

controlled by drug traffickers, and believed to be used by the UWSA and possibly other organized crime groups to conduct illegal transactions—are of primary money laundering concern plainly furthers the purposes of the BSA to guard against international money laundering and other financial crimes.

III. Imposition of Special Measures

As a result of the designation of Mayflower Bank and Asia Wealth Bank as primary money laundering concerns, and based upon consultations and the consideration of all relevant factors,¹³ the Secretary has determined that grounds exist for the imposition of the special measure authorized by section 5318A(b)(5). Thus, the proposed rulemaking would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent or payable-through account for, or on behalf of, Mayflower Bank or Asia Wealth Bank. This prohibition would extend to any correspondent account maintained for any foreign bank if the account is used to provide banking services indirectly to either of these two banks. Financial institutions covered by this proposed rule that obtain knowledge that this is occurring would be required to ensure that any such account no longer is used to provide such services, including, where necessary, terminating the correspondent relationship in the manner set forth in this rulemaking.

In imposing this special measure, the Secretary has considered the following pursuant to section 5318A(a)(4)(b):

1. *Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Burma Generally*

In June of 2001, the FATF designated Burma as an NCCT, resulting in FATF members issuing advisories to their financial sectors recommending enhanced scrutiny of transactions involving Burma. In April 2002 FinCEN issued an advisory notifying U.S. financial institutions that they should accord enhanced scrutiny with respect to transactions and accounts involving Burma. In October 2003, FATF called upon its 33 members to take additional countermeasures with respect to Burma as of November 3, 2003. Based on informal discussions and the past practices of the FATF membership, the majority of FATF members are expected to take countermeasures, including all of the Group of Seven countries. The

countermeasures imposed by such FATF members will likely include imposition of additional reporting requirements, issuance of advisories, shifting the burden for reporting obligations, and/or restrictions on the licensing of Burmese financial institutions. Imposition of the fifth special measure against Mayflower Bank and Asia Wealth Bank (as well as the jurisdiction of Burma) is consistent with this call for additional countermeasures and forms part of an international effort to protect the financial system.

2. *Imposition of the Fifth Special Measure Would Not Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States*

U.S. financial institutions are already prohibited from providing financial services to Burma, unless such services are exempted or licensed. The imposition of the fifth special measure potentially imposes a broader prohibition than currently exists for two reasons—it would preclude maintaining correspondent accounts for foreign branches of these two banks and the exemptions and licenses do not apply. However, on balance, it is unlikely that the imposition of the fifth special measure will create any significant additional costs or place U.S. financial institutions at a competitive disadvantage with respect to these two institutions. In fact, Treasury's action is intended to encourage other jurisdictions and financial institutions to take similar steps to cut off Mayflower Bank and Asia Wealth Bank from the international financial system, which would further minimize any potential competitive disadvantage for U.S. financial institutions.

Moreover, the proposed rule would not itself require U.S. financial institutions to perform additional due diligence on their existing foreign bank correspondent account customers beyond what is already required under existing regulations.

3. *The Proposed Action or Timing of the Action Will Not Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of the Two Banks*

Private banks, such as Mayflower Bank and Asia Wealth Bank, are not permitted to deal in foreign exchange. All foreign currency transfers into Burma are required to be executed by one of three of Burma's state banks. And, as noted previously, it is unlikely

that Mayflower Bank or Asia Wealth Bank can conduct any legitimate banking operations at this time. Therefore, this action or timing of the action would affect neither the international payment, clearance, and settlement system nor the potential legitimate banking operations of the two banks.

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 against Mayflower Bank, Asia Wealth Bank, and Burma is part of 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 Mayflower Bank and Asia Wealth Bank 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, Mayflower Bank and Asia Wealth Bank. If a U.S. financial institution covered by this proposed rulemaking learns that a correspondent account that it maintains for a foreign bank is being used by that foreign bank to provide services indirectly to Mayflower Bank or Asia Wealth Bank, 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, however, the proposed rule does not itself require U.S. financial institutions to perform additional due diligence on foreign bank customers.

B. Definitions

Correspondent account. Section 103.187(a)(1) of the proposed rule's definition of correspondent account is the definition contained in 31 CFR 103.175(d), which defines the term to mean an account established to receive deposits from, or make payments on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition would

¹³ For purposes of this action, the required consultation with the Federal functional regulators was performed at the staff level.