

to incorporate reorganizations and tax-free liquidations described in section 381(a) that occur on or after August 31, 2011.

Approved: July 20, 2011.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Emily S. McMahon,

Acting Assistant Secretary of the Treasury (Tax Policy).

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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 Bank

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

ACTION: Final rule.

SUMMARY: This document repeals FinCEN’s final rule, “Imposition of Special Measure Against VEF Bank” of July 13, 2006, and withdraws the finding of VEF Bank 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. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR

Chapter X.¹ 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.²

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.³

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 Bank

At the time of issuance of the final rule on July 13, 2006, VEF Bank was

¹ On October 26, 2010, FinCEN issued a final rule creating a new Chapter X in Title 31 of the Code of Federal Regulations for the BSA regulations. See 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule) (referred to herein as the “Chapter X Final Rule”). The Chapter X Final Rule became effective on March 1, 2011.

² Therefore, references to the authority of the Secretary under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

³ Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)-(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

headquartered in Riga, Latvia. VEF Bank 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 Bank had one subsidiary, Veiksmes lizings, which offered financial leasing and factoring services. In addition to its headquarters in Riga, VEF Bank had one branch in Riga and one representative office in the Czech Republic. VEF Bank 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 Bank 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 Bank was a financial institution of primary money laundering concern. This finding was published on April 26, 2005,⁴ 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 Bank 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 Bank.⁵ This final rule requires covered financial institutions to terminate any correspondent or payable-through

⁴ See 70 FR 21369 (April 26, 2005, RIN 1506-AA82).

⁵ See 71 FR 39554 (July 13, 2006, RIN 1506-AA82).

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 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 lizings.

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

⁶ "On Withdrawal of the JSC 'VEF Banka's' Operating Licence," Financial Capital Market Commission press release, May 26, 2010 (http://www.fktk.lv/en/publications/press_releases/2010-05-29_on_withdrawal_of_the_jsc/)

⁷ "VEF Bank Loses License," The Baltic Times, July 28, 2010 (<http://www.baltictimes.com/news/articles/26661/>).

⁸ "Court Rule for Liquidation of VEF Banka," The Baltic Course, November 16, 2010 (<http://www.baltic-course.com/eng/finances/?doc=33962&underline=vef+banka>).

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

⁹ The "Republic of Latvia" was described at length in the April 26, 2005 notice of proposed rulemaking, 70 FR 21369, and July 13, 2006 final rule, 71 FR 39554. Today's repeal of the final rule and withdrawal of the finding of primary money laundering concern against VEF Banka do not provide updates on jurisdictional developments. Further discussion of jurisdictional developments can be found at the U.S. Department of State's "2011 International Narcotics Control Strategy Report" (<http://www.state.gov/p/inl/rls/nrcrpt/2011/vol2/156375.htm#latvia>).

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

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307.

§ 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.

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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 crewing their bridge by allowing the bridge to be