

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1505-AA87

Financial Crimes Enforcement Network; Anti-Money Laundering Requirements B Correspondent Accounts for Foreign Shell Banks; Recordkeeping and Termination of Correspondent Accounts for Foreign Banks.

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final Rule.

SUMMARY: The Financial Crimes Enforcement Network (FinCEN) is issuing this final rule to extend the time by which certain financial institutions must obtain information from each foreign bank for which they maintain a correspondent account concerning (1) the foreign bank’s status as “shell” bank, (2) whether the foreign bank provides banking services to foreign shell banks, (3) certain owners of the foreign bank, and (4) the identity of a person in the United States to accept service of legal process.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905-3590; Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622-0480, or Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622-1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2002, FinCEN published a final rule (67 FR 60562) implementing sections 313(a) and 319(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 313(a) of the Act added subsection (j) to 31 U.S.C. 5318, which prohibits a covered financial institution from providing correspondent accounts in the United States to foreign banks that do not have a physical presence in any country (foreign shell banks). Section 313(a) also requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. Section 319(b) of the Act added subsection (k) to 31 U.S.C. 5318, which requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank's owners and to maintain the name and address of an agent in the United States designated to accept service of legal process for the foreign bank for records regarding the correspondent account.

The September 26, 2002 final rule provided that a covered financial institution could satisfy the requirements of section 313(a) and 319(b) by obtaining from a foreign bank a certification that contained the necessary information, or by otherwise obtaining documentation of the required information. With respect to correspondent accounts that existed on October 28, 2002, the final rule required a covered financial institution to close a correspondent account, within a commercially reasonable time, if the covered financial institution did not receive the certification from the foreign bank, or otherwise obtain documentation of the required information, on or before December 26, 2002.

A significant number of covered financial institutions, principally in the securities industry, have noted that the December 26, 2002 deadline to obtain the required information is proving to be inadequate. Many securities firms indicated that providing an effective explanation of their duties under the Act to a wide variety of foreign banks, which may speak different languages and operate in different ways than their U.S. counterparts, has in some cases, lengthened the process. Moreover, the broad definition of a correspondent account found in the Final Rule has increased the number of accounts subject to these requirements and, consequently, has increased the burden on U.S. banks and broker-dealers to secure the required information. Finally, because the Act has generally increased the overall level of regulatory requirements for securities firms and depository institutions, they have been managing an increased overall workload as a result of additional regulations, within a finite set of resources. For these reasons, the process of gathering the necessary information to comply with section 313(a) and 319(b) of the Act is taking longer than the time provided in the September 28 final rule.

II. The Current Rulemaking

This rule extends the time by which a covered financial institution must obtain the information required to satisfy the requirements of sections 313(a) and 319(b) from December 26, 2002 to March 31, 2003. Treasury and FinCEN do not anticipate granting a further extension beyond March 31 and expect that covered financial institutions will comply with the September 26, 2002 final rule with respect to correspondent accounts established for foreign banks that have not provided the required information by that date.

III. Procedural Requirements

Because this rule extends the time by which a covered financial institution must obtain the information necessary to satisfy the requirements of section 313(a) and 319(b) of the Act before taking actions to terminate a correspondent account, it has been determined that notice and public procedure are unnecessary pursuant to 5 U.S.C. 553 (b)(B) and that a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1).

It has been determined that this rule is not a significant regulatory action for purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 103

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

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 103 is amended as follows:

PART 103? FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN 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 and 5316-5332; title III, secs. 312, 313, 314, 319, 352, Pub. L. 107-56, 115 Stat. 307.

2. Section 103.177 is revised by amending paragraph (d)(1) to read as follows:

' 103.177 Prohibition on correspondent accounts for foreign shell banks; Records concerning owners of foreign banks and agents for service of legal process.

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(d) Closure of correspondent accounts. (1) Accounts existing on October 28, 2002. In the case of any correspondent account that was in existence on October 28, 2002, if the covered financial institution has not obtained a certification (or recertification) from the foreign bank, or has not otherwise obtained documentation of the information required by such certification (or recertification), on or before March 31, 2003, and at least once every three years thereafter, the covered financial institution shall close all correspondent accounts with such foreign bank within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transaction through any such account, other than transactions necessary to close the account.

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DATED: _____, 2002

James Sloan
Director, Financial Crimes Enforcement Network