

Subpart I—Anti-Money Laundering Programs

ANTI-MONEY LAUNDERING PROGRAMS

§ 103.120 Anti-money laundering program requirements for financial institutions regulated by a Federal functional regulator or a self-regulatory organization, and casinos.

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

(1) *Financial institution* means a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) that is subject to regulation by a Federal functional regulator or a self-regulatory organization.

(2) *Federal functional regulator* means:

- (i) The Board of Governors of the Federal Reserve System;
- (ii) The Office of the Comptroller of the Currency;
- (iii) The Board of Directors of the Federal Deposit Insurance Corporation;
- (iv) The Office of Thrift Supervision;
- (v) The National Credit Union Administration;
- (vi) The Securities and Exchange Commission; or
- (vii) The Commodity Futures Trading Commission.

(3) *Self-regulatory organization:*

(i) Shall have the same meaning as provided in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)); and

(ii) Means a “registered entity” or a “registered futures association” as provided in section 1a(29) or 17, respectively, of the Commodity Exchange Act (7 U.S.C. 1a(29), 21).

(4) *Casino* has the same meaning as provided in § 103.11(n)(5).

(b) *Requirements for financial institutions regulated only by a Federal functional regulator, including banks, savings associations, and credit unions.* A financial institution regulated by a Federal functional regulator that is not subject to the regulations of a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains an anti-money laundering program that complies with the requirements of §§ 103.176 and 103.178 and the regulation of its Federal functional regulator governing such programs.

(c) *Requirements for financial institutions regulated by a self-regulatory organization, including registered securities broker-dealers and futures commission merchants.* A financial institution regulated by a self-regulatory organization shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if:

(1) The financial institution complies with the requirements of §§ 103.176 and 103.178 and any applicable regulation of its Federal functional regulator governing the establishment and implementation of anti-money laundering programs; and

(2)(i) The financial institution implements and maintains an anti-money laundering program that complies with the rules, regulations, or requirements of its self-regulatory organization governing such programs; and

(ii) The rules, regulations, or requirements of the self-regulatory organization have been approved, if required, by the appropriate Federal functional regulator.

(d) *Requirements for casinos.* A casino shall be deemed to satisfy the requirements of 31 U.S.C. 5318(h)(1) if it implements and maintains a compliance program described in § 103.64.

[67 FR 21113, Apr. 29, 2002, as amended at 71 FR 512, Jan. 4, 2006]

§ 103.121 Customer Identification Programs for banks, savings associations, credit unions, and certain non-Federally regulated banks.

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

(1)(i) *Account* means a formal banking relationship established to provide or engage in services, dealings, or other financial transactions including a deposit account, a transaction or asset account, a credit account, or other extension of credit. *Account* also includes a relationship established to provide a safety deposit box or other safekeeping services, or cash management, custodian, and trust services.

(ii) *Account* does not include:

(A) A product or service where a formal banking relationship is not established with a person, such as check-cashing, wire transfer, or sale of a check or money order;

(B) An account that the bank acquires through an acquisition, merger, purchase of assets, or assumption of liabilities; or

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(C) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Bank* means:

(i) A bank, as that term is defined in § 103.11(c), that is subject to regulation by a Federal functional regulator; and

(ii) A credit union, private bank, and trust company, as set forth in § 103.11(c), that does not have a Federal functional regulator.

(3)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the bank, provided that the bank has a reasonable belief that it knows the true identity of the person.

(4) *Federal functional regulator* is defined at § 103.120(a)(2).

(5) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(6) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(7) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership, or trust), that is established or organized under the laws of a State or the United States.

(8) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) *Customer Identification Program: minimum requirements*—(1) *In general*. A bank must implement a written Customer Identification Program (CIP) appropriate for its size and type of business that, at a minimum, includes each

of the requirements of paragraphs (b)(1) through (5) of this section. If a bank is required to have an anti-money laundering compliance program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1), then the CIP must be a part of the anti-money laundering compliance program. Until such time as credit unions, private banks, and trust companies without a Federal functional regulator are subject to such a program, their CIPs must be approved by their boards of directors.

(2) *Identity verification procedures*. The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer. These procedures must be based on the bank's assessment of the relevant risks, including those presented by the various types of accounts maintained by the bank, the various methods of opening accounts provided by the bank, the various types of identifying information available, and the bank's size, location, and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required*—(A) *In general*. The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of

business, local office, or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the bank must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening the account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(C) *Credit card accounts.* In connection with a customer who opens a credit card account, a bank may obtain the identifying information about a customer required under paragraph (b)(2)(i)(A) by acquiring it from a third-party source prior to extending credit to the customer.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the bank will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a bank relying on documents, the CIP must contain procedures that set

forth the documents that the bank will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a bank relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the bank will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The bank's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the bank is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the bank; and where the bank is otherwise presented with circumstances that increase the risk that the bank will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the bank's risk assessment of a new account opened by a customer that is not an individual, the bank will obtain information about individuals with authority or control over such account, including signatories, in order to verify the customer's identity. This verification method applies only when the bank cannot verify

the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the bank cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the bank should not open an account;

(B) The terms under which a customer may use an account while the bank attempts to verify the customer's identity;

(C) When the bank should close an account, after attempts to verify a customer's identity have failed; and

(D) When the bank should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under the procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance and, if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The bank must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed or, in the case of credit card accounts, five years after the account is closed or becomes dormant. The bank must retain the information in paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the bank to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures must also require the bank to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing bank customers with adequate notice that the bank is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the bank generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a bank may post a notice in the lobby or on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a bank may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures

specifying when a bank will rely on the performance by another financial institution (including an affiliate) of any procedures of the bank's CIP, with respect to any customer of the bank that is opening, or has opened, an account or has established a similar formal banking or business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

(c) *Exemptions.* The appropriate Federal functional regulator, with the concurrence of the Secretary, may, by order or regulation, exempt any bank or type of account from the requirements of this section. The Federal functional regulator and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and with safe and sound banking, and may consider other appropriate factors. The Secretary will make these determinations for any bank or type of account that is not subject to the authority of a Federal functional regulator.

(d) *Other requirements unaffected.* Nothing in this section relieves a bank of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25109, May 9, 2003]

§ 103.122 Customer identification programs for broker-dealers.

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

(1)(i) *Account* means a formal relationship with a broker-dealer established to effect transactions in securi-

ties, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral.

(ii) *Account* does not include:

(A) An account that the broker-dealer acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Broker-dealer* means a person registered or required to be registered as a broker or dealer with the Commission under the Securities Exchange Act of 1934 (15 U.S.C 77a *et seq.*), except persons who register pursuant to 15 U.S.C 78o(b)(11).

(3) *Commission* means the United States Securities and Exchange Commission.

(4)(i) *Customer* means: (A) A person that opens a new account; and (B) an individual who opens a new account for: (1) An individual who lacks legal capacity; or (2) an entity that is not a legal person.

(ii) *Customer* does not include: (A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator; (B) a person described in §103.22(d)(2)(ii) through (iv); or (C) a person that has an existing account with the broker-dealer, provided the broker-dealer has a reasonable belief that it knows the true identity of the person.

(5) *Federal functional regulator* is defined at §103.120(a)(2).

(6) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means: (i) A United States citizen; or (ii) a person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(9) *Non-U.S. person* means a person that is not a U.S. person.

(b) *Customer identification program: minimum requirements*—(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (“CIP”) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of the broker-dealer’s anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the broker-dealer to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the broker-dealer’s assessment of the relevant risks, including those presented by the various types of accounts maintained by the broker-dealer, the various methods of opening accounts provided by the broker-dealer, the various types of identifying information available and the broker-dealer’s size, location and customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i)(A) *Customer information required.* The CIP must contain procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, the broker-dealer must obtain, at a minimum, the following information prior to opening an account:

(1) Name;

(2) Date of birth, for an individual;

(3) Address, which shall be: (i) For an individual, a residential or business street address; (ii) for an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or (iii) for a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be: (i) For a U.S. person, a taxpayer identification number; or (ii) for a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the broker-dealer must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer’s account is opened. The procedures must describe when the broker-dealer will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a broker-dealer relying on documents, the CIP must contain procedures that set forth the documents the broker-dealer will use. These documents may include:

(1) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver’s license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a broker-dealer relying on non-documentary methods, the CIP must contain procedures that set forth the non-documentary methods the broker-dealer will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The broker-dealer's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the broker-dealer is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the broker-dealer; and where the broker-dealer is otherwise presented with circumstances that increase the risk that the broker-dealer will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the broker-dealer's risk assessment of a new account opened by a customer that is not an individual, the broker-dealer will obtain information about individuals with authority or control over such account. This verification method applies only when the broker-dealer cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the broker-dealer cannot form a reasonable belief

that it knows the true identity of a customer. These procedures should describe:

(A) When the broker-dealer should not open an account;

(B) The terms under which a customer may conduct transactions while the broker-dealer attempts to verify the customer's identity;

(C) When the broker-dealer should close an account after attempts to verify a customer's identity fail; and

(D) When the broker-dealer should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section,

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The broker-dealer must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C) and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 240.17a-4.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected terrorists or terrorist organizations issued by any Federal government

agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the broker-dealer to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the broker-dealer to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the broker-dealer is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the broker-dealer generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a broker-dealer may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of oral or written notice.

(iii) *Sample notice.* If appropriate, a broker-dealer may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES
FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the broker-dealer will rely on the performance by another financial institution (including an affiliate) of any procedures of the broker-dealer's CIP, with respect to any customer of the broker-dealer that is opening an account or has established

an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the broker-dealer's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o or 15 U.S.C. 78o-4 or any type of account from the requirements of this section. The Secretary, with the concurrence of the Commission, may exempt any broker-dealer that registers with the Commission pursuant to 15 U.S.C. 78o-5. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a broker-dealer of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25129, May 9, 2003]

§ 103.123 Customer identification programs for futures commission merchants and introducing brokers.

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

(1)(i) *Account* means a formal relationship with a futures commission merchant, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on

any contract of sale of a commodity for future delivery, or options on a commodity.

(ii) *Account* does not include:

(A) An account that the futures commission merchant acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2) *Commission* means the United States Commodity Futures Trading Commission.

(3) *Commodity* means any good, article, service, right, or interest described in Section 1a(4) of the Commodity Exchange Act (7 U.S.C. 1a(4)).

(4) *Contract of sale* means any sale, agreement of sale or agreement to sell as described in Section 1a(7) of the Commodity Exchange Act (7 U.S.C. 1a(7)).

(5)(i) *Customer* means:

(A) A person that opens a new account with a futures commission merchant; and

(B) An individual who opens a new account with a futures commission merchant for:

(1) An individual who lacks legal capacity; or

(2) An entity that is not a legal person.

(ii) *Customer* does not include:

(A) A financial institution regulated by a Federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in §103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account, provided the futures commission merchant or introducing broker has a reasonable belief that it knows the true identity of the person.

(iii) When an account is introduced to a futures commission merchant by an introducing broker, the person or individual opening the account shall be deemed to be a *customer* of both the futures commission merchant and the introducing broker for the purposes of this section.

(6) *Federal functional regulator* is defined at §103.120(a)(2).

(7) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(8) *Futures commission merchant* means any person registered or required to be registered as a futures commission merchant with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(9) *Introducing broker* means any person registered or required to be registered as an introducing broker with the Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to Section 4f(a)(2) of the Commodity Exchange Act (7 U.S.C. 6f(a)(2)).

(10) *Option* means an agreement, contract or transaction described in Section 1a(26) of the Commodity Exchange Act (7 U.S.C. 1a(26)).

(11) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and the Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(12) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust) that is established or organized under the laws of a State or the United States.

(13) *Non-U.S. person* means a person that is not a *U.S. person*.

(b) *Customer identification program: minimum requirements*—(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (b)(5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's anti-money laundering compliance program required under 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable each futures commission merchant and introducing broker to form a

reasonable belief that it knows the true identity of each customer. The procedures must be based on the futures commission merchant's or introducing broker's assessment of the relevant risks, including those presented by the various types of accounts maintained, the various methods of opening accounts, the various types of identifying information available, and the futures commission merchant's or introducing broker's size, location and customer base. At a minimum, these procedures must contain the elements described in paragraph (b)(2) of this section.

(i)(A) *Customer information required.* The CIP must include procedures for opening an account that specify identifying information that will be obtained from each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, each futures commission merchant and introducing broker must obtain, at a minimum, the following information prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street address of a next of kin or another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identifica-

tion number, the futures commission merchant or introducing broker must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a customer that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the customer opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of each customer, using information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time before or after the customer's account is opened. The procedures must describe when the futures commission merchant or introducing broker will use documents, non-documentary methods, or a combination of both methods, as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a futures commission merchant or introducing broker relying on documents, the CIP must contain procedures that set forth the documents the futures commission merchant or introducing broker will use. These documents may include:

(1) For an individual, an unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or a trust instrument.

(B) *Verification through non-documentary methods.* For a futures commission merchant or introducing broker relying on non-documentary methods, the

CIP must contain procedures that set forth the non-documentary methods the futures commission merchant or introducing broker will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; or obtaining a financial statement.

(2) The futures commission merchant's or introducing broker's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the futures commission merchant or introducing broker is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person at the futures commission merchant or introducing broker; and where the futures commission merchant or introducing broker is otherwise presented with circumstances that increase the risk that the futures commission merchant or introducing broker will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the futures commission merchant's or introducing broker's risk assessment of a new account opened by a customer that is not an individual, the futures commission merchant or introducing broker will obtain information about individuals with authority or control over such account in order to verify the customer's identity. This verification method applies only when the futures commission merchant or introducing broker cannot verify the customer's true identity after using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the futures commission merchant or introducing broker cannot form a reasonable belief

that it knows the true identity of a customer. These procedures should describe:

(A) When an account should not be opened;

(B) The terms under which a customer may conduct transactions while the futures commission merchant or introducing broker attempts to verify the customer's identity;

(C) When an account should be closed after attempts to verify a customer's identity have failed; and

(D) When the futures commission merchant or introducing broker should file a Suspicious Activity Report in accordance with applicable law and regulation.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under procedures implementing paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of a customer under paragraphs (b)(2)(ii)(B) and (C) of this section; and

(D) A description of the resolution of each substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* Each futures commission merchant and introducing broker must retain the records made under paragraph (b)(3)(i)(A) of this section for five years after the account is closed and the records made under paragraphs (b)(3)(i)(B), (C), and (D) of this section for five years after the record is made. In all other respects, the records must be maintained pursuant to the provisions of 17 CFR 1.31.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether a customer appears on any list of known or suspected

terrorists or terrorist organizations issued by any Federal government agency and designated as such by Treasury in consultation with the Federal functional regulators. The procedures must require the futures commission merchant or introducing broker to make such a determination within a reasonable period of time after the account is opened, or earlier if required by another Federal law or regulation or Federal directive issued in connection with the applicable list. The procedures also must require the futures commission merchant or introducing broker to follow all Federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing customers with adequate notice that the futures commission merchant or introducing broker is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the futures commission merchant or introducing broker generally describes the identification requirements of this section and provides such notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending upon the manner in which the account is opened, a futures commission merchant or introducing broker may post a notice in the lobby or on its Web site, include the notice on its account applications or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a futures commission merchant or introducing broker may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES
FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on another financial institution.* The CIP may include procedures specifying when the futures commission merchant or introducing broker will rely on the performance by another financial institution (including an affiliate) of any procedures of its CIP, with respect to any customer of the futures commission merchant or introducing broker that is opening an account, or has established an account or similar business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h), and is regulated by a Federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its anti-money laundering program, and that it will perform (or its agent will perform) specified requirements of the futures commission merchant's or introducing broker's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may by order or regulation exempt any futures commission merchant or introducing broker that registers with the Commission or any type of account from the requirements of this section. In issuing such exemptions, the Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act, and in the public interest, and may consider other necessary and appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a futures commission merchant or introducing broker of its obligation to comply with any other provision of this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25160, May 9, 2003]

§ 103.125 Anti-money laundering programs for money services businesses.

(a) Each money services business, as defined by §103.11(uu), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

(b) The program shall be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the money services business.

(c) The program shall be in writing, and a money services business shall make copies of the anti-money laundering program available for inspection to the Department of the Treasury upon request.

(d) At a minimum, the program shall:

(1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with this part.

(i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of this part including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems.

(iii) A person that is a money services business solely because it is an agent for another money services business as set forth in §103.41(a)(2), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the re-

quirements set forth in this section, and nothing in this paragraph (d)(1) relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program.

(2) Designate a person to assure day to day compliance with the program and this part. The responsibilities of such person shall include assuring that:

(i) The money services business properly files reports, and creates and retains records, in accordance with applicable requirements of this part;

(ii) The compliance program is updated as necessary to reflect current requirements of this part, and related guidance issued by the Department of the Treasury; and

(iii) The money services business provides appropriate training and education in accordance with paragraph (d)(3) of this section.

(3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under this part.

(4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in paragraph (d)(2) of this section.

(e) *Effective date.* A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of July 24, 2002, and the end of the 90-day period beginning on the day following the date the business is established.

[67 FR 21116, Apr. 29, 2002]

§ 103.130 Anti-money laundering programs for mutual funds.

(a) For purposes of this section mutual fund means an “investment company” (as that term is defined in section 3 of the Investment Company Act

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(15 U.S.C. (15 U.S.C. 80a-3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) registered or required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8).

(b) Effective July 24, 2002, each mutual fund shall develop and implement a written anti-money laundering program reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve and monitor compliance with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311, et seq.), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each mutual fund’s anti-money laundering program must be approved in writing by its board of directors or trustees. A mutual fund shall make its anti-money laundering program available for inspection by the Commission.

(c) The anti-money laundering program shall at a minimum:

(1) Establish and implement policies, procedures, and internal controls reasonably designed to prevent the mutual fund from being used for money laundering or the financing of terrorist activities and to achieve compliance with the applicable provisions of the Bank Secrecy Act and the implementing regulations thereunder;

(2) Provide for independent testing for compliance to be conducted by the mutual fund’s personnel or by a qualified outside party;

(3) Designate a person or persons responsible for implementing and monitoring the operations and internal controls of the program; and

(4) Provide ongoing training for appropriate persons.

[67 FR 21121, Apr. 29, 2002, as amended at 75 FR 19245, Apr. 14, 2010]

§ 103.131 Customer identification programs for mutual funds.

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

(1)(i) *Account* means any contractual or other business relationship between a person and a mutual fund established to effect transactions in securities

issued by the mutual fund, including the purchase or sale of securities.

(ii) *Account* does not include:

(A) An account that a mutual fund acquires through any acquisition, merger, purchase of assets, or assumption of liabilities; or

(B) An account opened for the purpose of participating in an employee benefit plan established under the Employee Retirement Income Security Act of 1974.

(2)(i) *Customer* means:

(A) A person that opens a new account; and

(B) An individual who opens a new account for:

(1) An individual who lacks legal capacity, such as a minor; or

(2) An entity that is not a legal person, such as a civic club.

(ii) *Customer* does not include:

(A) A financial institution regulated by a federal functional regulator or a bank regulated by a state bank regulator;

(B) A person described in § 103.22(d)(2)(ii) through (iv); or

(C) A person that has an existing account with the mutual fund, provided that the mutual fund has a reasonable belief that it knows the true identity of the person.

(3) *Federal functional regulator* is defined at § 103.120(a)(2).

(4) *Financial institution* is defined at 31 U.S.C. 5312(a)(2) and (c)(1).

(5) *Mutual fund* means an “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a-3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) that is registered or is required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8).

(6) *Non-U.S. person* means a person that is not a *U.S. person*.

(7) *Taxpayer identification number* is defined by section 6109 of the Internal Revenue Code of 1986 (26 U.S.C. 6109) and Internal Revenue Service regulations implementing that section (*e.g.*, social security number or employer identification number).

(8) *U.S. person* means:

(i) A United States citizen; or

(ii) A person other than an individual (such as a corporation, partnership or trust), that is established or organized under the laws of a State or the United States.

(b) *Customer identification program: minimum requirements*—(1) *In general.* A mutual fund must implement a written Customer Identification Program (“CIP”) appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (b)(1) through (5) of this section. The CIP must be a part of the mutual fund’s anti-money laundering program required under the regulations implementing 31 U.S.C. 5318(h).

(2) *Identity verification procedures.* The CIP must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the mutual fund to form a reasonable belief that it knows the true identity of each customer. The procedures must be based on the mutual fund’s assessment of the relevant risks, including those presented by the manner in which accounts are opened, fund shares are distributed, and purchases, sales and exchanges are effected, the various types of accounts maintained by the mutual fund, the various types of identifying information available, and the mutual fund’s customer base. At a minimum, these procedures must contain the elements described in this paragraph (b)(2).

(i) *Customer information required*—(A) *In general.* The CIP must contain procedures for opening an account that specify the identifying information that will be obtained with respect to each customer. Except as permitted by paragraph (b)(2)(i)(B) of this section, a mutual fund must obtain, at a minimum, the following information prior to opening an account:

- (1) Name;
- (2) Date of birth, for an individual;
- (3) Address, which shall be:

(i) For an individual, a residential or business street address;

(ii) For an individual who does not have a residential or business street address, an Army Post Office (APO) or Fleet Post Office (FPO) box number, or the residential or business street ad-

dress of next of kin or of another contact individual; or

(iii) For a person other than an individual (such as a corporation, partnership, or trust), a principal place of business, local office or other physical location; and

(4) Identification number, which shall be:

(i) For a U.S. person, a taxpayer identification number; or

(ii) For a non-U.S. person, one or more of the following: a taxpayer identification number; passport number and country of issuance; alien identification card number; or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

NOTE TO PARAGRAPH (b)(2)(i)(A)(4)(ii): When opening an account for a foreign business or enterprise that does not have an identification number, the mutual fund must request alternative government-issued documentation certifying the existence of the business or enterprise.

(B) *Exception for persons applying for a taxpayer identification number.* Instead of obtaining a taxpayer identification number from a customer prior to opening an account, the CIP may include procedures for opening an account for a person that has applied for, but has not received, a taxpayer identification number. In this case, the CIP must include procedures to confirm that the application was filed before the person opens the account and to obtain the taxpayer identification number within a reasonable period of time after the account is opened.

(ii) *Customer verification.* The CIP must contain procedures for verifying the identity of the customer, using the information obtained in accordance with paragraph (b)(2)(i) of this section, within a reasonable time after the account is opened. The procedures must describe when the mutual fund will use documents, non-documentary methods, or a combination of both methods as described in this paragraph (b)(2)(ii).

(A) *Verification through documents.* For a mutual fund relying on documents, the CIP must contain procedures that set forth the documents that the mutual fund will use. These documents may include:

(1) For an individual, unexpired government-issued identification evidencing nationality or residence and bearing a photograph or similar safeguard, such as a driver's license or passport; and

(2) For a person other than an individual (such as a corporation, partnership, or trust), documents showing the existence of the entity, such as certified articles of incorporation, a government-issued business license, a partnership agreement, or trust instrument.

(B) *Verification through non-documentary methods.* For a mutual fund relying on non-documentary methods, the CIP must contain procedures that describe the non-documentary methods the mutual fund will use.

(1) These methods may include contacting a customer; independently verifying the customer's identity through the comparison of information provided by the customer with information obtained from a consumer reporting agency, public database, or other source; checking references with other financial institutions; and obtaining a financial statement.

(2) The mutual fund's non-documentary procedures must address situations where an individual is unable to present an unexpired government-issued identification document that bears a photograph or similar safeguard; the mutual fund is not familiar with the documents presented; the account is opened without obtaining documents; the customer opens the account without appearing in person; and where the mutual fund is otherwise presented with circumstances that increase the risk that the mutual fund will be unable to verify the true identity of a customer through documents.

(C) *Additional verification for certain customers.* The CIP must address situations where, based on the mutual fund's risk assessment of a new account opened by a customer that is not an individual, the mutual fund will obtain information about individuals with authority or control over such account, including persons authorized to effect transactions in the shareholder of record's account, in order to verify the customer's identity. This verification method applies only when

the mutual fund cannot verify the customer's true identity using the verification methods described in paragraphs (b)(2)(ii)(A) and (B) of this section.

(iii) *Lack of verification.* The CIP must include procedures for responding to circumstances in which the mutual fund cannot form a reasonable belief that it knows the true identity of a customer. These procedures should describe:

(A) When the mutual fund should not open an account;

(B) The terms under which a customer may use an account while the mutual fund attempts to verify the customer's identity;

(C) When the mutual fund should file a Suspicious Activity Report in accordance with applicable law and regulation; and

(D) When the mutual fund should close an account, after attempts to verify a customer's identity have failed.

(3) *Recordkeeping.* The CIP must include procedures for making and maintaining a record of all information obtained under paragraph (b) of this section.

(i) *Required records.* At a minimum, the record must include:

(A) All identifying information about a customer obtained under paragraph (b)(2)(i) of this section;

(B) A description of any document that was relied on under paragraph (b)(2)(ii)(A) of this section noting the type of document, any identification number contained in the document, the place of issuance, and if any, the date of issuance and expiration date;

(C) A description of the methods and the results of any measures undertaken to verify the identity of the customer under paragraph (b)(2)(ii)(B) or (C) of this section; and

(D) A description of the resolution of any substantive discrepancy discovered when verifying the identifying information obtained.

(ii) *Retention of records.* The mutual fund must retain the information in paragraph (b)(3)(i)(A) of this section for five years after the date the account is closed. The mutual fund must retain the information in paragraphs

(b)(3)(i)(B), (C), and (D) of this section for five years after the record is made.

(4) *Comparison with government lists.* The CIP must include procedures for determining whether the customer appears on any list of known or suspected terrorists or terrorist organizations issued by any federal government agency and designated as such by the Department of the Treasury in consultation with the federal functional regulators. The procedures must require the mutual fund to make such a determination within a reasonable period of time after the account is opened, or earlier, if required by another federal law or regulation or federal directive issued in connection with the applicable list. The procedures must also require the mutual fund to follow all federal directives issued in connection with such lists.

(5)(i) *Customer notice.* The CIP must include procedures for providing mutual fund customers with adequate notice that the mutual fund is requesting information to verify their identities.

(ii) *Adequate notice.* Notice is adequate if the mutual fund generally describes the identification requirements of this section and provides the notice in a manner reasonably designed to ensure that a customer is able to view the notice, or is otherwise given notice, before opening an account. For example, depending on the manner in which the account is opened, a mutual fund may post a notice on its website, include the notice on its account applications, or use any other form of written or oral notice.

(iii) *Sample notice.* If appropriate, a mutual fund may use the following sample language to provide notice to its customers:

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

(6) *Reliance on other financial institutions.* The CIP may include procedures specifying when a mutual fund will rely on the performance by another financial institution (including an affiliate) of any procedures of the mutual fund's CIP, with respect to any customer of the mutual fund that is opening, or has opened, an account or has established a similar formal business relationship with the other financial institution to provide or engage in services, dealings, or other financial transactions, provided that:

(i) Such reliance is reasonable under the circumstances;

(ii) The other financial institution is subject to a rule implementing 31 U.S.C. 5318(h) and is regulated by a federal functional regulator; and

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its anti-money laundering program, and that it (or its agent) will perform the specific requirements of the mutual fund's CIP.

(c) *Exemptions.* The Commission, with the concurrence of the Secretary, may, by order or regulation, exempt any mutual fund or type of account from the requirements of this section. The Commission and the Secretary shall consider whether the exemption is consistent with the purposes of the Bank Secrecy Act and is in the public interest, and may consider other appropriate factors.

(d) *Other requirements unaffected.* Nothing in this section relieves a mutual fund of its obligation to comply with any other provision in this part, including provisions concerning information that must be obtained, verified, or maintained in connection with any account or transaction.

[68 FR 25147, May 9, 2003]

§ 103.135 Anti-money laundering programs for operators of credit card systems.

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

(1) *Operator of a credit card system* means any person doing business in the United States that operates a system for clearing and settling transactions in which the operator's credit card, whether acting as a credit or debit

card, is used to purchase goods or services or to obtain a cash advance. To fall within this definition, the operator must also have authorized another person (whether located in the United States or not) to be an issuing or acquiring institution for the operator's credit card.

(2) *Issuing institution* means a person authorized by the operator of a credit card system to issue the operator's credit card.

(3) *Acquiring institution* means a person authorized by the operator of a credit card system to contract, directly or indirectly, with merchants or other persons to process transactions, including cash advances, involving the operator's credit card.

(4) *Operator's credit card* means a credit card capable of being used in the United States that:

(i) Has been issued by an issuing institution; and

(ii) Can be used in the operator's credit card system.

(5) *Credit card* has the same meaning as in 15 U.S.C. 1602(k). It includes charge cards as defined in 12 CFR 226.2(15).

(6) *Foreign bank* means any organization that is organized under the laws of a foreign country; engages in the business of banking; is recognized as a bank by the bank supervisory or monetary authority of the country of its organization or the country of its principal banking operations; and receives deposits in the regular course of its business. 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 U.S. Virgin Islands.

(ii) The term foreign bank does not include:

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

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

(b) *Anti-money laundering program requirement*. Effective July 24, 2002, each operator of a credit card system shall develop and implement a written anti-money laundering program reasonably

designed to prevent the operator of a credit card system from being used to facilitate money laundering and the financing of terrorist activities. The program must be approved by senior management. Operators of credit card systems must make their anti-money laundering programs available to the Department of the Treasury or the appropriate Federal regulator for review.

(c) *Minimum requirements*. At a minimum, the program must:

(1) Incorporate policies, procedures, and internal controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering or terrorist financing risk assessment, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities;

(ii) For purposes of making the risk assessment required by paragraph (c)(1)(i) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such person to serve as an issuing or acquiring institution:

(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in 31 CFR 104.10(e) and (j);

(B) A person appearing on the Specially Designated Nationals List issued by Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a jurisdiction whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371;

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841, et seq.) or the International Banking Act (12 U.S.C.

3101, et seq.) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special measures due to money laundering concerns;

(iii) That the operator is in compliance with all applicable provisions of subchapter II of chapter 53 of title 31, United States Code and this part;

(2) Designate a compliance officer who will be responsible for assuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in risk factors or the risk assessment, current requirements of part 103, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section;

(3) Provide for education and training of appropriate personnel concerning their responsibilities under the program; and

(4) Provide for an independent audit to monitor and maintain an adequate program. The scope and frequency of the audit shall be commensurate with the risks posed by the persons authorized to issue or accept the operator's credit card. Such audit may be conducted by an officer or employee of the operator, so long as the reviewer is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

[67 FR 21126, Apr. 29, 2002]

§ 103.137 Anti-money laundering programs for insurance companies.

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

(1) *Annuity contract* means any agreement between the insurer and the contract owner whereby the insurer promises to pay out a fixed or variable income stream for a period of time.

(2) *Bank* has the same meaning as provided in §103.11(c).

(3) *Broker-dealer in securities* has the same meaning as provided in §103.11(f).

(4) *Covered product* means:

(i) A permanent life insurance policy, other than a group life insurance policy;

(ii) An annuity contract, other than a group annuity contract; and

(iii) Any other insurance product with features of cash value or investment.

(5) *Group annuity contract* means a master contract providing annuities to a group of persons under a single contract.

(6) *Group life insurance policy* means any life insurance policy under which a number of persons and their dependents, if appropriate, are insured under a single policy.

(7) *Insurance agent* means a sales and/or service representative of an insurance company. The term "insurance agent" encompasses any person that sells, markets, distributes, or services an insurance company's covered products, including, but not limited to, a person who represents only one insurance company, a person who represents more than one insurance company, and a bank or broker-dealer in securities that sells any covered product of an insurance company.

(8) *Insurance broker* means a person who, by acting as the customer's representative, arranges and/or services covered products on behalf of the customer.

(9) *Insurance company or insurer.* (i) Except as provided in paragraph (a)(9)(ii) of this section, the term "insurance company" or "insurer" means any person engaged within the United States as a business in the issuing or underwriting of any covered product.

(ii) The term "insurance company" or "insurer" does not include an insurance agent or insurance broker.

(10) *Permanent life insurance policy* means an agreement that contains a cash value or investment element and that obligates the insurer to indemnify or to confer a benefit upon the insured or beneficiary to the agreement contingent upon the death of the insured.

(11) *Person* has the same meaning as provided in §103.11(z).

(12) *United States* has the same meaning as provided in §103.11(nn).

(b) *Anti-money laundering program requirements for insurance companies.* Not later than May 2, 2006, each insurance company shall develop and implement a written anti-money laundering program applicable to its covered products that is reasonably designed to prevent the insurance company from being used to facilitate money laundering or the financing of terrorist activities. The program must be approved by senior management. An insurance company shall make a copy of its anti-money laundering program available to the Department of the Treasury, the Financial Crimes Enforcement Network, or their designee upon request.

(c) *Minimum requirements.* At a minimum, the program required by paragraph (b) of this section shall:

(1) Incorporate policies, procedures, and internal controls based upon the insurance company's assessment of the money laundering and terrorist financing risks associated with its covered products. Policies, procedures, and internal controls developed and implemented by an insurance company under this section shall include provisions for complying with the applicable requirements of subchapter II of chapter 53 of title 31, United States Code and this part, integrating the company's insurance agents and insurance brokers into its anti-money laundering program, and obtaining all relevant customer-related information necessary for an effective anti-money laundering program.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively, including monitoring compliance by the company's insurance agents and insurance brokers with their obligations under the program;

(ii) The anti-money laundering program is updated as necessary; and

(iii) Appropriate persons are educated and trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going training of appropriate persons concerning their responsibilities under the program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company.

(4) Provide for independent testing to monitor and maintain an adequate program, including testing to determine compliance of the company's insurance agents and insurance brokers with their obligations under the program. The scope and frequency of the testing shall be commensurate with the risks posed by the insurance company's covered products. Such testing may be conducted by a third party or by any officer or employee of the insurance company, other than the person designated in paragraph (c)(2) of this section.

(d) *Anti-money laundering program requirements for insurance companies registered or required to register with the Securities and Exchange Commission as broker-dealers in securities.* An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities shall be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an anti-money laundering program pursuant to §103.120 and complies with such program.

(e) *Compliance.* Compliance with this section shall be examined by the Department of the Treasury, through the Financial Crimes Enforcement Network or its delegees, under the terms of the Bank Secrecy Act. Failure to comply with the requirements of this section may constitute a violation of the Bank Secrecy Act and of this part.

[70 FR 66760, Nov. 3, 2005]

§ 103.140 Anti-money laundering programs for dealers in precious metals, precious stones, or jewels.

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

(1) *Covered goods* means:

(i) Jewels (as defined in paragraph (a)(3) of this section);

(ii) Precious metals (as defined in paragraph (a)(4) of this section);

(iii) Precious stones (as defined in paragraph (a)(5) of this section); and

(iv) Finished goods (including, but not limited to, jewelry, numismatic items, and antiques), that derive 50 percent or more of their value from jewels, precious metals, or precious stones contained in or attached to such finished goods;

(2) *Dealer.* (i) Except as provided in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section, the term “dealer” means a person engaged within the United States as a business in the purchase and sale of covered goods and who, during the prior calendar or tax year:

(A) Purchased more than \$50,000 in covered goods; and

(B) Received more than \$50,000 in gross proceeds from the sale of covered goods.

(ii) For purposes of this section, the term “dealer” does not include:

(A) A retailer (as defined in paragraph (a)(7) of this section), unless the retailer, during the prior calendar or tax year, purchased more than \$50,000 in covered goods from persons other than dealers or other retailers (such as members of the general public or foreign sources of supply); or

(B) A person licensed or authorized under the laws of any State (or political subdivision thereof) to conduct business as a pawnbroker, but only to the extent such person is engaged in pawn transactions (including the sale of pawn loan collateral).

(iii) For purposes of paragraph (a)(2) of this section, the terms “purchase” and “sale” do not include a retail transaction in which a retailer or a dealer accepts from a customer covered goods, the value of which the retailer or dealer credits to the account of the customer, and the retailer or dealer does not provide funds to the customer in exchange for such covered goods.

(iv) For purposes of paragraphs (a)(2) and (b) of this section, the terms “purchase” and “sale” do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

(v) For purposes of applying the \$50,000 thresholds in paragraphs (a)(2)(i) and (a)(2)(ii)(A) of this section to finished goods defined in paragraph (a)(1)(iv) of this section, only the value of jewels, precious metals, or precious stones contained in, or attached to, such goods shall be taken into account.

(3) *Jewel* means an organic substance with gem quality market-recognized beauty, rarity, and value, and includes pearl, amber, and coral.

(4) *Precious metal* means:

(i) Gold, iridium, osmium, palladium, platinum, rhodium, ruthenium, or silver, having a level of purity of 500 or more parts per thousand; and

(ii) An alloy containing 500 or more parts per thousand, in the aggregate, of two or more of the metals listed in paragraph (a)(3)(i) of this section.

(5) *Precious stone* means a substance with gem quality market-recognized beauty, rarity, and value, and includes diamond, corundum (including rubies and sapphires), beryl (including emeralds and aquamarines), chrysoberyl, spinel, topaz, zircon, tourmaline, garnet, crystalline and cryptocrystalline quartz, olivine peridot, tanzanite, jadeite jade, nephrite jade, spodumene, feldspar, turquoise, lapis lazuli, and opal.

(6) *Person* shall have the same meaning as provided in § 103.11(z).

(7) *Retailer* means a person engaged within the United States in the business of sales primarily to the public of covered goods.

(b) *Anti-money laundering program requirement.* (1) Each dealer shall develop and implement a written anti-money laundering program reasonably designed to prevent the dealer from being used to facilitate money laundering and the financing of terrorist activities through the purchase and sale of covered goods. The program must be approved by senior management. A dealer shall make its anti-money laundering

program available to the Department of Treasury through FinCEN or its designee upon request.

(2) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the \$50,000 threshold contained in paragraph (a)(2)(ii)(A), the anti-money laundering compliance program required of the retailer under this paragraph need only address such purchases.

(c) *Minimum requirements.* At a minimum, the anti-money laundering program shall:

(1) Incorporate policies, procedures, and internal controls based upon the dealer's assessment of the money laundering and terrorist financing risks associated with its line(s) of business. Policies, procedures, and internal controls developed and implemented by a dealer under this section shall include provisions for complying with the applicable requirements of the Bank Secrecy Act (31 U.S.C. 5311 *et seq.*), and this part.

(i) For purposes of making the risk assessment required by paragraph (c)(1) of this section, a dealer shall take into account all relevant factors including, but not limited to:

(A) The type(s) of products the dealer buys and sells, as well as the nature of the dealer's customers, suppliers, distribution channels, and geographic locations;

(B) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(C) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in jurisdictions that have been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371; designated as non-cooperative with international anti-money laundering principles or procedures by an inter-governmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A as warranting special

measures due to money laundering concerns.

(ii) A dealer's program shall incorporate policies, procedures, and internal controls to assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering or terrorist financing, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

(A) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;

(B) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;

(C) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;

(D) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and

(E) Purchases or sales that are not in conformity with standard industry practice.

(2) Designate a compliance officer who will be responsible for ensuring that:

(i) The anti-money laundering program is implemented effectively;

(ii) The anti-money laundering program is updated as necessary to reflect changes in the risk assessment, requirements of this part, and further guidance issued by the Department of the Treasury; and

(iii) Appropriate personnel are trained in accordance with paragraph (c)(3) of this section.

(3) Provide for on-going education and training of appropriate persons concerning their responsibilities under the program.

(4) Provide for independent testing to monitor and maintain an adequate program. The scope and frequency of the testing shall be commensurate with the risk assessment conducted by the dealer in accordance with paragraph (c)(1) of this section. Such testing may be conducted by an officer or employee of the dealer, so long as the tester is not the person designated in paragraph (c)(2) of this section or a person involved in the operation of the program.

(d) *Effective date.* A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the later of January 1, 2006, or six months after the date a dealer becomes subject to the requirements of this section.

[70 FR 33716, June 9, 2005]

§ 103.170 Exempted anti-money laundering programs for certain financial institutions.

(a) *Exempt financial institutions.* Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

(1) An agency of the United States Government, or of a State or local government, carrying out a duty or power of a business described in 31 U.S.C. 5312(a)(2); and
 (2) [Reserved]

(b) *Temporary exemption for certain financial institutions.* (1) Subject to the provisions of paragraphs (c) and (d) of this section, the following financial institutions (as defined in 31 U.S.C. 5312(a)(2) or (c)(1)) are exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs:

- (i) Pawnbroker;
- (ii) Loan or finance company;
- (iii) Travel agency;
- (iv) Telegraph company;
- (v) Seller of vehicles, including automobiles, airplanes, and boats;
- (vi) Person involved in real estate closings and settlements;
- (vii) Private banker;
- (viii) Commodity pool operator;
- (ix) Commodity trading advisor; or

(x) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in §103.11(c)) that is not subject to regulation by a Federal functional regulator (as defined in §103.120(a)(2)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in §103.11(n)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption.* The exemptions described in paragraphs (a)(2) and (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this subpart I.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this part.

[67 FR 21113, Apr. 29, 2002, as amended at 67 FR 67549, Nov. 6, 2002; 67 FR 68935, Nov. 14, 2002; 73 FR 1976, Jan. 11, 2008]

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

SOURCE: 67 FR 48351, July 23, 2002, unless otherwise noted.

§ 103.175 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 103.176 through 103.185:

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

(b) *Beneficial owner* of an account means an individual who has a level of control over, or entitlement to, the funds or assets in the account that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the account. The ability to fund the account or the entitlement to the funds of the account

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alone, however, without any corresponding authority to control, manage or direct the account (such as in the case of a minor child beneficiary), does not cause the individual to be a beneficial owner.

(c) *Certification and recertification* mean the certification and recertification forms described in appendices A and B, respectively, to this subpart.

(d) *Correspondent account*. (1) The term *correspondent account* means:

(i) For purposes of § 103.176(a), (d) and (e), an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution; and

(ii) For purposes of §§ 103.176(b) and (c), 103.177 and 103.185, an account established for a foreign bank to receive deposits from, or to make payments or other disbursements on behalf of, the foreign bank, or to handle other financial transactions related to such foreign bank.

(2) For purposes of this definition, the term *account*:

(i) As applied to banks (as set forth in paragraphs (f)(1)(i) through (vii) of this section):

(A) Means any formal banking or business relationship established by a bank to provide regular services, dealings, and other financial transactions; and

(B) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit;

(ii) As applied to brokers or dealers in securities (as set forth in paragraph (f)(1)(viii) of this section) means any formal relationship established with a broker or dealer in securities to provide regular services to effect transactions in securities, including, but not limited to, the purchase or sale of securities and securities loaned and borrowed activity, and to hold securities or other assets for safekeeping or as collateral;

(iii) As applied to futures commission merchants and introducing brokers (as set forth in paragraph (f)(1)(ix) of this section) means any formal relationship established by a futures commission

merchant to provide regular services, including, but not limited to, those established to effect transactions in contracts of sale of a commodity for future delivery, options on any contract of sale of a commodity for future delivery, or options on a commodity; and

(iv) As applied to mutual funds (as set forth in paragraph (f)(1)(x) of this section) means any contractual or other business relationship established between a person and a mutual fund to provide regular services to effect transactions in securities issued by the mutual fund, including the purchase or sale of securities.

(e) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 103.177 and 103.185.

(f) *Covered financial institution* means: (1) For purposes of §§ 103.176 and 103.178:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

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

(iv) A federally insured credit union;

(v) A savings association;

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

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an

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open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

(2) For purposes of §§ 103.177 and 103.185:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank or trust company;

(iii) A private banker;

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

(v) A credit union;

(vi) A savings association;

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

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934.

(g) *Foreign bank.* The term *foreign bank* has the meaning provided in § 103.11(o).

(h) *Foreign financial institution.* (1) The term *foreign financial institution* means:

(i) A foreign bank;

(ii) Any branch or office located outside the United States of any covered financial institution described in paragraphs (f)(1)(viii) through (x) of this section;

(iii) Any other person organized under foreign law (other than a branch or office of such person in the United States) that, if it were located in the United States, would be a covered financial institution described in paragraphs (f)(1)(viii) through (x) of this section; and

(iv) Any person organized under foreign law (other than a branch or office of such person in the United States) that is engaged in the business of, and is readily identifiable as:

(A) A currency dealer or exchanger; or

(B) A money transmitter.

(2) For purposes of paragraph (h)(1)(iv) of this section, a person is not “engaged in the business” of a currency dealer, a currency exchanger or a money transmitter if such transactions are merely incidental to the person’s business.

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

(j) *Non-United States person or non-U.S. person* means a natural person who is neither a United States citizen nor is accorded the privilege of residing permanently in the United States pursuant to title 8 of the United States Code. For purposes of this paragraph (j), the definition of *person* in § 103.11(z) does not apply, notwithstanding paragraph (m) of this section.

(k) *Offshore banking license* means a license to conduct banking activities that prohibits the licensed entity from conducting banking activities with the citizens of, or in the local currency of, the jurisdiction that issued the license.

(l) *Owner.* (1) The term *owner* means any person who, directly or indirectly:

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

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

(2) 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, 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 as a result of aggregating the 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.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for

or to select directors (or individuals exercising similar functions).

(m) *Person* has the meaning provided in § 103.11(z).

(n) *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 one 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.

(o) *Private banking account* means an account (or any combination of accounts) maintained at a covered financial institution that:

(1) Requires a minimum aggregate deposit of funds or other assets of not less than \$1,000,000;

(2) Is established on behalf of or for the benefit of one or more non-U.S. persons who are direct or beneficial owners of the account; and

(3) Is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a covered financial institution acting as a liaison between the covered financial institution and the direct or beneficial owner of the account.

(p) *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 a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of

voting securities 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.

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

(r) *Senior foreign political figure*. (1) The term *senior foreign political figure* means:

(i) A current or former:

(A) Senior official in the executive, legislative, administrative, military, or judicial branches of a foreign government (whether elected or not);

(B) Senior official of a major foreign political party; or

(C) Senior executive of a foreign government-owned commercial enterprise;

(ii) A corporation, business, or other entity that has been formed by, or for the benefit of, any such individual;

(iii) An immediate family member of any such individual; and

(iv) A person who is widely and publicly known (or is actually known by the relevant covered financial institution) to be a close associate of such individual.

(2) For purposes of this definition:

(i) *Senior official or executive* means an individual with substantial authority over policy, operations, or the use of government-owned resources; and

(ii) *Immediate family member* means spouses, parents, siblings, children and a spouse's parents and siblings.

(s) *Territories and Insular Possessions* has the meaning provided in § 103.11(tt).

(t) *United States* has the meaning provided in § 103.11(nn).

[71 FR 512, Jan. 4, 2006]

§ 103.176 Due diligence programs for correspondent accounts for foreign financial institutions.

(a) *In general*. A covered financial institution shall establish a due diligence program that includes appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to enable the covered financial institution to detect and report, on an ongoing basis, any known or suspected money laundering activity conducted

through or involving any correspondent account established, maintained, administered, or managed by such covered financial institution in the United States for a foreign financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart. Such policies, procedures, and controls shall include:

(1) Determining whether any such correspondent account is subject to paragraph (b) of this section;

(2) Assessing the money laundering risk presented by such correspondent account, based on a consideration of all relevant factors, which shall include, as appropriate:

(i) The nature of the foreign financial institution's business and the markets it serves;

(ii) The type, purpose, and anticipated activity of such correspondent account;

(iii) The nature and duration of the covered financial institution's relationship with the foreign financial institution (and any of its affiliates);

(iv) The anti-money laundering and supervisory regime of the jurisdiction that issued the charter or license to the foreign financial institution, and, to the extent that information regarding such jurisdiction is reasonably available, of the jurisdiction in which any company that is an owner of the foreign financial institution is incorporated or chartered; and

(v) Information known or reasonably available to the covered financial institution about the foreign financial institution's anti-money laundering record; and

(3) Applying risk-based procedures and controls to each such correspondent account reasonably designed to detect and report known or suspected money laundering activity, including a periodic review of the correspondent account activity sufficient to determine consistency with information obtained about the type, purpose, and anticipated activity of the account.

(b) *Enhanced due diligence for certain foreign banks.* In the case of a correspondent account established, maintained, administered, or managed in

the United States for a foreign bank described in paragraph (c) of this section, the due diligence program required by paragraph (a) of this section shall include enhanced due diligence procedures designed to ensure that the covered financial institution, at a minimum, takes reasonable steps to:

(1) Conduct enhanced scrutiny of such correspondent account to guard against money laundering and to identify and report any suspicious transactions in accordance with applicable law and regulation. This enhanced scrutiny shall reflect the risk assessment of the account and shall include, as appropriate:

(i) Obtaining and considering information relating to the foreign bank's anti-money laundering program to assess the risk of money laundering presented by the foreign bank's correspondent account;

(ii) Monitoring transactions to, from, or through the correspondent account in a manner reasonably designed to detect money laundering and suspicious activity; and

(iii)(A) Obtaining information from the foreign bank about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.

(B) For purposes of paragraph (b)(1)(iii)(A) of this section, a *payable-through account* means a correspondent account maintained by a covered financial institution for a foreign bank by means of which the foreign bank permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(2) Determine whether the foreign bank for which the correspondent account is established or maintained in turn maintains correspondent accounts for other foreign banks that use the foreign correspondent account established or maintained by the covered financial institution and, if so, take reasonable steps to obtain information relevant to assess and mitigate money laundering risks associated with the foreign bank's correspondent accounts

for other foreign banks, including, as appropriate, the identity of those foreign banks.

(3)(i) Determine, for any correspondent account established or maintained for a foreign bank whose shares are not publicly traded, the identity of each owner of the foreign bank and the nature and extent of each owner's ownership interest.

(ii) For purposes of paragraph (b)(3)(i) of this section:

(A) *Owner* means any person who directly or indirectly owns, controls, or has the power to vote 10 percent or more of any class of securities of a foreign bank. For purposes of this paragraph (b)(3)(ii)(A):

(1) Members of the same family shall be considered to be one person; and

(2) *Same family* has the meaning provided in § 103.175(1)(2)(ii).

(B) *Publicly traded* means shares that 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)).

(c) *Foreign banks to be accorded enhanced due diligence.* The due diligence procedures described in paragraph (b) of this section are required for any correspondent account maintained for a foreign bank that operates under:

(1) An offshore banking license;

(2) A banking license issued by a foreign country that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative to the group or organization concurs; or

(3) A banking license issued by a foreign country that has been designated by the Secretary as warranting special measures due to money laundering concerns.

(d) *Special procedures when due diligence or enhanced due diligence cannot be performed.* The due diligence program required by paragraphs (a) and (b) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due dili-

gence or enhanced due diligence with respect to a correspondent account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules for general due diligence.* The provisions of paragraph (a) of this section apply to covered financial institutions as follows:

(1) *General rules—(i) Correspondent accounts established on or after July 5, 2006.* Effective July 5, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established on or after that date.

(ii) *Correspondent accounts established before July 5, 2006.* Effective October 2, 2006, the requirements of paragraph (a) of this section shall apply to each correspondent account established before July 5, 2006.

(2) *Special rules for certain banks.* Until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section, the due diligence requirements of 31 U.S.C. 5318(i)(1) shall continue to apply to any covered financial institution listed in § 103.175(f)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The due diligence requirements of 31 U.S.C. 5318(i)(1) shall not apply to a covered financial institution listed in § 103.175(f)(1)(vii) through (x) until the requirements of paragraph (a) of this section become applicable as set forth in paragraph (e)(1) of this section.

(f) *Applicability rules for enhanced due diligence.* The provisions of paragraph (b) of this section apply to covered financial institutions as follows:

(1) *General rules—(i) Correspondent accounts established on or after February 5, 2008.* Effective February 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established on or after such date.

(ii) *Correspondent accounts established before February 5, 2008.* Effective May 5, 2008, the requirements of paragraph (b) of this section shall apply to each correspondent account established before February 5, 2008.

(2) *Special rules for certain banks.* Until the requirements of paragraph (b)

of this section become applicable as set forth in paragraph (f)(1) of this section, the enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall continue to apply to any covered financial institutions listed in §103.175(f)(1)(i) through (vi).

(3) *Special rules for all other covered financial institutions.* The enhanced due diligence requirements of 31 U.S.C. 5318(i)(2) shall not apply to a covered financial institution listed in §103.175(f)(1)(vii) through (x) until the requirements of paragraph (b) of this section become applicable, as set forth in paragraph (f)(1) of this section.

(g) *Exemptions—(1) Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1), or §103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(1) and (i)(2) pertaining to correspondent accounts.

(2) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (g) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

[71 FR 514, Jan. 4, 2006, as amended at 71 FR 16041, Mar. 30, 2006; 72 FR 44774, Aug. 9, 2007]

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

(a) *Requirements for covered financial institutions—(1) 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 paragraph (a)(1) of this section prohibits a covered financial institution from providing a cor-

respondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, 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 whose shares are not publicly traded and the name and street 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.

(ii) A covered financial institution need not maintain records of the owners of any foreign bank that is required to have on file with the Federal Reserve Board a Form FR Y-7 that identifies the current owners of the foreign bank as required by such form.

(iii) For purposes of paragraph (a)(2)(i) of this section, *publicly traded* refers to shares that are traded on an exchange or on 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)).

(b) *Safe harbor.* Subject to paragraphs (c) and (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, at least once every three years, a certification or recertification from the foreign bank.

(c) *Interim verification.* If at any time a covered financial institution knows, suspects, or has reason to suspect, that any information contained in a certification or recertification 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 or correct such information, or shall take other appropriate measures to ascertain the accuracy of the information or to obtain correct information, as appropriate. See paragraph (d)(3) of this section for additional requirements if a foreign bank

fails to verify or correct the information or if a covered financial institution cannot ascertain the accuracy of the information or obtain correct information.

(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.

(2) *Accounts established after October 28, 2002.* In the case of any correspondent account established after October 28, 2002, if the covered financial institution has not obtained a certification (or recertification), or has not otherwise obtained documentation of the information required by such certification (or recertification) within 30 calendar days after the date the account is established, 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.

(3) *Verification of previously provided information.* In the case of a foreign bank with respect to which the covered financial institution undertakes to verify information pursuant to paragraph (c) of this section, if the covered financial institution has not obtained, from the foreign bank or otherwise, verification of the information or corrected information within 90 calendar days after the date of undertaking the verification, the covered financial in-

stitution 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.

(4) *Reestablishment of closed accounts and establishment of new accounts.* A covered financial institution shall not reestablish any account closed pursuant to this paragraph (d), and shall not establish any other correspondent account with the concerned foreign bank, until it obtains from the foreign bank the certification or the recertification, 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 account 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 correspondent 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 October 28, 2002—*(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 and published in the FEDERAL REGISTER on November 27, 2001; or

(ii) The guidance issued in a document published in the FEDERAL REGISTER on December 28, 2001.

(2) *Use of Interim Guidance certification.* In the case of a correspondent account in existence on October 28, 2002, the term “certification” as used in paragraphs (b), (c), (d)(1), and (d)(3) of this section shall also include the certification appended to the Interim

Guidance, provided that such certification was requested prior to October 28, 2002 and obtained by the covered financial institution on or before December 26, 2002.

(3) *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.

(Approved by the Office of Management and Budget under Control Number 1505-0184.)

[67 FR 60570, Sept. 26, 2002, as amended at 67 FR 78384, Dec. 24, 2002]

§ 103.178 Due diligence programs for private banking accounts.

(a) *In general.* A covered financial institution shall maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving any private banking account that is established, maintained, administered, or managed in the United States by such financial institution. The due diligence program required by this section shall be a part of the anti-money laundering program otherwise required by this subpart.

(b) *Minimum requirements.* The due diligence program required by paragraph (a) of this section shall be designed to ensure, at a minimum, that the financial institution takes reasonable steps to:

(1) Ascertain the identity of all nominal and beneficial owners of a private banking account;

(2) Ascertain whether any person identified under paragraph (b)(1) of this section is a senior foreign political figure;

(3) Ascertain the source(s) of funds deposited into a private banking account and the purpose and expected use of the account; and

(4) Review the activity of the account to ensure that it is consistent with the information obtained about the client's source of funds, and with the stated purpose and expected use of the account, as needed to guard against money laundering, and to report, in accordance with applicable law and regulation, any known or suspected money

laundering or suspicious activity conducted to, from, or through a private banking account.

(c) *Special requirements for senior foreign political figures.* (1) In the case of a private banking account for which a senior foreign political figure is a nominal or beneficial owner, the due diligence program required by paragraph (a) of this section shall include enhanced scrutiny of such account that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(2) For purposes of this paragraph (c), the term *proceeds of foreign corruption* means any asset or property that is acquired by, through, or on behalf of a senior foreign political figure through misappropriation, theft, or embezzlement of public funds, the unlawful conversion of property of a foreign government, or through acts of bribery or extortion, and shall include any other property into which any such assets have been transformed or converted.

(d) *Special procedures when due diligence cannot be performed.* The due diligence program required by paragraph (a) of this section shall include procedures to be followed in circumstances in which a covered financial institution cannot perform appropriate due diligence with respect to a private banking account, including when the covered financial institution should refuse to open the account, suspend transaction activity, file a suspicious activity report, or close the account.

(e) *Applicability rules.* The provisions of this section apply to covered financial institutions as follows:

(1) *General rules*—(i) Private banking accounts established on or after July 5, 2006. Effective July 5, 2006, the requirements of this section shall apply to each private banking account established on or after such date.

(ii) Private banking accounts established before July 5, 2006. Effective October 2, 2006, the requirements of this section shall apply to each private banking account established before July 5, 2006.

(2) *Special rules for certain banks and for brokers or dealers in securities, futures commission merchants, and introducing brokers.* Until the requirements of this section become applicable as set forth

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in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall continue to apply to a covered financial institution listed in §103.175(f)(1)(i) through (vi), (viii), or (ix).

(3) *Special rules for federally regulated trust banks or trust companies, and mutual funds.* Until the requirements of this section become applicable as set forth in paragraph (e)(1) of this section, the requirements of 31 U.S.C. 5318(i)(3) shall not apply to a covered financial institution listed in §103.175(f)(1)(vii), or (x).

(4) *Exemptions*—(i) *Exempt financial institutions.* Except as provided in this section, a financial institution defined in 31 U.S.C. 5312(a)(2) or (c)(1) or §103.11(n) is exempt from the requirements of 31 U.S.C. 5318(i)(3) pertaining to private banking accounts.

(ii) *Other compliance obligations of financial institutions unaffected.* Nothing in paragraph (e)(4) of this section shall be construed to relieve a financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31, United States Code, and this part.

[71 FR 515, Jan. 4, 2006, as amended at 71 FR 16041, Mar. 30, 2006]

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 agree-

ment, 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]

§ 103.186 Special measures against Burma.

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

(1) *Correspondent account* has the same meaning as provided in §103.175(d).

(2) *Covered financial institution* has the same meaning as provided in §103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the

Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Burmese banking institution* means any foreign bank, as that term is defined in §103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on 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, a Burmese banking institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese banking institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese banking institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section

shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese banking institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

[69 FR 19098, Apr. 12, 2004]

§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.

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

(1) *Correspondent account* has the same meaning as provided in §103.175(d).

(2) *Covered financial institution* has the same meaning as provided in §103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on 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, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

[69 FR 19103, Apr. 12, 2004]

§ 103.188 Special measures against Commercial Bank of Syria.

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

(1) *Commercial Bank of Syria* means any branch, office, or subsidiary of Commercial Bank of Syria operating in Syria or in any other jurisdiction, including Syrian Lebanese Commercial Bank.

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

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

(iv) A federally insured credit union;

(v) A savings association;

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

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the Securities and Exchange Commission pursuant to the Investment Company Act.

(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 open or maintained in the United States for, or

on behalf of, Commercial Bank of Syria.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Commercial Bank of Syria. At a minimum, that due diligence must include:

(A) Notifying correspondent account holders that the correspondent account may not be used to provide Commercial Bank of Syria with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, 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, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Commercial Bank of Syria.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Commercial Bank of Syria shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Commercial Bank of Syria.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is re-

quired 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.

[71 FR 13267, Mar. 15, 2006]

§ 103.192 Special measures against VEF Bank.

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

(1) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(2) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

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

(iv) A federally insured credit union;

(v) A savings association;

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

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to be registered, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is

registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

(3) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(4) *VEF Bank* means any branch, office, or subsidiary of joint stock company VEF Banka operating in the Republic of Latvia or in any other jurisdiction. The one known VEF Bank subsidiary, Veiksmes lizings, and any branches or offices, are included in the definition.

(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 opened or maintained in the United States for, or on behalf of, VEF Bank.

(2) *Due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by VEF Bank. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders that the correspondent account may not be used to provide VEF Bank with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by VEF Bank, 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, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by VEF Bank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to VEF Bank shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to VEF Bank.

(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.

[71 FR 39560, July 13, 2006]

§ 103.193 Special measures against Banco Delta Asia.

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

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

(2) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii).

(3) *Covered financial institution* includes:

(i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));

(ii) A commercial bank;

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

(iv) A federally insured credit union;

(v) A savings association;

(vi) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.);

(vii) A trust bank or trust company that is federally regulated and is subject to an anti-money laundering program requirement;

(viii) A broker or dealer in securities registered, or required to be registered, with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), except persons who register pursuant to section 15(b)(11) of the Securities Exchange Act of 1934;

(ix) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*), except persons who register pursuant to section 4(f)(a)(2) of the Commodity Exchange Act; and

(x) A mutual fund, which means an investment company (as defined in section 3(a)(1) of the Investment Company Act of 1940 (“Investment Company Act”) (15 U.S.C. 80a-3(a)(1))) that is an open-end company (as defined in section 5(a)(1) of the Investment Company Act (15 U.S.C. 80a-5(a)(1))) and that is registered, or is required to register, with the U.S. Securities and Exchange Commission pursuant to the Investment Company Act.

(4) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Requirements for covered financial institutions—(1) Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banco Delta Asia.

(2) *Due diligence of correspondent accounts to prohibit indirect use.*

(i) A covered financial institution shall apply due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by Banco Delta Asia. At a minimum, that due diligence must include:

(A) Notifying correspondent accountholders the correspondent account may not be used to provide Banco Delta Asia with access to the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by Banco Delta Asia, to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution’s normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Banco Delta Asia.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to Banco Delta Asia shall take all appropriate steps to prevent such indirect access, including, where necessary, terminating the correspondent account.

(iv) A covered financial institution required to terminate a correspondent account pursuant to paragraph (b)(2)(iii) of this section:

(A) Should do so within a commercially reasonable time, and should not permit the foreign bank to establish any new positions or execute any transaction through such correspondent account, other than those necessary to close the correspondent account; and

(B) May reestablish a correspondent account closed pursuant to this paragraph if it determines that the correspondent account will not be used to provide banking services indirectly to Banco Delta Asia.

(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.

[72 FR 12739, Mar. 19, 2007]

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: _____

[67 FR 60573, Sept. 26, 2002]

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.

Monetary Offices, Treasury

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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]