



Invested in America

Via Electronic Mail

January 27, 2012

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

Re: Imposition of Special Measure against the
Islamic Republic of Iran as a Jurisdiction of
Primary Money Laundering Concern
RIN 1506–AB16

Ladies and Gentlemen:

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates the opportunity to comment on the proposal issued by the Financial Crimes Enforcement Network of the Department of the Treasury (“FinCEN”) designating the Islamic Republic of Iran (“Iran”) as a jurisdiction of primary money laundering concern and imposing a special measure against Iran pursuant to Section 311 of Title III of the USA PATRIOT Act of 2001.² SIFMA supports FinCEN’s determination to impose the special measures against Iran.

FinCEN’s proposed rule would prohibit a covered financial institution from establishing, maintaining, or managing in the United States any correspondent account for, or on behalf of, banking institutions in Iran.³ The proposal would also require covered financial institutions to: 1) provide notice to correspondent account holders that they may not provide banking institutions in Iran 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 Iranian banking institutions to the extent that such use can be

¹ The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

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).

³ 76 Fed. Reg. 72881 (Nov. 28, 2011).

determined from transactional records maintained in the normal course of business.⁴ Beyond these steps, FinCEN also notes that covered institutions should take a risk-based approach to determine what, if any, additional due diligence measures should be implemented to guard against improper indirect use of its correspondent accounts by Iranian banking institutions.

FinCEN is specifically inviting comments on the form and scope of the notice to certain correspondent account holders that would be required under the rule and whether a one-time notice will be sufficient to ensure cooperation from correspondent account holders in denying Iranian banking institutions access to the financial system. FinCEN is also requesting comments on the incremental costs that financial institutions would incur if this rule required an annual notice. Finally, FinCEN is specifically soliciting comments on the requirement that covered financial institutions take reasonable steps to screen their correspondent accounts in order to identify any indirect use by Iranian banking institutions.

One-time Notice Provision

SIFMA appreciates FinCEN's concerns regarding Iran, and we are committed to assist in the government's efforts to detect and prevent money laundering and the financing of terrorist activity. However, we recommend that FinCEN reconsider the necessity of the notice provision or consider permitting other methods of providing notice, or allowing sufficient flexibility so that firms can utilize systems already established under other provisions of the PATRIOT Act to provide the notice. If FinCEN finds the notice provision essential, we ask that FinCEN at a minimum provide clarification with regard to the timing of such notices. SIFMA member firms are requesting clarification as to the term "one-time notice" and whether the notice should be issued at the time of the final issuance of the rule by FinCEN, and circulated to all existing customers with whom a covered financial institution maintains correspondent relationships at that point in time, or at every new customer relationship or account opening, as subsequently established by a covered financial institution with a new correspondent customer. Based on prior practice, it is the industry's view that the rule was only intended to require notice at one time when the rule is finalized. The fact that FinCEN is now considering "annual" notice supports that view.

The special measures require a covered financial institution to notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Iranian banking institutions that such correspondents may not provide Iranian banking institutions with access to the correspondent account maintained at the covered financial institution. We believe this provision may be unnecessarily burdensome, redundant, and not the most effective way of achieving the goals of the proposal. Given that many US financial institutions have thousands of correspondent accounts -- most of which have no dealings with Iran -- it would seem to be an extremely inefficient use of resources to provide notice to all such account holders. The inefficiency of this process greatly increases every time FinCEN imposes special measures against additional foreign financial institutions, especially if the interpretation of the notice obligations means that U.S. institutions are required to send ongoing communications and additional rounds of notices to correspondent account holders.

⁴ *Id.*

As a result, many foreign banks will be inundated with the same notification from many different U.S. financial institutions that are required to send the notice because the foreign banks have correspondent relationships with them. Moreover, the notice would require in many cases a separate mailing, at considerable cost and expense with little, if any, added enforcement benefit, because firms do not regularly schedule mailings targeted solely to correspondent account holders.

We suggest that FinCEN reconsider the necessity of the notification provision or alternatively, consider permitting other methods by which institutions can comply with the notice requirement. SIFMA believes the goals of the notification provision could be achieved by FinCEN's efforts to publicize the special measure worldwide. We respectfully submit that FinCEN could accomplish this goal by working with foreign governments and central banks to provide notice to their financial institutions. Alternatively, all U.S. financial institutions could be encouraged or required to post the notice on their website in order to help publicize the special measure.

Another alternative would be to permit firms to use other means of notification, including through mechanisms already in place under other provisions of the PATRIOT Act, such as the certificate pursuant to Sections 313 and 319 of the Act. This flexibility will allow firms to build on current systems, and provide notice efficiently and effectively.

As noted, SIFMA requests that FinCEN clarify the meaning of the term "one-time notice" so that going forward industry members can be appropriately guided as to their obligations under this rule. The requirement of an annual notice in addition to the "one-time notice" increases the burden even more and diverts valuable resources (*e.g.*, time and money) from being applied towards other efforts to detect and prevent money laundering and the financing of terrorist activity. Should FinCEN find the notice requirement to be essential, SIFMA asks for clarification as to the timing of both the one-time notice and the annual notice and the expectations on covered financial institutions going forward. For example, the industry would like clarification as to whether FinCEN expects the annual notice to be timed once a year, or to be calculated from the last notice provided to the financial institution.

Indirect Use

The proposal would require covered financial institutions to take reasonable steps to identify any indirect use of their correspondent accounts by Iranian banking institutions to the extent that such use can be determined from transactional records maintained in the normal course of business. SIFMA requests that FinCEN clarify the meaning of "indirect use" or "indirect access" so that covered institutions can be appropriately guided as to their obligations under this rule. Institutions already impose vigorous risk-based controls on their correspondent relationships in accordance with AML requirements and guidance from FinCEN and OFAC sanctions against Iran, and we expect these controls to be sufficient to meet the proposed designation's requirements.

Enhanced Due Diligence

FinCEN also notes that covered institutions should take a risk-based approach to determine what, if any, additional due diligence measures should be implemented to guard

against improper indirect use of its correspondent accounts by Iranian banking institutions. SIFMA also asks FinCEN to clarify whether the reference to enhanced due diligence in any way enhances the obligations for such due diligence under Rule 312 or whether it is simply incorporating that rule into this special measure.

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We are committed to working with FinCEN to find alternative methods to achieve the goals of the notice provision, and the implementation of the special measures rule, and we stand ready to help FinCEN implement any of our suggestions. Please do not hesitate to contact Ryan Foster at 202-962-73288 or via email at rfoster@sifma.org if you would like to discuss these matters further.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'RDF', is positioned below the 'Respectfully submitted,' text.

Ryan D. Foster
Vice President and Assistant General Counsel
SIFMA