



# Federal Register

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**Friday,  
December 28, 2001**

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## **Part IV**

# **Department of the Treasury**

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**31 CFR Part 104  
Departmental Offices; Counter Money  
Laundering Requirements—Correspondent  
Accounts for Foreign Shell Banks;  
Recordkeeping and Termination of  
Correspondent Accounts for Foreign  
Banks; Proposed Rule**

**DEPARTMENT OF THE TREASURY****31 CFR Part 104**

RIN 1505-AA87

**Departmental Offices; Counter Money Laundering Requirements— Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks****AGENCY:** Departmental Offices, Department of the Treasury.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing a proposed rule to implement new provisions of the Bank Secrecy Act that: Prohibit certain financial institutions from providing correspondent accounts to foreign shell banks; require such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks; require certain financial institutions that provide correspondent accounts to foreign banks to maintain records of the ownership of such foreign banks and their agents in the United States designated for service of legal process for records regarding the correspondent account; and require the termination of correspondent accounts of foreign banks that fail to turn over their account records in response to a lawful request of the Secretary of the Treasury (Secretary) or the Attorney General of the United States (Attorney General).

**DATES:** Written comments on the proposed rule may be submitted to the Treasury Department on or before February 11, 2002.

**ADDRESSES:** Submit comments (preferably an original and three copies) to Office of the Assistant General Counsel (Enforcement), Attention: Official Comment Record, Room 2000, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library by advance arrangement. To make appointments, call (202) 622-0990 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Gary W. Sutton, Senior Banking Counsel, Office of the Assistant General Counsel (Banking & Finance), (202) 622-1976, or William Langford, Attorney-Advisor, Office of the Assistant General Counsel (Enforcement), (202) 622-1932 (not toll-free numbers).

**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 (USA PATRIOT) Act of 2001 (Public Law 107-56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA), which is codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism. Two of these provisions become effective on December 26, 2001.

First, section 313(a) of the Act adds a new subsection (j) to 31 U.S.C. 5318 that prohibits a "covered financial institution" from providing "correspondent accounts" in the United States to foreign banks without a physical presence in any country (shell banks) and requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks. The Department of the Treasury expects that covered financial institutions, as required by 31 U.S.C. 5318(j), will immediately terminate all correspondent accounts with any foreign bank that it knows to be a shell bank that is not a regulated affiliate as defined in the proposed rule, and will terminate any correspondent account with a foreign bank that it knows is being used to indirectly provide banking services to a foreign shell bank.

Second, section 319(b) of the Act adds a new subsection (k) to 31 U.S.C. 5318 that requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank's owners and agent in the United States designated to accept service of legal process for records regarding the correspondent account. Subsection (k) also authorizes the Secretary and the Attorney General to issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and to request records relating to such account, including records maintained outside the United States relating to the deposit of funds into the foreign bank. If a foreign bank fails to comply with or contest the summons or subpoena, any covered financial institution with which the foreign bank maintains a correspondent

account must terminate the account upon notice from the Secretary or the Attorney General.

Under the Act, Treasury is authorized to interpret and administer these provisions. On November 20, 2001, Treasury issued Interim Guidance to banks, savings associations, and other depository institutions to assist them in meeting their compliance obligations under sections 5318(j) and (k).<sup>1</sup> The Interim Guidance, published in the **Federal Register** on November 27, 2001 (66 FR 59342), included definitions of key terms in sections 5318(j) and (k) and a model certification that depository institutions may use as an interim means to assist them in meeting their obligations related to dealing with foreign shell banks under section 5318(j) and recordkeeping under section 5318(k). In issuing the Interim Guidance, Treasury stated that it may be relied upon by financial institutions until superseded by regulations or a subsequent notice. Treasury now is proposing to codify the Interim Guidance, with some modifications, as regulatory standards, and proposing standards applicable to securities brokers and dealers.

When issuing the Interim Guidance, Treasury deferred addressing the compliance obligations of securities brokers and dealers with respect to the requirements of sections 5318(j) and (k), because the Act requires Treasury to define by regulation, after consultation with the Securities and Exchange Commission (SEC), the types of accounts maintained by brokers and dealers for foreign banks that are similar to correspondent accounts that depository institutions maintain for foreign banks. As further discussed below, Treasury is proposing to apply the requirements of sections 5318(j) and (k)(3)(B)(i) to brokers and dealers in the same manner that they apply to other covered financial institutions.

The proposed rule also carries forward from the Interim Guidance, with some modifications, the model certification that covered financial institutions may use to assist them in meeting the requirements of sections 5318(j) and (k). Use of the model certification (Appendix A to part 104) will provide a covered financial institution with a safe harbor for

<sup>1</sup> Treasury issued the interim guidance after consultation with the Department of Justice, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the staff of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, and the Securities and Exchange Commission. Treasury also consulted with these agencies in preparing this proposed rule.

purposes of compliance with those sections. Treasury is proposing that covered financial institutions must verify the information provided by a foreign bank, or otherwise relied upon for purposes of sections 5318(j) and (k), every two years or at any time a covered financial institution has reason to believe that the previously provided information is no longer accurate. The proposed rule also includes a model recertification (Appendix B to part 104), which also will provide a covered financial institution with a safe harbor in connection with the verification of previously provided information.

Proposed section 104.40(f) provides special rules and safe harbors for a covered financial institution that, consistent with the Interim Guidance or this notice of proposed rulemaking, requests information from a foreign bank before the effective date of the final rule and receives such information not later than the date that is 90 days after the publication of the final rule. Such information will be deemed to satisfy the covered financial institution's obligations for purposes of the final rule until such time as the information must be verified.

As an administrative matter, the proposed rule also establishes a new part 104 of title 31 of the Code of Federal Regulations. Part 104 eventually will include other regulations implementing the anti-money laundering provisions of the Act for which Treasury is authorized or required to issue regulations. At this point, most of part 104 has been reserved for these future regulations.

## II. Description of the Proposed Rule

### A. Limitations on Correspondent Accounts for Foreign Shell Banks

Section 5318(j) provides that a "covered financial institution" shall not establish, maintain, administer, or manage a "correspondent account" in the United States for, or on behalf of, a shell bank that is not a regulated affiliate (as described below). In addition, a covered financial institution must take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank that is not a regulated affiliate.

#### 1. What Is a Covered Financial Institution?

For purposes of section 5318(j), the term "covered financial institution" is

defined as: (1) Any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h))); (2) a commercial bank or trust company; (3) a private banker; (4) an agency or branch of a foreign bank in the United States; (4) a credit union; (5) a thrift institution; or (6) a broker or dealer registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). See 31 U.S.C. 5318(j)(1), 5312(a)(2). The proposed rule incorporates this statutory definition. Covered financial institutions include insured banks organized in U.S. territories, Puerto Rico, Guam, American Samoa, and the Virgin Islands, and corporations organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*).

#### 2. What Is a Correspondent Account?

Section 5318(j) applies to any "correspondent account" established, maintained, administered, or managed by the covered financial institution in the United States for a foreign bank. For purposes of section 5318(j), "correspondent account" is defined with respect to banking institutions as "an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution." See 31 U.S.C. 5318A(e)(1)(B). The Act also defines the term "account" as "a formal banking or business relationship established to provide regular services, dealings, and other financial transactions [and] includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit." See 31 U.S.C. 5318A(e)(1)(A).

Treasury, after consultation with the SEC, is required under the Act to define the types of accounts that come within the definition of "correspondent account" for purposes of securities brokers' and dealers' compliance with section 5318(j). See 31 U.S.C. 5318A(e)(2). In addition, Treasury may further define the terms "correspondent account" and "account" as the Secretary deems appropriate. See 31 U.S.C. 5318A(e)(4). Treasury intends to maintain parity in treatment between accounts provided to foreign banks by banks and broker-dealers, and to treat functionally equivalent accounts, whether maintained by banks or broker-dealers, in the same manner.

The statutory definition of "correspondent account" is broadly worded; it is not limited to any particular type of account. The proposed rule incorporates the statutory definition of "correspondent account."

It includes, for example, any account that falls within the definition of "transaction account" under Regulation D of the Board of Governors of the Federal Reserve System (Federal Reserve).<sup>2</sup> It also includes clearing and settlement accounts (which may also fall within the definition of "transaction account"). Such accounts are typically used by foreign banks for remittance of funds in settlement of U.S. dollar transactions with parties other than the U.S. bank at which the account is maintained. In addition, foreign banks maintain fiduciary accounts with U.S. banks for the benefit of such foreign banks or their customers, including custody and escrow accounts. U.S. banks also establish time deposit accounts for foreign banks that are used by foreign banks primarily as funding mechanisms, as well as money market deposit accounts ("MMDAs") that share limited use for transactions processing. In addition, U.S. banks engage in transactions with foreign banks in securities, derivatives, repurchase agreements, foreign exchange, and other instruments. To the extent that these transactions involve an account, they would be covered by the definition of "correspondent account."

In light of the broad statutory definitions of "correspondent account" and "account" for banking institutions, Treasury is proposing to apply the same definition for purposes of the types of broker-dealer accounts that are covered by section 5318(j). Thus, under the proposed rule, brokers and dealers must comply with section 5318(j) with respect to any account they provide in the U.S. to a foreign bank that permits the foreign bank to engage in securities transactions, funds transfers, or other financial transactions through that account. Such accounts would include, for example, the following: (1) Accounts to purchase, sell, lend or otherwise hold securities, either in a proprietary account or an omnibus account for trading on behalf of the foreign bank's customers on a fully disclosed or non-disclosed basis; (2) prime brokerage accounts that consolidate trading done at a number of firms; (3) accounts for trading foreign currency; (4) various forms of custody accounts for the foreign bank and its customers; (5) over-the-counter derivatives accounts; and (6) futures accounts to purchase futures, which would be maintained primarily by broker-dealers that are dually registered as futures commission merchants.

Treasury requests comments on the breadth of the definition of

<sup>2</sup> 12 CFR 204.2(e).

“correspondent account” as applied to accounts maintained by depository institutions and brokers and dealers for foreign banks. Comments are requested on the extent to which different types of accounts may be used to provide financial services directly or indirectly to foreign shell banks. Comments are requested on the extent to which different types of accounts may be used to facilitate money laundering, terrorist financing, or other criminal transactions, including the extent to which different types of accounts may be used to disguise the nature, location, source, ownership, or control of the proceeds of unlawful activity. Treasury also seeks comments on whether particular types of accounts pose so little vulnerability to criminal transactions as to merit exclusion from the broad definition of “correspondent account,” together with the reasons therefor. Comments also are requested on the adverse business implications for covered financial institutions, if any, of adopting a broad definition of “correspondent account” for purposes of section 5318(j).

Covered financial institutions may through their foreign branches establish, maintain, administer, or manage correspondent accounts for foreign banks. Because these foreign branches legally are part of covered financial institutions, Treasury considers these correspondent accounts to be maintained in the United States for purposes of section 5318(j). In addition, Treasury has broad authority under the Act to establish anti-money laundering standards for U.S. financial institutions and their foreign branches. *See* 31 U.S.C. 5318(h). Therefore, the proposed rule applies to any correspondent accounts provided by a foreign branch of a covered financial institution to a foreign bank. Treasury requests comments on the extent to which such accounts are in fact established, maintained, administered or managed in the United States, as well as whether imposing this requirement on foreign branches of covered financial institutions is commensurate with the size, location, and activities of such institutions.

### 3. What Is a Foreign Bank?

The Act does not define “foreign bank.” For purposes of the proposed rule, “foreign bank” is any organization that (1) is organized under the laws of a foreign country, (2) engages in the business of banking, (3) is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations, (4) and receives deposits in

the regular course of its business. A “foreign bank” also includes a branch of a foreign bank located in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands. A “foreign bank” does not include an agency or branch of a foreign bank located in the United States or an insured bank organized in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands. Those entities are “covered financial institutions” under the statute. In addition, a foreign central bank or foreign monetary authority that functions as a central bank is not a “foreign bank.” Comments are requested on whether the term “foreign bank” should be defined more specifically.

### 4. What Is a Foreign Shell Bank?

For purposes of section 5318(j), a foreign shell bank is a foreign bank without a physical presence in any country. *See* 31 U.S.C. 5318(j)(1). “Physical presence” means a place of business that is maintained by a foreign bank and is located at a fixed address, other than solely a post office box or an electronic address, in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank: (1) employs one or more individuals on a full-time basis; (2) maintains operating records related to its banking activities; and (3) is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities. *See* 31 U.S.C. 5318(j)(4)(B).

### 5. What Is a Regulated Affiliate?

The limitations on the direct and indirect provision of correspondent accounts to foreign shell banks do not apply to a foreign shell bank that is a “regulated affiliate.” A regulated affiliate is a foreign shell bank that: (1) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and (2) is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank. An affiliate is a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank. *See* 31 U.S.C. 5318(j)(3).

### 6. What Steps Must a Covered Financial Institution Take To Comply With Section 5318(j)?

In order to comply with the limitations on the direct and indirect provision of correspondent accounts to foreign shell banks, a covered financial

institution must ensure that each foreign bank to which it provides a correspondent account is not a shell bank, and take reasonable steps to ensure that correspondent accounts provided to such foreign banks are not being used to indirectly provide banking services to foreign shell banks. Although the proposed rule does not prescribe the manner in which a covered financial institution must satisfy its obligations under section 5318(j), it does provide a safe harbor if a covered financial institution uses the model certifications in Appendix A and Appendix B for these purposes. A covered financial institution that does not obtain, from a foreign bank or otherwise, the information necessary to fulfill its obligations under section 5318(j) within the prescribed time periods must terminate its correspondent account relationship with the concerned foreign bank.

The Department of the Treasury expects that covered financial institutions, as required by 31 U.S.C. 5318(j), will immediately terminate all correspondent accounts with any foreign bank that it knows to be a shell bank that is not a regulated affiliate, and will terminate any correspondent account with a foreign bank that it knows is being used to indirectly provide banking services to a foreign shell bank. Because some correspondent accounts, at the time of termination, may contain open securities or futures positions, a covered financial institution may exercise its commercially reasonable discretion in liquidating such open positions (including, but not limited to, following its ordinary practices upon the default of a client). However, a covered financial institution must take reasonable steps to ensure that an account that is in the process of being terminated is not permitted to establish new positions.

#### *B. Recordkeeping and Termination Requirements for Correspondent Accounts of Foreign Banks*

Under 31 U.S.C. 5318(k), as added by section 319(b) of the Act, any covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying: (1) the owner(s) of such foreign bank; and (2) the name and address of a person (as defined in 31 CFR 103.11(z)) who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

Section 5318(k) authorizes the Secretary and the Attorney General to issue a summons or subpoena to any

foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

A covered financial institution must terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed either: (1) to comply with the summons or subpoena issued; or (2) to initiate proceedings in a United States court contesting such summons or subpoena. *See* 31 U.S.C. 5318(k)(3)(C).

If a covered financial institution fails to terminate the correspondent relationship upon receiving notice from the Secretary or the Attorney General, it is subject to a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated. A covered financial institution is not liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with section 5318(k).

### 1. What Is a Covered Financial Institution?

There is no statutory definition of "covered financial institution" for purposes of section 5318(k). For the following reasons, Treasury believes that "covered financial institution" in section 5318(k) should be read to have the same meaning as the identical term in section 5318(j), which includes brokers and dealers.

Both sections 5318(j) and (k) deal with anti-money laundering efforts related to correspondent relationships between U.S. financial institutions and foreign banks. Congress expressly included brokers and dealers in the category of "covered financial institutions" under section 5318(j) and required Treasury to identify the types of accounts that brokers and dealers maintain for foreign banks that are similar to correspondent accounts. In addition, Congress provided that the same definition of "correspondent account" applies in both sections 5318(j) and (k).

Excluding brokers and dealers from the category of "covered financial institutions" subject to the recordkeeping requirements and account termination safeguards under section 5318(k) would be inconsistent with the statutory scheme and would not reflect a comprehensive approach to implementing the Act's anti-money laundering requirements. In addition, Treasury has broad authority under the Act to establish anti-money laundering standards for securities brokers and dealers. *See* 31 U.S.C. 5318(h). Consequently, under the proposed rule, brokers and dealers are covered financial institutions subject to section 5318(k).

### 2. What Accounts Are Covered?

Section 5318(k) applies to "correspondent accounts," which has the same meaning as in section 5318(j), *i.e.*, an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution. In light of the Act's use of the same definition of correspondent account in both sections 5318(j) and (k), Treasury believes that both sections should be read as coextensive in the types of accounts to which they apply.

### 3. Who Is an Owner of a Foreign Bank?

Section 5318(k) does not define "owner" for purposes of the requirement that a covered financial institution maintain records of the owners of foreign banks to which it provides correspondent accounts. Treasury is proposing to define an "owner" as any person who is a "large direct owner," an "indirect owner," and a "reportable small direct owner." The proposed definition of each of these terms is discussed below. For purposes of these definitions, "person" means any individual, bank, corporation, partnership, limited liability company, or any other legal entity, except that members of the same family<sup>3</sup> shall be considered one person, and each family member who has an ownership interest in the foreign bank must be identified. "Voting shares or other voting interests" means shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

The definition of "owner" applies only with respect to the provisions of section 5318(k), which are designed to

<sup>3</sup>The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing.

facilitate the service of legal process. No inference may be drawn as to the applicability of this definition to other provisions of the Act, including the enhanced due diligence requirements of 31 U.S.C. 5318(i) (as added by section 312 of the Act), which sets forth different standards for reporting ownership information.

Foreign banks that maintain U.S. branches or agencies are required by the Federal Reserve to file an Annual Report (FR Y-7), which lists the foreign bank's agent for service of process in the U.S. and information on the ownership of the foreign bank. The current FR Y-7 generally requires the reporting of persons who own, directly or indirectly, 5 percent or more of any class of the voting shares of a foreign bank. A U.S. branch or agency of a foreign bank or other covered financial institution may use the relevant portions of a current FR Y-7 filed by the foreign bank to meet its recordkeeping obligations under section 5318(k) with respect to a correspondent account the U.S. branch or agency or other covered financial institution maintains for the foreign bank.

The definition of "owner" in the proposed rule is intended to minimize reporting burdens by focusing on those persons who are likely to have the ability to exert influence over the operations of a foreign bank. The proposed definition necessarily reflects the complexity of ownership relationships, including those that can be used or structured to obscure controlling or influential owners of a foreign bank. The Department recognizes that the reporting regime of FR Y-7 is significantly simpler than the proposed definition, but believes that it would be more burdensome for foreign banks. Comments are specifically requested concerning whether the Treasury should use the ownership criteria of FR Y-7 in lieu of the definition of "owner" in the proposed rule.

#### a. Who Is a Small Direct Owner of a Foreign Bank?

A "small direct owner" of a foreign bank is a person who owns, controls, or has power to vote less than 25 percent of the voting shares or other voting interests of the foreign bank. The identity of a small direct owner is not subject to reporting unless such person is a "reportable small direct owner."

A "reportable small direct owner" is: (1) Each of two or more small direct owners that in the aggregate own 25 percent or more of any class of the voting shares or other voting interests of the foreign bank and are majority-owned by the same person, or by a chain of

majority-owned persons; or (2) each of any one or more small direct owners that are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of the voting shares or other voting interests of the foreign bank. In determining who is a "reportable small direct owner," a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

#### b. Who Is a Large Direct Owner of a Foreign Bank?

A "large direct owner" of a foreign bank is a person who: (1) Owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or (2) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank. A covered financial institution must obtain the identity of each large direct owner of a foreign bank.

#### c. Who Is an Indirect Owner of a Foreign Bank?

An indirect owner is any person in the ownership chain of any large direct owner or a reportable small direct owner who is not majority-owned by another person. In determining who is an "indirect owner," a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account. A covered financial institution must obtain the identity of each indirect owner of a foreign bank.

For example, if any two or more small direct owners of a foreign bank (1) in the aggregate own, control, or have power to vote 25 percent or more of any class of voting securities or other voting interests of the foreign bank, and (2) are majority-owned by the same person, or by the same chain of majority-owned persons, the "indirect owner" is any person in the ownership chain of those small direct owners who is not majority-owned by another person.

Similarly, if one or more small direct owners of a foreign bank is majority-owned by another small direct owner and in the aggregate all such small direct owners own, control, or have power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank, the "indirect owner" is (1) the small direct owner that is the majority-owner of the other small direct owner(s), or (2) any person in the ownership chain of the small direct owner that is the majority-

owner of the other small direct owner(s) that is not majority-owned by another person.

#### *Examples of reportable owners.*

*Example 1.* FB-1 is a foreign bank. Voting securities of FB-1 are owned by Person C (15 percent), Person D (35 percent), Person E (10 percent), Person F (20 percent), and Person G (20 percent).

Persons C and G are both majority-owned by Person X, which is majority-owned by Person Y, which is majority-owned by Person Z, which is not majority-owned by another person.

Person D is majority-owned by Person V, which is majority-owned by Person W, which is not majority-owned by another person.

Persons E and F are not owned by another person.

Persons C, E, F, and G are small direct owners because each owns less than 25 percent of the voting securities of FB-1. The identities of Persons C and G are reportable small direct owners because: (1) In the aggregate they own more than 25 percent of the voting securities of FB-1; and (2) they are majority-owned by the same indirect owner Z. The identities of Persons E and F are not subject to reporting.

Person D is a large direct owner because it owns 25 percent or more of the voting securities of FB-1. The identity of Person D is subject to reporting.

Person W is an indirect owner because it is a majority-owner of Person V, which is a majority-owner of Person D. The identity of Person W is subject to reporting. The identity of Person V is not subject to reporting.

Person Z is an indirect owner because it is a majority-owner of Person Y, which is a majority-owner of Person X, which is a majority-owner of Persons C and G, which are small direct owners that in the aggregate own 25 percent or more of the voting securities of FB-1. The identity of Person Z is subject to reporting. The identities of Persons Y and X are not subject to reporting.

*Example 2.* FB-2 is a foreign bank. Voting securities of FB-2 are owned by Person K (20 percent) and Person L (10 percent). Person K is majority-owned by Person L. Person L is not majority-owned by another person. Persons K and L are small direct owners. However, Person L is also an indirect owner subject to reporting because: (1) Person L is a majority-owner of Person K; and (2) in the aggregate Persons K and L own more than 25 percent of the voting securities of FB-2. Person K is a reportable small direct owner for the same reason.

*Example 3.* Same facts as in Example 2, except that Person L is majority-owned by Person M, who is majority-owned by Person N, who is not majority-owned by another person. In this example, Person N is an indirect owner subject to reporting because Person N is the person in the ownership chain of small direct owner Person L and is not majority-owned by another person. Persons K and L are reportable small direct owners. The identity of Person M is not subject to reporting.

*Example 4.* FB-3 is a foreign bank. 30 percent of the voting securities of FB-2 are owned by 6 members of the same family (as defined in the proposed rule) in amounts

ranging from 2 percent to 10 percent. The 6 family members are considered to be one person who is a large direct owner of the bank. The identity of each of the 6 family members is subject to reporting. Other family members who do not own voting securities in FB-3 are not subject to reporting.

#### 4. What Steps Must a Covered Financial Institution Take To Comply With Section 5318(k)(3)(B)(i)?

Although the proposed rule does not prescribe the manner in which a covered financial institution must obtain information concerning the identity of owners of foreign banks and their agents in the U.S. authorized to receive service of legal process, it does provide a safe harbor if a covered financial institution uses the model certifications in Appendix A and Appendix B for these purposes. A covered financial institution that does not obtain, from a foreign bank or otherwise, the information necessary to fulfill its obligations under section 5318(k)(3)(B)(i) must terminate its correspondent account relationship with the concerned foreign bank.

### III. Submission of Comments

All comments will be available for public inspection and copying, and no material in any comments, including the name of any person submitting comments, will be recognized as confidential. Material not intended to be disclosed to the public should not be submitted.

### IV. Regulatory Flexibility Act

It is hereby certified that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities. Covered financial institutions that are subject to the recordkeeping requirements in the statute and the proposed rule tend to be large institutions. Moreover, any economic consequences that might result from the prohibition on dealings with foreign shell banks, or from the failure of a foreign bank to provide the information necessary for a covered financial institution to fulfill its recordkeeping obligations, flow directly from the underlying statute. Accordingly, the analysis provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### V. Executive Order 12866

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

## VI. Paperwork Reduction Act

The collections of information contained in Appendix A to proposed 31 CFR part 104 rulemaking have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and assigned OMB Control Number 1505-0184.

The collection of information contained in Appendix B to proposed 31 CFR part 104 and the recordkeeping requirement in proposed 31 CFR 104.40(e) have been submitted to OMB for review in accordance with the requirements of the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503, and to the Department of the Treasury at the address previously specified in the ADDRESSES portion of this preamble. Any such comments should be submitted not later than February 26, 2002.

Comments are specifically requested concerning:

Whether the collection of information is necessary for the proper performance of the functions of the Department of the Treasury, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collection of information (see below), which was developed in part on the basis of discussions with industry representatives. The Department is particularly interested in comments concerning the number of covered financial institutions and the number of foreign banks for which correspondent accounts are maintained.

How to enhance the quality, utility, and clarity of the information to be collected;

How to minimize the burden of complying with the collection of information, including the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

This information will enable financial institutions to comply with the

requirements of sections 31 U.S.C. 5318(j) and (k), and will be used by Federal agencies to verify compliance by covered financial institutions with these provisions. The respondents are foreign banks that establish or maintain correspondent accounts with U.S. financial institutions. The reporting of this information by foreign banking institutions is voluntary; however failure to provide the information may preclude the establishment or the continuation of correspondent accounts with U.S. financial institutions. The recordkeepers are covered financial institutions. The recordkeeping requirement concerning owners and agents of foreign banks is required by statute.

*Estimated total annual reporting burden for Appendix B:* 45,000 hours.

*Estimated number of respondents (foreign banks):* 9,000.

*Estimated average annual reporting burden per respondent:* 5 hours.

*Estimated frequency of responses:* Once every 2 years.

*Estimated total annual recordkeeping burden:* 18,000 hours.

*Estimated number of recordkeepers (covered financial institutions):* 2000.

*Estimated average annual recordkeeping burden per recordkeeper:* 9 hours.

### List of Subjects in 31 CFR Part 104

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

Dated: December 19, 2001.

**David D. Aufhauser,**  
*General Counsel.*

### Authority and Issuance

For the reasons set forth in the preamble, the Treasury is proposing to amend 31 CFR subtitle B, chapter I by adding part 104 to read as follows:

## PART 104—COUNTER MONEY LAUNDERING REQUIREMENTS

### Subpart A—Definitions

Sec.

104.10 Definitions.

### Subpart B—Anti Money Laundering Programs [Reserved]

### Subpart C—Special Due Diligence for Correspondent Accounts and Private Banking Accounts

104.40 Records concerning owners of foreign banks and agents designated to receive service of legal process; prohibition on correspondent accounts for foreign shell banks.

104.50 [Reserved]

### Subpart D—Law Enforcement Access to Foreign Bank Records

104.60 Summons or subpoena of foreign bank records.

104.70 Termination of correspondent relationship.

### Subpart E—Cooperative Efforts to Deter Money Laundering [Reserved]

Appendix A to Part 104—Certification Regarding Correspondent Accounts  
Appendix B to Part 104—Recertification Regarding Correspondent Accounts

**Authority:** 31 U.S.C. 5318, 5318A; title III, secs 311, 313, 319, 352, Pub. L. 107-56, 115 Stat. 298, 306, 311, 322.

### Subpart A—Definitions

#### § 104.10 Definitions.

For purposes of subparts C and D of this part:

(a) *Attorney General* means the Attorney General of the United States.

(b) *Correspondent account* means an account established to receive deposits from, make payments on behalf of a foreign bank, or handle other financial transactions related to such bank.

(c) *Covered financial institution* means:

(1) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)) and any foreign branch of an insured bank;

(2) A commercial bank or trust company;

(3) A private banker;

(4) An agency or branch of a foreign bank in the United States;

(5) A credit union;

(6) A thrift institution;

(7) A corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and

(8) A broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(d) *Foreign bank.* (1) The term *foreign bank* means any organization that:

(i) Is organized under the laws of a foreign country;

(ii) Engages in the business of banking;

(iii) Is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or principal banking operations; and  
(iv) Receives deposits in the regular course of its business.

(2) For purposes of this definition:

(i) The term *foreign bank* includes a branch of a foreign bank in a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands.

(ii) The term *foreign bank* does not include:

(A) A U.S. agency or branch of a foreign bank;

(B) An insured bank organized under the laws of a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands;

(C) A foreign central bank or foreign monetary authority that functions as a central bank; and

(D) The African Development Bank, Asian Development Bank, Bank for International Settlements, European Bank for Reconstruction and Development, Inter-American Development Bank, International Bank for Reconstruction and Development (the World Bank), International Finance Corporation, International Monetary Fund, North American Development Bank, African Development Bank, International Development Association, Multilateral Investment Guarantee Agency, and similar international financial institutions of which the United States is a member or as otherwise designated by the Secretary.

(e) *Foreign shell bank* means a foreign bank without a physical presence in any country.

(f) *Majority-owned* means a person who is owned 50 percent or more by another person.

(g) *Owner* means any large direct owner, indirect owner, and reportable small direct owner. For purposes of this definition:

(1) *Large direct owner* means a person who:

(i) Owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank.

(2) *Small direct owner* means a person who owns, controls, or has power to vote less than 25 percent of any class of voting shares or other voting interests of the foreign bank.

(3) *Reportable small direct owner*. (i) Subject to paragraph (g)(3)(ii) of this section, the term *reportable small direct owner* means:

(A) Each of two or more small direct owners who in the aggregate own 25 percent or more of any class of voting shares or other voting interests of the foreign bank and are majority-owned by the same person, or by the same chain of majority-owned persons; and

(B) Each of one or more small direct owners who are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of any class of voting shares or other voting interests of the foreign bank.

(ii) In determining who is a reportable small direct owner for purposes of

paragraph (g)(3)(i) of this section, a small direct owner who owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

(4) *Indirect owner*. (i) The term *indirect owner* means:

(A) Any person in the ownership chain of any large direct owner who is not majority-owned by another person.

(B) Any person, including a small direct owner who is a majority-owner as described in paragraph (g)(3)(i)(B) of this section, in the ownership chain of any reportable small direct owner who is not majority-owned by another person.

(ii) A person who is a reportable small direct owner as defined in paragraph (g)(3) of this section need not also be reported as an indirect owner under this paragraph (g)(4).

(5) *Person* means any individual, bank, corporation, partnership, limited liability company, or any other legal entity. For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner because of the aggregate ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(6) *Voting shares or other voting interests* means shares or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(h) *Person*. Except with respect to paragraph (g) of this section, the term *person* shall have the same meaning as provided in § 103.11(z) of this chapter.

(i) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs 1 or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the

foreign bank to conduct banking activities.

(j) *Regulated affiliate*. (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regulating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(ii) *Control* means:

(A) Ownership, control, or power to vote 25 percent or more of any class of voting shares or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(k) *Secretary* means the Secretary of the Treasury.

#### **Subpart B—Anti Money Laundering Programs [Reserved]**

#### **Subpart C—Special Due Diligence for Correspondent Accounts and Private Banking Accounts**

##### **§ 104.40 Records concerning owners of foreign banks and agents designated to receive service of legal process; prohibition on correspondent accounts for foreign shell banks.**

(a) *Requirements for covered financial institutions*—(1) *Records of owners and agents*. A covered financial institution that maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of each such foreign bank and the name and address of a person who resides in the United States and is authorized, and has agreed to be an agent to accept service of legal process for records regarding each such account. For purposes of this section, any correspondent account maintained by a foreign branch of a covered financial institution for a foreign bank shall be deemed to be maintained in the United States.

(2) *Prohibition on correspondent accounts for foreign shell banks*. (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure



that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in this paragraph (a)(2) prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(iv) For purposes of this paragraph (a)(2), any correspondent account established, maintained, administered, or managed by a foreign branch of a covered financial institution shall be deemed to be established, maintained, administered, or managed in the United States.

(b) *Safe harbor.* Subject to paragraph (d) of this section, a covered financial institution will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to a foreign bank if the covered financial institution obtains from the foreign bank the certification described in Appendix A to this part (including all annexes thereto).

(c) *Verification requirements—(1) Biennial verification.* At least once every 2 years, a covered financial institution shall verify the information previously provided by each foreign bank for which it maintains a correspondent account, or otherwise relied upon by the covered financial institution for purposes of this section.

(2) *Interim verification.* If at any time a covered financial institution has reason to believe that any information provided by a foreign bank or otherwise relied upon by the covered financial institution for purposes of this section is no longer correct, the covered financial institution shall request that the foreign bank verify such information.

(3) *Safe harbor.* Subject to paragraph (d) of this section, a covered financial institution will be deemed to continue to be in compliance with the requirements of this paragraph (c) and paragraph (a) of this section if the covered financial institution obtains from the foreign bank:

(i) A revised Appendix A certification (including all annexes thereto); or  
(ii) The recertification described in Appendix B to this part.

(d) *Closure of correspondent accounts—(1) Accounts existing on [the date that is 30 days after the date of publication of the final rule in the Federal Register].* In the case of a foreign bank with respect to which a covered financial institution maintains a correspondent account that was in existence on [the date that is 30 days

after the date of publication of the final rule in the **Federal Register**], the covered financial institution shall close all correspondent accounts with such foreign bank not later than [the date that is 90 days after the date of publication of the final rule in the **Federal Register**] if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto).

(2) *Accounts established after [the date that is 30 days after the date of publication of the final rule in the Federal Register].* In the case of a foreign bank with respect to which a covered financial institution establishes a correspondent account after [the date that is 30 days after the date of publication of the final rule in the **Federal Register**], the covered financial institution shall close such account if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto), or the information described in Appendix B to this part, not later than the date that is:

(i) In the case of an account established before January 1, 2003, 60 calendar days after the date the account is established; or

(ii) In the case of an account established after December 31, 2002, 30 calendar days after the date the account is established.

(3) *Verification of previously provided information.* In the case of a foreign bank from which a covered financial institution requests a verification of information or with respect to which the covered financial institution otherwise undertakes to verify information pursuant to paragraph (c)(1) or (2) of this section, the covered financial institution shall close all correspondent accounts with such foreign bank if the covered financial institution has not obtained, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto) or the information described in Appendix B to this part, not later than the date that is:

(i) In the case of a verification initiated before January 1, 2003, 90 calendar days after the date of the request or otherwise undertaking the verification; or

(ii) In the case of a verification initiated after December 31, 2002, 60 calendar days after the date of the request or otherwise undertaking the verification.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial

institution shall not reestablish any account closed pursuant to this paragraph, and shall not establish any other correspondent account with the concerned foreign bank, until it obtains, from the foreign bank or otherwise, the information described in Appendix A to this part (including all annexes thereto) or the information described in Appendix B to this part, as appropriate.

(5) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this paragraph (d).

(e) *Recordkeeping requirement.* A covered financial institution shall retain the original of any document provided by a foreign bank, and the original or a copy of any document otherwise relied upon by the covered financial institution, for purposes of this section, for at least 5 years after the date that the covered financial institution no longer maintains any account for such foreign bank. A covered financial institution shall retain such records with respect to any foreign bank for such longer period as the Secretary may direct.

(f) *Special rules concerning information requested prior to [the date that is 30 days after the date of publication of the final rule in the Federal Register].—(1) Definition.* For purposes of this paragraph (f) the term “Interim Guidance” means:

(i) The Interim Guidance of the Department of the Treasury dated November 20, 2001<sup>1</sup> and published in the **Federal Register** on November 27, 2001; or

(ii) The provisions of this part as published in the **Federal Register** on December 28, 2001.

(2) *Safe harbors.* (i) For purposes of paragraph (b) of this section, a covered financial institution that requested a foreign bank to provide the information described in the Interim Guidance prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] will be deemed to be in compliance with the requirements of paragraph (a) of this section with respect to such foreign bank if the foreign bank provides such information to the covered financial institution on or before [the date that is 90 days after the date of publication of the final rule in the **Federal Register**].

(ii) Nothing in this section shall be construed to cause any information obtained pursuant to the Interim Guidance to be considered incorrect for

<sup>1</sup> The November 20, 2001 Interim Guidance may be found on the Treasury Internet site at <http://www.treas.gov/press/releases/po813.htm>.

purposes of paragraph (c)(2) of this section if such information was obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule].

(iii) For purposes of paragraph (d)(1) of this section, the reference in paragraph (d)(1) of this section to “the information described in Appendix A to this part (including all annexes thereto)” shall be deemed to refer to such information as described in the Interim Guidance if such information was obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule].

(3) *Verification of information.* For purposes of paragraph (c)(1) of this section, information obtained pursuant to a request to a foreign bank made prior to [the date that is 30 days after the date of publication of the final rule in the **Federal Register**] and received on or before [the date that is 90 days after the date of publication of the final rule] shall be verified in accordance with the definitions and requirements of this section.

(4) *Recordkeeping requirement.* Paragraph (e) of this section shall apply to any document provided by a foreign

bank, or otherwise relied upon by a covered financial institution, for purposes of the Interim Guidance.

#### **§ 104.50 [Reserved]**

### **Subpart D—Law Enforcement Access to Foreign Bank Records**

#### **§ 104.60 Summons or subpoena of foreign bank records.**

(a) *Issuance to foreign banks.* The Secretary or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank. The summons or subpoena may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(b) *Issuance to covered financial institutions.* Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained by a covered financial institution under § 104.40, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

#### **§ 104.70 Termination of correspondent relationship.**

(a) *Termination upon receipt of notice.* A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed:

(1) To comply with a summons or subpoena issued under § 104.60(a); or

(2) To initiate proceedings in a United States court contesting such summons or subpoena.

(b) *Limitation on liability.* A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with paragraph (a) of this section.

(c) *Failure to terminate relationship.* Failure to terminate a correspondent relationship in accordance with this section shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

### **Subpart E—Cooperative Efforts To Deter Money Laundering [Reserved]**

#### **Appendix A to Part 104—Certification Regarding Correspondent Accounts**

BILLING CODE 4810-25-P

**CERTIFICATION FOR PURPOSES OF SECTIONS 5318(j) AND 5318(k)  
OF TITLE 31, UNITED STATES CODE**

[OMB Control Number 1505-0184]

*The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).*

The undersigned financial institution,

\_\_\_\_\_ (a "Foreign bank" as defined in  
31 CFR 104.10(d)), has established one or more accounts with \_\_\_\_\_

\_\_\_\_\_ (a "Covered Financial Institution")

to receive deposits from, make payments on behalf of, or handle other financial transactions related to Foreign Bank (the "correspondent accounts"). Foreign Bank hereby certifies, by an individual authorized to make such certification, as follows:

1. Foreign Bank (check appropriate box and complete Annex I):

- (a) Maintains a place of business that (i) is located at a fixed address (other than solely an electronic address or a post office box) in a country in which Foreign Bank is authorized by such country to conduct banking activities, at which location Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities; and (ii) is subject to inspection by the banking authority that licensed Foreign Bank to conduct banking activities (hereinafter referred to as a "**physical presence**");
- (b) Does not have a **physical presence** in any country, but the Foreign Bank (i) is an affiliate of a U.S. depository institution, U.S. credit union, or a Foreign bank that maintains a **physical presence** in a country; and (ii) is also subject to supervision by the same banking authority in the country that regulates such affiliated depository institution, credit union, or foreign bank (the Foreign Bank is thus a "**regulated affiliate**"); or
- (c) Does not have a **physical presence** in a country and is not a **regulated affiliate**.

2. Foreign Bank does not use any correspondent account with the Covered Financial Institution to indirectly provide banking services to any foreign bank that does not have a **physical presence** in any country, and that is not a **regulated affiliate**.
3. Foreign Bank has no **owner(s)** (as defined below) except as set forth in Annex II. For purposes of this Certification, an **owner** means any **large direct owner**, any **indirect owner**, and any **reportable small direct owner** as these terms are defined 31 CFR 104.10(g). Generally:

A **large direct owner** is a **person** who: (1) owns, controls, or has power to vote 25 percent or more of any class of voting shares or other voting interests of the foreign bank; or (2) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of the foreign bank.

A **small direct owner** is a **person** who owns, controls, or has power to vote less than 25 percent of any class of voting shares or other voting interests of the foreign bank. A small direct owner need not be reported on Annex II unless it is a reportable small direct owner.

A **reportable small direct owner** means: (1) each of two or more small direct owners who in the aggregate own 25 percent or more of any class of voting shares or other voting interests of the foreign bank and are majority-owned by the same indirect owner; or (2) each of any one or more small direct owners who are majority-owned by another small direct owner and in the aggregate all such small direct owners own 25 percent or more of any class of voting shares or other voting interests of the foreign bank. In determining who is a reportable small direct owner, a small direct owner that owns or controls less than 5 percent of the voting shares or other voting interests of the foreign bank need not be taken into account.

An **indirect owner** means: Any person in the ownership chain of any large direct owner or reportable small direct owner who is not majority-owned by another person. For purposes of this Certification, (i) "**person**" means any individual, bank, corporation, partnership, limited liability company or any other legal entity; (ii) **voting securities or other voting interests** means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions); and (iii) members of the same family\* shall be considered one **person**.

4. The individual or entity ("Agent") identified in Annex III, resident in the United States at the address (not a post office box) set forth in Annex III, is authorized to accept service of legal process from the Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

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\* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, second cousins, stepchildren, stepsiblings, parents-in-law and spouses of any of the foregoing. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account. Each family member with an ownership interest must be reported.

5. Foreign Bank shall notify in writing within 30 calendar days each financial institution in the United States at which it maintains a correspondent account of any change in facts or circumstances as reported in this Certification and the Annexes hereto.
6. Foreign Bank understands that each financial institution in the United States at which it maintains a correspondent account may provide a copy of this Certification to the Secretary of the Treasury and the Attorney General of the United States.

I, \_\_\_\_\_ (name), certify that I have read and understand this Certification and the Annexes hereto and that the statements made in this Certification and the Annexes hereto are true and correct.

This Certification is made on behalf of \_\_\_\_\_ (name of Foreign Bank), a banking institution organized under the laws of \_\_\_\_\_ (specify country).

I understand that the statements contained in this Certification and the Annexes hereto may be transmitted to one or more departments or agencies of the United States of America for purpose of fulfilling such departments and agencies governmental functions.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Received, reviewed and accepted by:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For:

\_\_\_\_\_  
[Name of Covered Financial Institution]

\_\_\_\_\_  
Date

**1. To be completed if Foreign Bank checked paragraph 1(a) of the Certification:**

(A) Foreign Bank maintains a place of business at

\_\_\_\_\_

[Street Address]

in \_\_\_\_\_

[Country]

(B) The banking authority that has the right to inspect the place of business referred to in (A) is

\_\_\_\_\_

[Name of Banking Authority]

**2. To be completed if Foreign Bank checked paragraph 1(b) of the Certification:**

(A) Foreign Bank's affiliate that is regulated is

\_\_\_\_\_, which maintains a **physical presence** at

[Name of Affiliate]

\_\_\_\_\_

[Street Address]

in \_\_\_\_\_

[Country]

(B) The banking authority that supervises both the Foreign Bank and its affiliate is

\_\_\_\_\_

[Name of Banking Authority]

Annex II

Name and Address  
of Owner(s)

<u>Name</u>	Address (No Post Office Boxes)

Attach Additional Sheets if Necessary

Name and Address  
of Agent Designated to Accept Service of Legal Process

<u>Name</u>	Address (No Post Office Boxes)	Phone No.	Fax No.	E-mail Address



FOR PURPOSES OF SECTIONS 5318(j) AND 5318(k) OF  
TITLE 31, UNITED STATES CODE

[OMB CONTROL NUMBER 1505-\_\_\_\_\_]

*The information contained in this Certification is sought pursuant to Sections 5318(j) and 5318(k) of Title 31 of the United States Code, as added by sections 313 and 319(b) of the USA PATRIOT Act of 2001 (Public Law 107-56).*

The undersigned financial institution, \_\_\_\_\_

\_\_\_\_\_ (a "Foreign Bank"

as defined in 31 CFR 104.10(d)), has established one or more accounts with \_\_\_\_\_

\_\_\_\_\_ (a "Covered Financial Institution") to receive deposits from, make payments on behalf of, or handle other financial transactions related to Foreign Bank (the "correspondent accounts").

Foreign Bank hereby certifies, by an individual authorized to make such certification, as follows:

- The information contained in the certification to the Covered Financial Institution dated \_\_\_\_\_ remains true and correct.
- The information contained in the certification to the Covered Financial Institution dated \_\_\_\_\_ is revised by the information provided with this certification (attach a statement describing the information that is no longer correct and indicating the correct information).

I, \_\_\_\_\_ (name), certify that I have read and understand this Certification and that the statements made in this Certification is true and correct.

This Certification is made on behalf of \_\_\_\_\_

\_\_\_\_\_ (name of Foreign Bank), a

banking institution organized under the laws of \_\_\_\_\_  
(Specify Country)

I understand that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for purpose of fulfilling such departments and agencies governmental functions.

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Title]

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**Received, reviewed and accepted by:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

For:

\_\_\_\_\_  
[Name of Covered Financial Institution]

\_\_\_\_\_  
Date