

§ 103.185

31 CFR Ch. I (7-1-03 Edition)

other applicable requirement of law or regulation, including title 31 of the United States Code and this part.

LAW ENFORCEMENT ACCESS TO FOREIGN BANK RECORDS

§ 103.185 Summons or subpoena of foreign bank records; Termination of correspondent relationship.

(a) *Definitions.* The definitions in § 103.175 apply to this section.

(b) *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 may 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.

(c) *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 paragraph (a)(2) of

§ 103.177, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(d) *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 paragraph (b) of this section; or

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

(e) *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 (d) of this section.

(f) *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.

[67 FR 60572, Sept. 26, 2002]

APPENDIX A—CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

APPENDIX A TO SUBPART I OF PART 103 – CERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

[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).

This Certification should be completed by any foreign bank that maintains a correspondent account with any U.S. bank or U.S. broker-dealer in securities (a covered financial institution as defined in 31 C.F.R. 103.175(f)). An entity that is not a foreign bank is not required to complete this Certification.

A foreign bank is a bank organized under foreign law and located outside of the United States (see definition at 31 C.F.R. 103.11(o)). A bank includes offices, branches, and agencies of commercial banks or trust companies, private banks, national banks, thrift institutions, credit unions, and other organizations chartered under banking laws and supervised by banking supervisors of any state (see definition at 31 C.F.R. 103.11(c)).*

A Correspondent Account for a foreign bank is any account to receive deposits from, make payments or other disbursements on behalf of a foreign bank, or handle other financial transactions related to the foreign bank.

Special instruction for foreign branches of U.S. banks: A branch or office of a U.S. bank outside the United States is a foreign bank. Such a branch or office is not required to complete this Certification with respect to Correspondent Accounts with U.S. branches and offices of the same U.S. bank.

Special instruction for covering multiple branches on a single Certification: A foreign bank may complete one Certification for its branches and offices outside the United States. The Certification must list all of the branches and offices that are covered and must include the information required in Part C for each branch or office that maintains a Correspondent Account with a Covered Financial Institution. Use attachment sheets as necessary.

A. The undersigned financial institution, _____ (“Foreign Bank”) hereby certifies as follows:

* A “foreign bank” does not include any foreign central bank or monetary authority that functions as a central bank, or any international financial institution or regional development bank formed by treaty or international agreement.

B. Correspondent Accounts Covered by this Certification: Check **one** box.

- This Certification applies to **all** accounts established for Foreign Bank by Covered Financial Institutions.
- This Certification applies to Correspondent Accounts established by _____ (name of Covered Financial Institution(s)) for Foreign Bank.

C. Physical Presence/Regulated Affiliate Status: Check **one** box and complete the blanks.

- Foreign Bank maintains a **physical presence** in any country. That means:
 - Foreign Bank has a place of business at the following street address: _____, where Foreign Bank employs one or more individuals on a full-time basis and maintains operating records related to its banking activities.
 - The above address is in _____ (insert country), where Foreign Bank is authorized to conduct banking activities.
 - Foreign Bank is subject to inspection by _____, (insert Banking Authority), the banking authority that licensed Foreign Bank to conduct banking activities.
- Foreign Bank does not have a physical presence in any country, but Foreign Bank is a **regulated affiliate**. That means:
 - Foreign Bank is an affiliate of a depository institution, credit union, or a foreign bank that maintains a physical presence at the following street address: _____, where it employs one or more persons on a full-time basis and maintains operating records related to its banking activities.
 - The above address is in _____ (insert country), where the depository institution, credit union, or foreign bank is authorized to conduct banking activities.
 - Foreign Bank is subject to supervision by _____, (insert Banking Authority), the same banking authority that regulates the depository institution, credit union, or foreign bank.
- Foreign Bank does **not** have a physical presence in a country and is **not** a regulated affiliate.

D. Indirect Use of Correspondent Accounts: Check box to certify.

- No Correspondent Account maintained by a Covered Financial Institution may be used to indirectly provide banking services to certain foreign banks. Foreign Bank hereby certifies that it does **not** use any Correspondent Account with a Covered Financial Institution to indirectly provide banking services to

any foreign bank that does not maintain a physical presence in any country and that is not a regulated affiliate.

E. Ownership Information: Check box 1 or 2 below, **if applicable.**

- 1. **Form FR Y-7 is on file.** Foreign Bank has filed with the Federal Reserve Board a current Form FR Y-7 and has disclosed its ownership information on Item 4 of Form FR Y-7.
- 2. **Foreign Bank's shares are publicly traded.** Publicly traded means that the shares are traded on an exchange or an organized over-the-counter market that is regulated by a foreign securities authority as defined in section 3(a)(50) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(50)).

If **neither** box 1 or 2 of Part E is checked, complete item 3 below, **if applicable.**

- 3. Foreign Bank has no **owner(s)** except as set forth below. For purposes of this Certification, **owner** means any person who, directly or indirectly, (a) owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of Foreign Bank; or (b) controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of Foreign Bank. 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**.

Name	Address

F. Process Agent: complete the following.

The following individual or entity: _____
 is a resident of the United States at the following street address:
 _____, **and**
 is authorized to accept service of legal process on behalf of Foreign Bank from the

* The same family means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first 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.

Secretary of the Treasury or the Attorney General of the United States pursuant to Section 5318(k) of title 31, United States Code.

G. General

Foreign Bank hereby agrees to notify in writing each Covered Financial Institution at which it maintains any Correspondent Account of any change in facts or circumstances reported in this Certification. Notification shall be given within 30 calendar days of such change.

Foreign Bank understands that each Covered Financial Institution 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. Foreign Bank further understands that the statements contained in this Certification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments' and agencies' governmental functions.

I, _____ (name of signatory), certify that I have read and understand this Certification, that the statements made in this Certification are complete and correct, and that I am authorized to execute this Certification on behalf of Foreign Bank.

[Name of Foreign Bank]

[Signature]

[Printed Name]

[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____

Title: _____

For: _____

[Name of Covered Financial Institution]

Date: _____

APPENDIX B—RECERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS

**APPENDIX B TO SUBPART I OF PART 103 –
RECERTIFICATION REGARDING CORRESPONDENT ACCOUNTS FOR FOREIGN BANKS**

[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, _____
 (“Foreign Bank”), hereby certifies as follows:

1. Foreign Bank has executed a Certification dated _____, 20__ (the “Certification”) relating to one or more Correspondent Accounts maintained by one or more Covered Financial Institutions for Foreign Bank. Terms defined in the Certification have the same meaning in this Recertification.

2. The information contained in the Certification:

- remains true and correct.
- is revised by the information provided with this Recertification (attach a statement describing the information that is no longer correct and stating the correct information).

Foreign Bank understands that each Covered Financial Institution at which it maintains a Correspondent Account may provide a copy of this Recertification to the Secretary of the Treasury and the Attorney General of the United States. Foreign Bank further understands that the statements contained in this Recertification may be transmitted to one or more departments or agencies of the United States of America for the purpose of fulfilling such departments’ and agencies’ governmental functions.

I, _____ (name of signatory), certify that I have read and understand this Recertification, that the statements made in this Recertification are complete and correct, and that I am authorized to execute this Recertification on behalf of Foreign Bank.

[Name of Foreign Bank]

[Signature]

[Title]

Executed on this _____ day of _____, 200__.

Received and reviewed by:

Name: _____

Title: _____

For: _____

[Name of Covered Financial Institution]

Date: _____

[67 FR 60573, Sept. 26, 2002]

APPENDIX A TO PART 103—
ADMINISTRATIVE RULINGS

88-1 (June 22, 1988)

Issue

What action should a financial institution take when it believes that it is being misused by persons who are intentionally structuring transactions to evade the reporting requirement or engaging in transactions that may involve illegal activity such as drug trafficking, tax evasion or money laundering?

Facts

A teller at X State Bank notices that the same person comes into the bank each day and purchases, with cash, between \$9,000 and \$9,900 in cashier's checks. Even when aggregated, these purchases never exceed \$10,000 during any one business day. The teller also notices that this person tries to go to different tellers for each transaction and is very reluctant to provide information about his frequent transactions or other information such as name, address, etc. Likewise, the payees on these cashier's checks all have

common names such as "John Smith" or "Mary Jones." The teller informs the bank's compliance officer that she believes that this person is structuring his transactions in order to evade the reporting requirements under the Bank Secrecy Act. X State Bank wants to know what actions it should take in this situation or in any other situation where a transaction or a person conducting a transaction appears suspicious.

Law and Analysis

As it appears that the person may be intentionally structuring the transactions to evade the Bank Secrecy Act reporting requirements, X State Bank should immediately telephone the local office of the Internal Revenue Service ("IRS") and speak to a Special Agent in the IRS Criminal Investigation Division, or should call 1-800-BSA-CTRS, where his call will be referred to a Special Agent.

Any information provided to the IRS should be given within the confines of §1103(c) of the Right to Financial Privacy Act. 12 U.S.C. 3401-3422. Section 1103(c) of that Act permits a financial institution to