rulemaking imposing the fifth special measure for purposes of 31 U.S.C. 5318A, as published in the

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of Nauru as a Primary Money Laundering Concern, published elsewhere in this issue of the **Federal Register**.

**Federal Register** on April 17, 2003 (68 FR 18917), is hereby withdrawn.

Dated: April 14, 2008.

**James H. Freis, Jr.**

*Director, Financial Crimes Enforcement Network.*

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