

measures will have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities of Burma.

4. The Proposed Action Would Enhance the National Security of the United States and Is Consistent With, and in Furtherance of, United States Foreign Policy

The imposition of this countermeasure on Burma is consistent with an overall foreign policy strategy to enhance our national security through comprehensive economic and political sanctions against Burma.

IV. Section-by-Section Analysis

A. Overview

The designation published elsewhere in this separate part and this proposed rule are intended to deny Burmese financial institutions access to the U.S. financial system through correspondent accounts, which includes payable-through accounts. The proposed rule would prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent accounts in the United States for, or on behalf of, a Burmese financial institution. If a U.S. financial institution covered by this proposed rule learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese financial institution, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. As explained below, the proposed rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

The proposed rule does allow U.S. financial institutions to maintain otherwise prohibited correspondent accounts to the extent they are permitted pursuant to Executive Order 13310 and the Burma-related activities of those accounts are for the purpose of conducting transactions that are exempt from, or licensed pursuant to, Executive Order 13310.

B. Definitions

Correspondent account. Section 103.186(a)(1) of the proposed rule's definition of correspondent account is the definition contained in 31 U.S.C. 5318A(e) (as added by Section 311 of the Act), which defines the term for banks to mean an account established to receive deposits from or make payments

on behalf of a foreign financial institution, or handle other financial transactions related to the foreign financial institution.

In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign financial institution, including payable-through accounts. In the case of securities broker-dealers, futures commission merchants, introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign financial institution to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions. Treasury is using the same definition for purposes of the proposed rule as that established in the final rule implementing Sections 313 and 319(b) of the Act⁸ with two notable exceptions: (1) the term also applies to such accounts maintained by futures commission merchants, introducing brokers, and mutual funds; and (2) the definition applies to such accounts maintained for any Burmese financial institution, as opposed to just Burmese banks.

Covered financial institution. Section 103.186(a)(2) of the proposed rule defines covered financial institution 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 register 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 (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) 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.

Burmese financial institution. Section 103.186(a)(3) of the proposed rule defines a Burmese financial institution to include all foreign banks chartered or licensed by Burma and any other person

organized under the law of Burma 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 or options. 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. Foreign branches and offices of Burmese financial institutions are included in this definition. However, subsidiaries are not at this time. Also, the Central Bank of Burma is not a Burmese financial institution.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.186(b)(1) of the proposed rule would prohibit generally all covered financial institutions from establishing, maintaining, administering, or managing a correspondent or payable-through account in the United States for, or on behalf of, a Burmese financial institution. The prohibition would require all covered financial institutions to review their account records to determine that they maintain no accounts directly for, or on behalf of, a Burmese financial institution. This prohibition is subject to the exception contained in section 103.186(b)(4), described below.

2. Prohibition on Indirect Correspondent Accounts

Under section 103.186(b)(2) of the proposed rule, if a covered financial institution obtains knowledge that a correspondent or payable-through account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to a Burmese financial institution, the U.S. institution must ensure that the account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship. In contrast to the obligation placed on covered financial institutions to identify correspondent accounts maintained directly for, or on behalf of, a Burmese financial institution in section 103.186(b)(1), this section would not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they

⁸ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.175 (d)(1))