

engage in: trading in securities and futures, funds transfers, or other types of financial transactions. Treasury is using the same definition for purposes of the proposed rule as that established in the Section 313/319 Rule with two notable exceptions: (1) the term also applies to such accounts maintained by futures commission merchants and introducing brokers as well as mutual funds; and (2) the definition applies to such accounts maintained for any Nauru financial institution, as opposed to just Nauru banks.

*Covered financial institution.* Section 103.184(a)(2) of the proposed rule defines covered financial institution to include those financial institutions included in the definition under the Section 313/319 Rule, as well as futures commission merchants, introducing brokers, and mutual funds. The term is therefore defined to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to be registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a-5) that is registered, or required to register, with the SEC pursuant to that Act. Futures commission merchants, introducing brokers, and mutual funds are being added in recognition of their offering of correspondent accounts within the meaning of 31 U.S.C. 5318A(e).

*Nauru financial institution.* Section 103.184(a)(3) of the proposed rule defines Nauru financial institution to include all foreign banks licensed by Nauru (other than the Central Bank of Nauru) and any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers: trading in (1) money market instruments; (2) exchange, interest rate, and index instruments; (3) transferable securities; and (4) commodity futures. The definition of foreign bank is that contained in 31 CFR 103.11(o). The inclusion in this definition of financial institutions other than depository

institutions is done in recognition that these activities are alternate viable routes for money laundering activity.

#### *C. Requirements for Covered Financial Institutions*

*Prohibition on correspondent accounts.* Section 103.184(b)(1) of the proposed rule would prohibit all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a Nauru financial institution. Based on Treasury's understanding that the only banks in Nauru (other than the Central Bank) are shell banks, depository institutions and securities broker-dealers are already subject to essentially this same prohibition under the Section 313/319 Rule, subject to the inclusion in the proposed rule of certain additional Nauru financial institutions. The prohibition would require the additional covered financial institutions to review their account records to determine that they have no customers that are Nauru financial institutions.

*Termination of known indirect accounts.* In addition, section 103.184(b)(2) of the proposed rule would require a covered financial institution to terminate immediately any correspondent account which it currently establishes, maintains, administers, or manages for, or on behalf of, a foreign bank, if it obtains actual knowledge that the foreign bank is using this account to provide banking services indirectly to a Nauru financial institution. The proposed rule would not require covered financial institutions to review or investigate every account they maintain for foreign banks to ascertain whether such foreign banks are providing services to Nauru financial institutions. Instead, covered financial institutions must terminate such an account only if they become aware that a foreign bank is using its correspondent account to provide banking services indirectly to a Nauru financial institution. This distinction is significant and in contrast to the obligation under the Section 313/319 Rule, which imposed a new due diligence requirement on covered financial institutions to take reasonable steps to ensure that their foreign bank customers were not providing services to shell banks. This proposed rule would rely on existing due diligence procedures and not require covered financial institutions to make a separate inquiry of their foreign bank customers concerning Nauru financial institutions.

*Reporting and recordkeeping not required.* Section 103.184(b)(3) of the

proposed rule states that nothing in the proposed rule imposes any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. If a covered financial institution that is subject to the Section 313/319 Rule (depository institution or securities broker-dealer) has previously received a certification or other information from a Nauru bank pursuant to that Rule in which it purports not to be a shell bank, this proposed rule would still require the termination of the account. More specifically, the safe harbor provisions of the Section 313/319 Rule will have no application to the measures that would be imposed under this proposed rule.

Section 5318A authorizes Treasury to prohibit a broad range of financial dealings with a country of primary money laundering concern. Indeed, the statute affords Treasury the authority to require the termination of any correspondent account that involves the primary money laundering concern. In the proposed rule, Treasury has taken a relatively conservative approach to this countermeasure by requiring only the termination of direct correspondent accounts with a Nauru financial institution and the termination of accounts for other foreign banks only when the U.S. institution has actual knowledge that the account is being used to provide services to a Nauru financial institution indirectly. In view of all the facts and circumstances, this more limited application is appropriate. Treasury notes, however, that the circumstances surrounding future designations may warrant the imposition of countermeasures that reach much further into nested financial relationships with the primary money laundering concern.

#### **IV. Public Comments Requested**

The Department of the Treasury invites comments from all interested persons, on all aspects of this rulemaking, and specifically seeks comments from the financial sector, including domestic financial institutions and domestic financial agencies, concerning the appropriateness and effectiveness of this particular special measure, the ability to comply with special measure five on Nauru, and any competitive disadvantage, cost, or burden associated with compliance.

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

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial