

include most types of banking relationships between a U.S. depository institution and a foreign bank, 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 bank 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 Act¹⁴ with the notable exception that the term also applies to such accounts maintained by futures commission merchants, introducing brokers, and mutual funds.

Covered financial institution. Section 103.187(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.

Myanmar Mayflower Bank. Section 103.187(a)(3) of the proposed rule defines Myanmar Mayflower Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. This definition does not include subsidiaries.

Asia Wealth Bank. Section 103.187(a)(4) of the proposed rule defines Asia Wealth Bank to include all headquarters, branches, and offices operating in Burma or in any jurisdiction. Similarly, this definition does not include subsidiaries.

C. Requirements for Covered Financial Institutions

1. Prohibition on Correspondent Accounts

Section 103.187(b)(1) of the proposed rule prohibits 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, Mayflower Bank or Asia Wealth Bank. 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, either bank.

2. Prohibition on Indirect Correspondent Accounts

Under section 103.187 (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 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. 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 103.187(b)(1), this section would not itself impose an independent obligation on covered financial institutions to review or investigate correspondent accounts they maintain for foreign banks to ascertain whether such foreign banks are using the account to provide services to Mayflower Bank or Asia Wealth Bank. Instead, if covered financial institutions become aware, through due diligence that is otherwise appropriate or required under existing anti-money laundering obligations, that a foreign bank is using its correspondent account to provide banking services indirectly to Mayflower Bank or Asia Wealth Bank, then the covered financial institutions must ensure that the account is no longer used for such purposes. This reflects the approach taken in the proposed rulemaking imposing special measures against Nauru.¹⁵

Additionally, when a covered financial institution becomes aware that a foreign bank customer is using a correspondent account to provide services to either of the two designated

banks indirectly, the covered financial institution may afford that foreign bank customer a reasonable opportunity to take corrective action prior to terminating the U.S. correspondent account. Should the foreign bank customer refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be used for impermissible purposes, the covered financial institution must terminate the account in accordance with this regulation. Treasury has also incorporated the requirement of termination within a reasonable period of time and the reinstatement of a terminated correspondent account found in the final regulation implementing sections 313 and 319(b) of the Act.¹⁶

3. Reporting and Recordkeeping Not Required

Section 103.187(b)(3) of the proposed rule states that it does not impose any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation.

V. Designation of Mayflower Bank and Asia Wealth Bank as Financial Institutions of Primary Money Laundering Concern

Effective November 18, 2003, Mayflower Bank and Asia Wealth Bank, were designated by the Secretary of the Treasury as financial institutions of primary money laundering concern under 31 U.S.C. 5318A, as added by Section 311(a) of the Act. See the notice published elsewhere in this separate part.

VI. Public Comments Requested

Comments are invited from all interested persons concerning this proposed rulemaking, and are specifically sought from the financial sector, including domestic financial institutions and agencies, concerning the appropriateness and effectiveness of this particular special measure, the ability to comply with the special measure, and any competitive disadvantage, cost, or burden associated with compliance.

VII. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. As explained above, financial institutions covered by this proposed rulemaking are already

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

¹⁵ 68 FR 18917 (April 17, 2003).

¹⁶ 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).