



Securities Industry Association

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Via Electronic Mail

September 23, 2004

Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39
Vienna, VA 22183-1618

Re: Imposition of Special Measures Against Infobank
and First Merchant Bank OSH Ltd. as Primary
Money Laundering Concerns – Section 311 – RIN
1506-AA65 and AA67

Ladies and Gentlemen:

The Securities Industry Association (“SIA”)¹ appreciates the opportunity to comment on the two separate proposals issued by the Financial Crimes Enforcement Network of the Department of the Treasury (“FinCEN”) designating Infobank and the First Merchant Bank OSH Ltd. and its subsidiaries as financial institutions of primary money laundering concern and imposing a special measure on these banks pursuant to 311(a) of Title III of the USA PATRIOT Act of 2001.² SIA supports FinCEN’s determination to impose the special measures against Infobank (located in Belarus) and First Merchant Bank OSH Ltd. (located in the Turkish Republic of Northern Cyprus).

FinCEN’s proposed rules would require a covered financial institution to terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Infobank or First Merchant Bank OSH Ltd. The proposals would also

¹ The Securities Industry Association, established in 1972 through the merger of the Association of Stock Exchange Firms and the Investment Banker's Association, brings together the shared interests of nearly 600 securities firms to accomplish common goals. SIA member-firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs 790,600 individuals. Industry personnel manage the accounts of nearly 93-million investors directly and indirectly through corporate, thrift, and pension plans. In 2003, the industry generated \$213 billion in domestic revenue and an estimated \$283 billion in global revenues. (More information about SIA is available on its home page: www.sia.com).

² “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001,” (“PATRIOT Act”) Pub. L. No. 107-56 (2001), signed into law by President Bush on October 26, 2001. 69 Fed. Reg. 28,098 (May 18, 2004).

require covered financial institutions to: 1.) provide notice to correspondent account holders that they may not provide Infobank or First Merchant Bank OSH Ltd. with access to the correspondent accounts maintained at the covered financial institution; and 2.) take reasonable steps to identify any indirect use of their correspondent accounts by Infobank or First Merchant Bank OSH Ltd. to the extent that such use can be determined from transactional records maintained in the normal course of business.

The provisions proposed are essentially the same as FinCEN proposed against the Commercial Bank of Syria on May 18, 2004. SIA supported those provisions but was concerned about the necessity to provide an actual notice of the prohibitions regarding the Commercial Bank of Syria to every correspondent account holder. (See SIA comment letter, dated June 17, 2004). The notice requirements for Infobank and First Merchant Bank OSH Ltd. are the same as the Commercial Bank of Syria notice and would require a U.S. firm to send a notice to every correspondent account holder stating that it may not provide Infobank and First Merchant Bank OSH Ltd. with access to the correspondent accounts maintained at the U.S. firm. Accordingly, we have the same concerns.

While SIA is committed to assisting the government's efforts against Infobank and First Merchant Bank OSH Ltd., we recommend, as we did in our earlier comment letter, that FinCEN consider permitting other methods of providing notice or allow sufficient flexibility so that firms can utilize systems already established under other provisions of the Patriot Act to provide notice. In sum, we believe that this notice requirement may be unnecessarily burdensome, redundant, and not the most effective way of achieving the goals of the proposal given that many financial institutions may have thousands of correspondent accounts. The inefficiency of this process will greatly increase if FinCEN imposes special measures against additional foreign financial institutions, and U.S. institutions are required to send out additional rounds of notices to correspondent account holders. We will not repeat the rationale and justifications presented in an earlier comment letter, but instead refer FinCEN staff to that letter.

We are also concerned that it may be difficult to screen for wire payments to First Merchant Bank OSH Ltd., which is located in the Turkish Republic of Northern Cyprus ("TRNC"). The TRNC is a self-proclaimed state occupying the northern third of Cyprus, and is only recognized by Turkey. All other governments and the United Nations recognize the sovereignty of the Republic of Cyprus over the whole island of Cyprus. As a result, the TRNC has no ISO (International Organization for Standardization) country code, which is routinely used by financial institutions in their automated screening. Screening will be complicated further because there are numerous institutions named "First Merchant Bank." We therefore request that FinCEN acknowledge in the final rule the difficulty of screening without an ISO country code. We also recommend that FinCEN include the ISO or SWIFT Code when issuing 311 special measures.

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We are committed to working with FinCEN to find alternative methods to achieve the goals of the notice provision. We made several suggestions in our earlier comment letter, and we stand ready to help FinCEN implement any of those suggestions.

Sincerely,

Alan E. Sorcher
Vice President and
Associate General Counsel
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