DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AA82

Financial Crimes Enforcement Network: Repeal of the Final Rule and Withdrawal of the Finding of Primary Money Laundering Concern Against VEF Banka

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

ACTION: Final rule.

SUMMARY: This document repeals FinCEN's final rule, “Imposition of Special Measure Against VEF Banka” of July 13, 2006, and withdraws the finding of VEF Banka as a Financial Institution of Primary Money Laundering Concern of April 26, 2005, issued pursuant to 31 U.S.C. 5318A of the Bank Secrecy Act (the “BSA”).

DATES: Effective Date: August 1, 2011.

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 and select Option 1.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56 (“USA PATRIOT Act”). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the BSA, codified at 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314 and 5316–5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the “Secretary”) to administer the BSA and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.

Section 311 of the USA PATRIOT Act ("section 311") added Section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern.

Taken as a whole, Section 5318A provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money-laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, FinCEN can: gain more information about the concerned jurisdictions, financial institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, financial institutions, transactions, and accounts; and, ultimately, protect U.S. financial institutions from involvement with jurisdictions, financial institutions, transactions, or accounts that pose a money laundering concern.

B. VEF Banka

At the time of issuance of the final rule on July 13, 2006, VEF Banka was headquartered in Riga, Latvia. VEF Banka was one of the smallest of Latvia’s 23 banks, and, in 2004, was reported to have approximately $80 million in assets and 87 employees. Total assets for the bank, as of June 30, 2005, were 27.3 million LATS, equivalent to approximately $47.4 million. VEF Banka had one subsidiary, Veiksnes līzings, which offered financial leasing and factoring services. In addition to its headquarters in Riga, VEF Banka had one branch in Riga and one representative office in the Czech Republic. VEF Banka offered corporate and private banking services, issued credit cards for non-Latvians, and provided currency exchange through Internet banking services (i.e., virtual currencies). In addition, according to its financial statements, VEF Banka maintained correspondent accounts in countries worldwide, but reported none in the United States at the time of the final rule.

II. The Finding, Final Rule, and Subsequent Developments

A. The Finding and Final Rule

Based upon review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary, through his delegate, the Director of FinCEN, found that reasonable grounds existed for concluding that VEF Banka was a financial institution of primary money laundering concern. This finding was published on April 26, 2005, in a notice of proposed rulemaking which proposed prohibiting covered financial institutions from, directly or indirectly, opening or maintaining correspondent accounts in the United States for VEF Banka or any of its branches, offices, or subsidiaries, pursuant to the authority under 31 U.S.C. 5318A. The notice of proposed rulemaking outlined the various factors supporting the finding and proposed prohibition.

After consulting with required Federal agencies and parties, reviewing public comments received from the April 26, 2005 notice of proposed rulemaking, and considering additional relevant factors, FinCEN issued a final rule on July 13, 2006 that imposed the special measure authorized under 31 U.S.C. 5318A(b)(5) against VEF Banka.

This final rule requires covered financial institutions to terminate any correspondent or payable-through accounts, or accounts that pose a primary money laundering concern.
accounts for, or on behalf of, VEF Banka, and to apply due diligence reasonably designed to guard against indirect use of their correspondent or payable-through accounts by VEF Banka.

B. VEF Banka’s Subsequent Developments

On May 26, 2010, VEF Banka’s Latvian banking regulator, the Financial and Capital Market Commission (the “FCMC”), revoked VEF Banka’s operating license on the grounds that the shareholders of the bank had not received authorization from the FCMC for the acquisition of qualifying holdings and the bank failed to ensure compliance with provisions of the Credit Institution Law.6 As a result, the shareholders had no decision-making rights and were unable to “ensure prudent bank operations.” The FCMC’s decision to revoke VEF Banka’s license was confirmed by the Senate of Latvia’s Supreme Court on July 22, 2010 and resulted in the decision to revoke VEF Banka’s license for prudent bank operations.” The FCMC’s decision to revoke VEF Banka’s license was confirmed by the Senate of Latvia’s Supreme Court on July 22, 2010 and terminated VEF Banka’s ability to operate as a financial institution under Latvian law.7 On November 15, 2010, the Riga District Court issued a non-appealable order to begin liquidating the bank.8 The liquidation process is expected to be complete in one to two years and will result in the disposition of all of VEF Banka’s assets, including its subsidiary, Veiksmes lı̇zings.

III. Withdrawal of the Finding of Primary Money Laundering Concern Against VEF Banka and Repeal of the Final Rule

For the reasons set forth above, FinCEN hereby withdraws the finding of primary money laundering concern against VEF Banka, as published in the Federal Register on April 26, 2005 (70 FR 21369) and finalized on July 13, 2006 (71 FR 39554), as of August 1, 2011. As a result, FinCEN is also repealing the final rule, as published in the Federal Register on July 13, 2006 (71 FR 39554) as 31 CFR 103.192 (now 31 CFR 1010.654), that was based upon the finding. FinCEN’s withdrawal of the finding of primary money laundering concern against VEF Banka and the repeal of the related final rule do not acknowledge any remedial measure taken by VEF Banka, but are the result of the revocation of VEF Banka’s Latvian banking license and the non-appealable decision by the Riga District Court to liquidate the bank.9

IV. Regulatory Matters

A. Executive Order 12866

It has been determined that this rulemaking is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

B. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under Section 202 and has concluded that on balance the rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), FinCEN certifies that this final regulation likely will not have a significant economic impact on a substantial number of small entities. The regulatory changes in this final rule merely remove the current obligations for financial institutions under 31 CFR 103.192 (now 31 CFR 1010.654).

D. Paperwork Reduction Act

This regulation discontinues the Office of Management and Budget Control Number 1506–0041 assigned to the final rule and, as a result, reduces the estimated average burden of one hour per affected financial institution, totaling 5,000 hours. This regulation contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) et seq.).

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth above, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

§ 1010.654 [Removed]

1. The authority cited for 31 CFR part 1010 continues to read as follows:


§ 1010.654 [Removed]

2. Part 1010 is amended by removing § 1010.654.

Dated: July 22, 2011.

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

[FR Doc. 2011–19118 Filed 7–29–11; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–1117]

RIN 1625–AA09

Drawbridge Operation Regulation; Raritan River, Arthur Kill and Their Tributaries, Staten Island, NY and Elizabeth, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard has changed the drawbridge operation regulations that govern the operation of the Arthur Kill (AK) Railroad Bridge at mile 11.6, across Arthur Kill between Staten Island, New York and Elizabeth, New Jersey. This final rule provides relief to the bridge owner from ceasing their bridge by allowing the bridge to be