

(BILLINGCODE: 4810-02P)

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AB11**

**Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act  
Regulations – Imposition of Special Measure against the Lebanese Canadian Bank  
SAL as a Financial Institution of Primary Money Laundering Concern**

**AGENCY:** Financial Crimes Enforcement Network, Treasury (“FinCEN”), 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 FinCEN, found that reasonable grounds exist for concluding that the Lebanese Canadian Bank SAL (“LCB”) is a financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A. FinCEN is issuing this notice of proposed rulemaking to impose a special measure against LCB.

**DATES:** Written comments on the notice of proposed rulemaking must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

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

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

- E-mail: [regcomments@fincen.treas.gov](mailto:regcomments@fincen.treas.gov). Include RIN 1 506-XXX in the subject line of the message.
- Mail: The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-XXX in the body of the text.

Instructions. It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, D.C. area may be delayed. Please submit comments by one method only. All submissions received must include the agency name and the Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to <http://www.fincen.gov>, including any personal information provided. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

**FOR FUTHER INFORMATION CONTACT:** Regulatory Policy and Programs Division, FinCEN, (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 amended 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

and 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 FinCEN.<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 the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively

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<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 FinCEN.

monitor the respective jurisdictions, institutions, transactions, or accounts; or can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that are of 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 reasonable grounds exist for concluding that a 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

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<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

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 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>

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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).

<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 jurisdiction.

<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)).

B. The Lebanese Canadian Bank SAL

In this rulemaking, FinCEN proposes to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against LCB. 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.

LCB is based in Beirut, Lebanon, and maintains a network of 35 branches in Lebanon and a representative office in Montreal, Canada.<sup>5</sup> The bank is considered among the top 10 banks in Lebanon in assets and has over 600 employees.<sup>6</sup> Originally established in 1960 as Banque des Activities Economiques SAL, it operated as a subsidiary of the Royal Bank of Canada Middle East (1968-1988) and is now a privately owned bank.<sup>7</sup> LCB offers a broad range of corporate, retail, and investment products, and it maintains extensive correspondent accounts with banks worldwide, including several U.S. financial institutions.<sup>8</sup> As of 2009, LCB's total assets were worth over \$5 billion.<sup>9</sup>

LCB has a controlling financial interest in a number of subsidiaries, including LCB Investments SAL, LCB Finance SAL, LCB Estates SAL, LCB Insurance Brokerage House SAL, Dubai-based Tabadul for Shares and Bonds LLC, Prime Bank Limited ("Prime Bank") of Gambia.<sup>10</sup> Prime Bank is a private commercial bank located in Serrekunda, Gambia.<sup>11</sup> LCB owns 51% of Prime Bank, while the remaining shares are

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<sup>5</sup> Bankers Almanac, Lebanese Canadian Bank SAL, June 22, 2010 (<http://www.bankersalmanac.com>).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Lebanese Canadian Bank, 2009 Annual Report.

<sup>10</sup> *Id.*

<sup>11</sup> See <http://primebankgambia.gm/index>.

held by local and Lebanese partners.<sup>12</sup> LCB apparently serves as the sole correspondent bank for Prime Bank.<sup>13</sup> For purposes of this document and, unless expressly stated otherwise, references to LCB include the aforementioned subsidiaries.

## **II. Imposition of Special Measure against the Lebanese Canadian Bank SAL as a financial institution of Primary Money Laundering Concern**

As a result of the finding on [INSERT DATE OF PUBLICATION] by the Secretary, through his delegate, the Director of FinCEN, that reasonable grounds exist for concluding that LCB 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 FinCEN, has determined that reasonable grounds exist for the imposition of the special measure authorized by section 5318A(b)(5).<sup>14</sup> That special measure authorizes the prohibition against the opening or maintaining of correspondent accounts<sup>15</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.

### **1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups against LCB**

Other countries or multilateral groups have not 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 LCB,

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State.

<sup>15</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.

and require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against their indirect use by nested correspondent accounts held by LCB. FinCEN 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, LCB. 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 LCB. FinCEN 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 LCB.<sup>16</sup> There is a minimal burden involved in transmitting a one-time notice to correspondent account holders concerning the prohibition on indirectly providing services to LCB. 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

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<sup>16</sup> Bankers Almanac, Lebanese Canadian Bank SAL, June 22, 2010 (<http://www.bankersalmanac.com>).

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 the Lebanese Canadian Bank SAL

This proposed rulemaking targets LCB specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. LCB 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 LCB would 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, FinCEN does not believe that it would impose an undue burden on legitimate business activities, and notes that the presence of several larger banks in Lebanon would 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 money launderers to access the substantial resources of the U.S. financial system. 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 LCB is an institution of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, FinCEN has determined that reasonable grounds exist for imposing the special measure.

### **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 LCB. 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 LCB. At a minimum, that special due diligence must include two elements. First, a covered financial institution must notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to LCB that such correspondents may not provide LCB 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 LCB, 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 LCB, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

A. 103.194(a) – Definitions

1. The Lebanese Canadian Bank SAL

Section 103.194(a)(1) of the proposed rule defines LCB to include all branches, offices, and subsidiaries of LCB operating in Lebanon or in any jurisdiction. These branches, offices, and subsidiaries include, but are not necessarily limited to, LCB Investments (Holding) SAL, LCB Finance SAL, LCB Estates SAL, LCB Insurance Brokerage House SAL, Dubai-based Tabadul for Shares and Bonds LLC, and Prime Bank Limited in Serrekunda, Gambia. FinCEN 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 LCB.

2. Correspondent account

Section 103.194(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 includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end

companies (mutual funds), we are using the same definition of “account” for purposes of this rule as was established in the final rule implementing section 312 of the USA PATRIOT Act.<sup>17</sup>

### 3. Covered financial institution

Section 103.194(a)(3) of the proposed rule defines “covered financial institution” with the same definition used in the final rule implementing section 312 of the USA PATRIOT Act,<sup>18</sup> which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- A trust bank or trust company;
- A broker or dealer in securities;
- A futures commission merchant or an introducing broker; or
- A mutual fund.

### B. 103.194(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, LCB, FinCEN expects that a

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<sup>17</sup> See 31 CFR 103.175(d)(2)(ii)-(iv).

<sup>18</sup> See 31 CFR 103.175(f)(1).

covered financial institution would 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 103.194(b)(1) of the proposed rule would prohibit 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, LCB. 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, LCB.

2. Special Due Diligence of Correspondent Accounts to Prohibit Indirect Use

As a corollary to the prohibition on maintaining correspondent accounts directly for LCB, section 103.194(b)(2) would require a covered financial institution to apply special due diligence to its correspondent accounts<sup>19</sup> that is reasonably designed to guard against their indirect use by LCB. At a minimum, that special due diligence must include notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to LCB, that such correspondents may not provide LCB with access to the correspondent account maintained at the covered financial institution. A covered financial institution would, for example, have knowledge that the correspondents provide access to LCB through transaction screening software. A covered financial institution may satisfy this requirement by transmitting the following

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<sup>19</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.

notice to its correspondent account holders that it knows or has reason to know provide services to LCB:

Notice: Pursuant to U.S regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 103.194, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, the Lebanese Canadian Bank SAL or any of its subsidiaries (including, but not limited to, LCB Investments (Holding) SAL, LCB Finance SAL, LCB Estates SAL, LCB Insurance Brokerage House SAL, Dubai-based Tabadul for Shares and Bonds LLC, and Prime Bank Limited of Gambia). The regulations also require us to notify you that you may not provide the Lebanese Canadian Bank SAL or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the Lebanese Canadian Bank SAL or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution for transactions, 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 LCB access to the U.S. financial system. However, FinCEN does not require or expect a covered financial institution to obtain a certification from any of 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 certain of the covered financial institution's correspondent account customers, informing them that they may not provide LCB 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 those correspondent account holders. FinCEN specifically solicits comments on the 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 LCB, 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 LCB as the originator's or beneficiary's financial institution, or otherwise referenced LCB 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. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to screen their correspondent accounts in order to identify any indirect use of such accounts by LCB.

Notifying certain correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by LCB in the manner discussed above would be 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 LCB, 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 LCB must take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder per section 103.194(b)(2)(i)(A) and, 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 LCB, 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 LCB. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions prevent indirect access to LCB, once such indirect access is identified.

### 3. Reporting Not Required

Section 103.194(b)(3) of the proposed rule clarifies that the rule would not 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 those correspondent account holders that the covered financial institution knows or has reason to know

provide services to LCB, that such correspondents may not provide LCB with access to the correspondent account maintained at the covered financial institution.

#### **IV. Request for Comments**

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

1. The form and scope of the notice to certain 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 LCB;
3. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by LCB; and
4. The impact of the proposed special measure upon legitimate transactions with LCB involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons or entities operating in Lebanon.

#### **V. Regulatory Flexibility Act**

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. FinCEN understands that LCB currently maintains few correspondent accounts in the United States.<sup>20</sup> Thus, the prohibition on maintaining such accounts would not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S.

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<sup>20</sup> Bankers Almanac, Lebanese Canadian Bank SAL, June 22, 2010 (<http://www.bankersalmanac.com>).

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 LCB. Thus, the special due diligence that would be required by this rulemaking – *i.e.*, the one-time transmittal of notice to certain correspondent account holders and the screening of transactions to identify any indirect use of correspondent accounts, would not be expected to impose a significant additional economic burden upon small U.S. financial institutions. FinCEN invites comments about the 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 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, D.C. 20503 (or by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov)) with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of

information as required by 31 CFR 103.194 is presented to assist those persons wishing to comment on the information collection.

The collection of information in this proposed rule is in 103.194(b)(2)(i) and 103.194(b)(3)(i). The notification requirement in 103.194(b)(2)(i) would be intended to ensure cooperation from correspondent account holders in denying LCB access to the U.S. financial system. The information required to be maintained by 103.194(b)(3)(i) would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 103.194. The class of financial institutions affected by the notification requirement would be 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.

FinCEN specifically invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the

quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

## **VII. Location in Chapter X**

As discussed in **Federal Register** Notice 75 FR 65806, October 26, 2010, FinCEN will be removing Part 103 of Chapter I of Title 31, Code of Federal Regulations, and adding Parts 1000 to 1099 (“Chapter X”) effective March 1, 2010. As of this effective date, the changes in the present proposed rule, if finalized, would be reorganized according to Chapter X. The planned reorganization will have no substantive effect on the regulatory changes herein. The regulatory changes of this specific rulemaking would be renumbered according to Chapter X as follows:

Section 103.194 would be moved to § 1010.656.

## **VIII. 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, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

## **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 amended 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 § 103.194 under the undesignated center heading “SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS” to read as follows:

#### **§ 103.194 Special measures against the Lebanese Canadian Bank SAL**

- (a) Definitions. For purposes of this section:
  - (1) The Lebanese Canadian Bank SAL means all branches, offices, and subsidiaries of the Lebanese Canadian Bank 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)(1).

- (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, the Lebanese Canadian Bank SAL.
- (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 the Lebanese Canadian Bank SAL. At a minimum, that special due diligence must include:
- (A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to the Lebanese Canadian Bank SAL, that such correspondents may not provide the Lebanese Canadian Bank SAL 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 the Lebanese Canadian Bank SAL, 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 the Lebanese Canadian Bank SAL.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to the Lebanese Canadian Bank SAL, shall take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) and, 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: \_\_\_\_\_

\_\_\_\_\_  
James H. Freis, Jr.  
Director  
Financial Crimes Enforcement Network