

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

RIN 1506-A83

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against Banco Delta Asia SARL****AGENCY:** Financial Crimes Enforcement Network, Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In a notice of finding published elsewhere in this issue of the *Federal Register*, the Secretary of the Treasury, through his delegate, the Director of the Financial Crimes Enforcement Network, found that reasonable grounds exist for concluding that Banco Delta Asia SARL (Banco Delta Asia) is a jurisdiction of primary money laundering concern pursuant to 31 U.S.C. 5318A. The Financial Crimes Enforcement Network is issuing this notice of proposed rulemaking to impose a special measure against Banco Delta Asia.

**DATES:** Written comments on the notice of proposed rulemaking must be submitted on or before October 20, 2005.

**ADDRESSES:** You may submit comments, identified by RIN 1506-A83 by any of the following methods:

- Federal e-rulemaking portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [regcomments@fincen.gov](mailto:regcomments@fincen.gov). Include RIN 1506-A83 in the subject line of the message.
- Mail: The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-A83 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 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 telephoning (202) 354-6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:**

Regulatory Policy and Programs Division, the 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 (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 ("the Secretary") to administer the BSA 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 ("section 311") added section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern," 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 Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, i.e., 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 the Secretary the authority to bring additional pressure on those jurisdictions and institutions that pose money laundering threats. Through

<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.

the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; 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 the both the Secretary of State and the Attorney General. The Secretary is also required by section 311 to consider "such information as the Secretary determines 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 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>2</sup> The Secretary's imposition of special measures requires additional consultations to be made and factors to be considered. The statute requires the Secretary to consult with appropriate federal agencies and other interested

<sup>2</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 special measures against Nauru).

parties<sup>3</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 measures 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 the United States national security and foreign policy.<sup>4</sup>

#### B. Banco Delta Asia

In this rulemaking, the Financial Crimes Enforcement Network proposes to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against Banco Delta Asia. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for the designated institution by U.S. financial institutions. This special measure may be imposed only through the issuance of a regulation.

Banco Delta Asia, located and licensed in the Macau Special Administrative Region, China, is the commercial banking arm of its parent company, Delta Asia Group (Holdings) Ltd. (Delta Asia Group).<sup>5</sup> In addition to commercial banking, Delta Asia Group

<sup>3</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 (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 opening or maintaining correspondent account relationships with the designated entity.

<sup>4</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)).

<sup>5</sup> The Bankers Almanac (2004). For purposes of this rulemaking, The Financial Crimes Enforcement Network's designation of primary money laundering concern and imposition of special measures shall apply exclusively to Banco Delta Asia and its branches, offices, and subsidiaries, and not to Delta Asia Group (Holdings) Ltd., or any of its other subsidiaries.

engages in investment banking and insurance activities. Banco Delta Asia was originally established in 1935 as Banco Hang Sang,<sup>6</sup> and its name changed to Banco Delta Asia in December 1993. With approximately 340 employees and a total equity of approximately \$35 million at the close of 2003, Banco Delta Asia is the fourth smallest commercial bank in Macau. Banco Delta Asia operates eight branches in Macau (including a branch at a casino) and is served by a representative office in Japan. In addition, Banco Delta Asia maintains correspondent accounts in Europe, Asia, Australia, Canada, and the United States, and has two wholly owned subsidiaries: Delta Asia Credit Ltd., and Delta Asia Insurance Limited.<sup>7</sup>

#### II. Imposition of Special Measure Against Banco Delta Asia as a Financial Institution of Primary Money Laundering Concern

As a result of the finding on September 20, 2005 by the Secretary, through his delegate, the Director of the Financial Crimes Enforcement Network, that reasonable grounds exist for concluding that Banco Delta Asia is a financial institution of primary money laundering concern (see the notice of this finding published elsewhere today in the **Federal Register**), and based upon the additional consultations and the consideration of all relevant factors discussed in the finding and in this notice of proposed rulemaking, the Secretary, through the Financial Crimes Enforcement Network, has determined that reasonable grounds exist for the imposition of the special measure authorized by section 5318A(b)(5).<sup>8</sup> That special measure authorizes the prohibition against the opening or maintaining of correspondent accounts<sup>9</sup> by any domestic financial institution or agency for or on behalf of a targeted financial institution. A discussion of the section 311 factors relevant to imposing this particular special measure follows.

<sup>6</sup> Banco Delta Asia's historical name, Banco Hang Sang, is not to be confused with Hang Seng Bank, a Hong Kong bank, nor the Hang Seng Index, an index of certain shares traded on the Hong Kong Stock Exchange.

<sup>7</sup> The Bankers' Almanac (2004).

<sup>8</sup> In connection with this action, the Financial Crimes Enforcement Network consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State.

<sup>9</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.

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

Other countries or multilateral groups have not yet taken 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 Banco Delta Asia, and to require those domestic financial institutions and agencies to screen their correspondents for nested correspondent accounts held by Banco Delta Asia. The Financial Crimes Enforcement Network encourages other countries to take similar action based on the findings contained in this rulemaking.

#### 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 and maintaining correspondent accounts for, or on behalf of, Banco Delta Asia. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used indirectly to provide services to Banco Delta Asia. The Financial Crimes Enforcement Network does not expect the burden associated with these requirements to be significant, given its understanding that few U.S. financial institutions currently maintain a correspondent account for Banco Delta Asia. There is a minimal burden involved in transmitting a one-time notice to all correspondent account holders concerning the prohibition on indirectly providing services to Banco Delta Asia. 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 (OFAC) of the Department of the Treasury. As explained in more detail in the section-by-section analysis below, financial institutions should, if necessary, be able to easily 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 Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Banco Delta Asia

This proposed rulemaking targets Banco Delta Asia specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Banco Delta Asia 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 Banco Delta Asia will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In light of the reasons for imposing this special measure, the Financial Crimes Enforcement Network does not believe that it will impose an undue burden on legitimate business activities, and notes that the presence of approximately ten larger banks in Macau will alleviate the burden on legitimate business activities within that jurisdiction.

### 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 terrorists and money launderers to access the substantial resources of the U.S. financial system. To the extent that this prevents North Korean front companies engaged in illicit activities from accessing the U.S. financial system, the proposed action supports and upholds U.S. national security and foreign policy goals. More generally, the imposition of the fifth special measure would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering.

Therefore, pursuant to the finding of the Secretary of the Treasury that Banco Delta Asia is an institution of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Financial Crimes Enforcement Network has determined that reasonable grounds exist for imposing the special measure

authorized by 31 U.S.C. 5318A(b)(5) against Banco Delta Asia.

### III. Section-by-Section Analysis

The proposed rule would prohibit covered financial institutions from establishing, maintaining, or managing in the United States any correspondent account for, or on behalf of, Banco Delta Asia. 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 Banco Delta Asia. 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 Banco Delta Asia 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 Banco Delta Asia, 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 should 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 Banco Delta Asia, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

#### A. Section 103.193(a)—Definitions

##### 1. Banco Delta Asia

Section 103.193(a)(1) of the proposed rule defines Banco Delta Asia to include all branches, offices, and subsidiaries of Banco Delta Asia operating in Macau or in any jurisdiction. These branches, offices, and subsidiaries include, but are not necessarily limited to, the Amaral, Antonio, Barca, Campo, Ioa Hon, Lisboa, Outubro, and Tap Sac branches in Macau, the Airport Service Centre, Financial Services Centre, Macao Administrative Centre, The Bank Centre, Delta Asia Credit Ltd., Delta Asia Insurance Limited, and the Tokyo Representative Office. The Financial Crimes Enforcement Network will provide updated information, as it is available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Banco Delta Asia.

##### 2. Correspondent Account

Section 103.193(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 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, 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, commodity futures, or options, (2) funds transfers, or (3) other types of financial transactions.

For purposes of the proposed rule, the Financial Crimes Enforcement Network is using the same definition of correspondent account as that established in the final rule implementing sections 313 and 319(b) of the USA PATRIOT Act<sup>10</sup> except that the term is being expanded to cover such accounts maintained by futures commission merchants, introducing brokers, and mutual funds.

##### 3. Covered Financial Institution

Section 103.193(a)(3) 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 an 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

<sup>10</sup> See 67 FR 60562 (September 26, 2002) codified at 31 CFR 103.175 (d)(1).

Investment Company Act of 1940 (15 U.S.C. 80a-8).

*B. Section 103.193(b) Requirements for Covered Financial Institutions*

For purposes of complying with the proposed rule's prohibition on the opening or maintaining of correspondent accounts for, or on behalf of, Banco Delta Asia, the Financial Crimes Enforcement Network expects that a covered financial institution will take such steps that a reasonable and prudent financial institution would take to protect itself from loan fraud or other fraud or loss based on misidentification of a person's status.

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

Section 103.193(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, Banco Delta Asia. 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, Banco Delta Asia.

**2. Special Due Diligence of Correspondent Accounts To Prohibit Indirect Use**

As a corollary to the prohibition on maintaining correspondent accounts directly for Banco Delta Asia, section 103.193(b)(2) requires a covered financial institution to apply special due diligence to its correspondent accounts<sup>11</sup> that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that special due diligence must include notifying correspondent account holders that they may not provide Banco Delta Asia 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 103.193, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, Banco Delta Asia or any of its subsidiaries (including, but not limited to, Delta Asia Credit Ltd., and Delta Asia

Insurance Limited). The regulations also require us to notify you that you may not provide Banco Delta Asia or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that Banco Delta Asia 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 cooperation from correspondent account holders in denying Banco Delta Asia access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Banco Delta Asia. However, the Financial Crimes Enforcement Network 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 Banco Delta Asia 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. The Financial Crimes Enforcement Network 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 Banco Delta Asia, 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 Banco Delta Asia as the originator's or beneficiary's financial institution, or otherwise referenced Banco Delta Asia in a manner detectable under the financial institution's normal screening processes. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to

comply with the economic sanctions programs administered by OFAC. The Financial Crimes Enforcement Network specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to screen its correspondent accounts in order to identify any indirect use of such accounts by Banco Delta Asia.

Notifying its correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia 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 correspondent accounts by Banco Delta Asia, 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 Banco Delta Asia must take all appropriate steps to prevent such 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 available to Banco Delta Asia, 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 the proposed rule if it determines that the account will not be used to provide banking services indirectly to Banco Delta Asia. The Financial Crimes Enforcement Network specifically solicits comments on the requirement under the proposed rule that covered financial institutions prevent indirect access to Banco Delta Asia, once such indirect access is identified.

**3. Reporting Not Required**

Section 103.193(b)(3) of the proposed rule clarifies that the rule does not

<sup>11</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.

impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify its correspondent account holders that they must not provide Banco Delta Asia with access to the correspondent account maintained at the covered financial institution.

#### IV. Request for Comments

The Financial Crimes Enforcement Network invites comments on all aspects of the proposal to prohibit the opening or maintaining of correspondent accounts for or on behalf of Banco Delta Asia, 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 Banco Delta Asia;
3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by Banco Delta Asia; and
4. The impact of the proposed special measure upon legitimate transactions with Banco Delta Asia involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons, entities, or the government of Macau, or operating in Macau.

#### 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. The Financial Crimes Enforcement Network understands that Banco Delta Asia maintains few correspondent accounts in the United States. 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 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 OFAC, can easily be modified to monitor for the use

of correspondent accounts by Banco Delta Asia. Thus, the special due diligence that would be required by this rulemaking—*i.e.*, the one-time transmittal of notice to correspondent account holders and the screening of transactions to identify any indirect use of correspondent accounts, is not expected to impose a significant additional economic burden upon small U.S. financial institutions. The Financial Crimes Enforcement Network 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 the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by e-mail to [Alexander\\_T.\\_Hunt@omb.eop.gov](mailto:Alexander_T._Hunt@omb.eop.gov)) with a copy to the Financial Crimes Enforcement Network by mail or e-mail at the addresses previously specified. Comments on the collection of information should be received by October 20, 2005. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506c(2)(A), and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 103.193 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 103.193(b)(2)(i) and 31 CFR 103.193(b)(3)(i). The disclosure requirement in 31 CFR 103.193(b)(2)(i) is intended to ensure cooperation from correspondent account holders in denying Banco Delta Asia access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and deficiencies of Banco Delta Asia. The information required to be maintained by 31 CFR 103.193(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 103.193. 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 Institutions:* The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

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

The Financial Crimes Enforcement Network specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of the Financial Crimes Enforcement Network, including whether the information shall have practical utility; (b) the accuracy of the Financial Crimes Enforcement Network'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

The 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, 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 § 103.193 to read as follows:

**§ 103.193 Special measures against Banco Delta Asia.**

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

(1) *Banco Delta Asia* means all branches, offices, and subsidiaries of Banco Delta Asia operating in any jurisdiction.

(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 of 1940 (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 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, Banco Delta Asia.

(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 Banco Delta Asia. At a minimum, that special due diligence must include:

(A) Notifying correspondent account holders that they may not provide Banco Delta Asia 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 Banco Delta Asia, 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, other due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia, shall take all appropriate steps to prevent 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: September 12, 2005.

**William F. Baity,**

*Deputy Director, Financial Crimes Enforcement Network.*

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