(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Burmese financial institution* means the following:

(i) Any foreign bank, as that term is defined in § 103.11(o), chartered or licensed by Burma, including branches and offices located outside Burma; and

(ii) Any other person organized under the law of Burma, including branches or offices located outside of Burma, who conducts as a business one or more of the following activities or operations on behalf of customers:

(A) Trading in money market instruments;

(B) Trading in exchange, interest rate, and index instruments;

(C) Trading in transferable securities; or

(D) Trading in commodity futures or options.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a Burmese financial institution.

(2) *Prohibition on indirect correspondent accounts.* (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to a Burmese financial institution, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to a Burmese financial institution.

(3) *Exception.* The provisions of paragraphs (b)(1) and (2) of this section shall not apply to a correspondent account provided that the operation of such account is not prohibited by Executive Order 13310 and the transactions involving Burmese financial institutions that are conducted through the correspondent account are limited solely to transactions that are exempted from, or otherwise authorized by regulation, order, directive, or license pursuant to, Executive Order 13310.

(4) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or report any information not otherwise required by law or regulation.

Dated: November 19, 2003.

**William F. Baity,**

*Acting Director, Financial Crimes Enforcement Network.*

[FR Doc. 03–29289 Filed 11–24–03; 8:45 am]

BILLING CODE 4810–02–P

---

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

## Imposition of Special Measures Against Myanmar Mayflower Bank and Asia Wealth Bank as Financial Institutions of Primary Money Laundering Concern

**AGENCY:** Financial Crimes Enforcement Network (FinCEN), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** On November 18, 2003, the Secretary of the Treasury designated Myanmar Mayflower Bank (Mayflower Bank) and Asia Wealth Bank, both Burma banks, as financial institutions of primary money laundering concern pursuant to 31 U.S.C. 5318A, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001. The Department of the Treasury, acting through FinCEN, is issuing this proposed rule to impose special measures against these two institutions.

**DATES:** Written comments on the notice of proposed rulemaking must be submitted on or before December 26, 2003.

**ADDRESSES:** It is preferable for comments to be submitted by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, ''Attn: Section 311—Designation of Burmese Banks.'' Comments also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 311 Special Measures Regulations (Burmese Banks). Please submit comments by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Office of the General Counsel, Department of the Treasury, (202) 622–1927; the Executive Office for Terrorist Financing and Financial Crimes (Treasury) (202) 622–0470; or the Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll free numbers).

**SUPPLEMENTARY INFORMATION:** The Secretary of the Treasury has designated Myanmar Mayflower Bank (Mayflower Bank) and Asia Wealth Bank to be financial institutions of primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act (Pub. L. 107–56).

Treasury, acting through FinCEN, is also proposing the imposition of special measures authorized by section 5318A(b)(5). The special measures imposed under this section would prohibit certain U.S. financial institutions from maintaining correspondent or payable-through accounts in the United States for, or on behalf of, Mayflower Bank and Asia Wealth Bank. This prohibition extends to correspondent or payable-through accounts maintained for other foreign banks when such accounts are used to provide banking services to the two named Burmese banks indirectly.

Additionally, the Secretary designated the jurisdiction of Burma as a jurisdiction of primary money laundering concern. By a separate proposed rule, Treasury and FinCEN are proposing a special measure to prohibit certain U.S. financial institutions from maintaining correspondent or payable-through accounts for, or on behalf of, any Burmese financial institution. The special measure in this notice would prohibit certain U.S. financial institutions from establishing, maintaining, administering, or managing correspondent or payable-through accounts for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank, notwithstanding any

exemption from or license issued pursuant to Executive Order 13310 of July 28, 2003.

## I. Background

### *A. Section 311 of the USA PATRIOT Act*

On October 26, 2001, the President signed the Act into law. Title III of the Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA) (codified in subchapter II of chapter 53 of title 31, United States Code) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act (Section 311) added section 5318A to the BSA, granting the Secretary of the Treasury (Secretary) authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) as a ''primary money laundering concern'' and to require U.S. financial institutions to take certain ''special measures'' against the primary money laundering concern.

Section 311 identifies factors to consider and agencies to consult before the Secretary may designate a primary money laundering concern. The statute also provides similar procedures, *i.e.,* factors and consultation requirements, for selecting the imposition of specific special measures against the designee.

Taken as a whole, Section 311 provides Treasury with a range of options that can be adapted to target most effectively specific money laundering and terrorist financing concerns. These options give the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the concerned jurisdictions, institutions, transactions, and accounts; more effectively monitor the respective institutions, transactions, and accounts; and/or protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

#### 1. Required Consultations and Statutory Considerations To Be Made Prior to Designating a Foreign Financial Institution To Be of Primary Money Laundering Concern

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary is required by statute to consider ''such information as the Secretary determines to be relevant, including the following potentially relevant factors,'' when designating a foreign financial institution:

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

Thus, a designation is based on consideration of the relevant facts and factors in conjunction with a consultation process, which leads to a decision by the Secretary that there are reasonable grounds to conclude that the institution is of primary money laundering concern.

#### 2. Imposition of Special Measures

If the Secretary determines that a foreign financial institution is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually, jointly, in any combination, and in any sequence.[1]

The Secretary's imposition of special measures follows procedures similar to those for designations, but carries with it additional consultations to be made and factors to consider. The statute requires the Secretary to consult with appropriate agencies and other interested parties[2] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular institution; and
- The effect of the action on United States national security and foreign policy.

#### 3. Procedures for Imposing Special Measures

In this proposed rulemaking, the Secretary seeks to impose the fifth special measure (31 U.S.C. 5318A(b)(5)) against Mayflower Bank and Asia Wealth Bank. This special measure may only be imposed through the issuance of a regulation.

### *B. Burma, Myanmar Mayflower Bank, and Asia Wealth Bank*

#### 1. The Burmese Anti-Money Laundering Regime

Burma (also known as Myanmar) has no effective anti-money laundering controls in place. As a result, in June 2001 Burma was designated as a Non-Cooperative Country and Territory (NCCT) by the Financial Action Task Force (FATF)[3] for its lack of basic anti-money laundering provisions and weak oversight of the banking sector. Following the designation by the FATF, in April 2002, FinCEN issued an advisory to U.S. financial institutions to give enhanced scrutiny to all transactions originating in or routed to or through Burma, or involving entities organized or domiciled, or persons maintaining accounts, in Burma. Deficiencies identified by FATF and the FinCEN advisory included:

- Burma lacks a basic set of anti-money laundering laws or regulations.

[1] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)–(5). For a complete discussion of the range of possible countermeasures, *see* 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

[2] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, ''such other agencies and interested parties as the Secretary may find to be appropriate.'' The consultation process must also include the Attorney General and the Secretary of State, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions maintaining correspondent account relationships with the designated entity.

[3] For further information on the FATF go to *http://www.fatf-gafi.org.*

• Money laundering is not a criminal offense for crimes other than drug trafficking in Burma.
• The Burmese Central Bank has no anti-money laundering regulations for financial institutions.
• Banks licensed by Burma are not legally required to obtain or maintain identification information about their customers.
• Banks licensed by Burma are not required to maintain transaction records of customer accounts.
• Burma does not require financial institutions to report suspicious transactions.
• Burma has significant obstacles to international co-cooperation by judicial authorities.

In June 2002, Burma responded to this international pressure by enacting an anti-money laundering law that purportedly addresses some of these deficiencies. The necessary regulations required for its effective implementation, however, are not in place. As a result, the Burmese anti-money laundering law is ineffective and unenforceable, and cannot be regarded as effectively remedying any of the identified deficiencies. Due to Burma's continuing lack of progress, the FATF called upon its member jurisdictions to impose countermeasures on Burma as of November 3, 2003.

The United States continues to recognize that Burma is a haven for international drug trafficking. On January 31, 2003, the President also signed Presidential Determination No. 2003–14, identifying Burma as a major illicit drug producing and/or drug transiting country pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Pub. L. 107–228), and as a country that has failed demonstrably during the previous twelve months to adhere to its obligations under international counter-narcotics agreements and take the measures set forth in section 489(a)(1) of the Foreign Assistance Act of 1961, as amended (FAA). In addition, this past year Burma continued to be named as a major money laundering country. A major money laundering country is defined by statute as one ''whose financial institutions engage in currency transactions including significant amounts of proceeds from international narcotics trafficking.'' FAA section 481(e)(7).

2. Mayflower Bank and Asia Wealth Bank

Mayflower Bank was incorporated in 1996 as a full-service commercial bank in Rangoon, Burma. The bank maintains 25 branches and has 1,153 employees. The Banker's Almanac and Dun and Bradstreet reports indicate that Mayflower Bank was incorporated in 1994. According to the 2003 Europa World Yearbook, the chairman of Mayflower Bank is Kyaw Win. The 1996–1997 Worldwide Correspondents Guide indicates that Mayflower Bank claims to have correspondent accounts in major cities, but advises readers to contact the bank for more information. The current issue of Thomson Bank Directory states that current financial figures for the bank are not available.

Asia Wealth Bank started its banking operation in 1995 and is one of the largest private banks in Burma, offering a wide variety of banking services. In August 2000, Asia Wealth Bank held 52 percent of the market share in fixed deposits of Burmese banks (over U.S. $23 billion). At the end of March 2001, it had 39 branches with a total of 3,200 employees (in December 2002, Dun and Bradstreet indicated only 2,200 employees). According to the 2003 Europa World Yearbook, Win Maung is the Chairman and Aik Htun is the Vice-Chair.

Presently Burma is reported to have only ten local private banks, and Mayflower Bank and Asia Wealth Bank are two of the five largest. There are also five state run (*i.e.*, public) banks in Burma.[4] Other reports indicate that there may be as many as 20 private banks, but confirm that Mayflower Bank and Asia Wealth Bank are two of the leading banks.[5]

*C. Economic Sanctions*

On July 28, 2003, the President signed both the Burmese Freedom and Democracy Act of 2003 and Executive Order 13310, imposing economic sanctions on Burma. These sanctions generally include: (1) A ban on the exportation or reexportation, directly or indirectly, of financial services to Burma; (2) the blocking of property and interests in property of the State Peace and Development Council of Burma and three state-owned foreign trade banks that are in the United States or in the possession or control of U.S. persons; and (3) a ban on the importation of Burmese goods into the United States. These sanctions build on an investment ban imposed under Executive Order 13047 issued pursuant to the International Emergency Economic Powers Act (IEEPA) on May 20, 1997, and a recently expanded visa ban in place since October 1996. The new sanctions have frozen hundreds of thousands of dollars of assets and have disrupted an already weak economy, especially in the important garment sector where many firms have closed or moved outside of Burma.

Executive Order 13310 prohibits broadly the provision of financial services to Burma from the United States or by a U.S. person, subject to limited exceptions.[6] Since the President signed the Order, however, Treasury has issued several licenses to permit transactions with Burma for certain specified purposes. For example, Treasury issued licenses authorizing transactions for the conduct of the official business of the United States Government, the United Nations, the World Bank, and the International Monetary Fund, and non-commercial personal remittances of up to $300 per household per quarter. The exemptions and licenses reflect the judgment of the United States that certain transactions are necessary and appropriate, even within the framework of this sanctions regime.

*D. The Proposed Section 311 Special Measures*

The requirements sought to be imposed against Mayflower Bank and Asia Wealth Bank pursuant to Section 311 reinforce the existing restrictions on transactions with Burma that are outlined above, and are a necessary addition to the Section 311 special measures Treasury seeks to impose on the jurisdiction of Burma. Although they are similar in their effect on these two banks, the proposed Section 311 special measures differ in certain respects and serve distinct policy goals from the economic sanctions imposed pursuant to Executive Order 13310. Most notably, the Section 311 special measures will not permit U.S. financial institutions to maintain indirect correspondent accounts even to conduct transactions that are exempt from, or licensed pursuant to, Executive Order 13310. The justification for this absolute prohibition lies in the Secretary's determination that Mayflower Bank and Asia Wealth Bank pose an unacceptable risk of money laundering and other financial crimes, and are linked to narcotics traffickers. The specific information concerning these two banks justifies their exclusion entirely from the U.S. financial system. This underscores the important policy justification for the Section 311 action—stemming the flow of illicit funds into

[4] *See* Official Myanmar Finance Ministry Web site, *http://www.Myanmar.com.*

[5] *See* Xinhua News Agency, March 8, 2002.

[6] For example, the prohibition does not extend to transactions relating to certain contracts entered into prior to May 21, 1997. *See* Executive Order 13310, § 13.

the U.S. financial system. In contrast, the existing sanctions pursuant to Executive Order 13310 were imposed for different reasons, including, for example, the government of Burma's continued suppression of the democratic opposition.

Moreover, as with the designation of Burma generally, the United States is sending a strong message to other jurisdictions and financial institutions to take similar steps to cut off these two banks from the international financial system due to the unacceptable risk of money laundering.

Finally, while the proposed special measures applicable to all Burmese financial institutions would certainly apply to Mayflower Bank and Asia Wealth Bank, a separate designation is necessary. The special measure Treasury proposes to apply to all Burmese financial institutions incorporates the licenses and exemptions applicable to the economic sanctions under Executive Order 13310. These exceptions are not appropriate when dealing with Mayflower Bank and Asia Wealth Bank, given their affiliation with narcotics traffickers. Also, by separately designating these two banks, to the extent Burma responds to the international call and begins to implement effective anti-money laundering controls, Treasury has the flexibility to alter the special measures applicable to all Burmese financial institutions while maintaining the absolute prohibition against these two institutions. The separate designation of Mayflower Bank and Asia Wealth Bank under Section 311 also fulfills another important goal of Treasury: To name publicly institutions posing risks to the international financial system and encourage all jurisdictions to exclude them.

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

Based upon a review and analysis of relevant information, consultations with relevant agencies and departments, and a consideration of the factors outlined above, the Secretary has determined that Mayflower Bank and Asia Wealth Bank are financial institutions of primary money laundering concern. See the notice published elsewhere in this separate part.

The Secretary has found Mayflower Bank and Asia Wealth Bank, both located in Burma, to be of primary money laundering concern due to a number of factors, including: (1) They are licensed in Burma, a jurisdiction with inadequate anti-money laundering controls; (2) individuals owning and controlling both banks are linked to drug trafficking and money laundering, including using the banks for such purposes; and (3) the individuals who own and control the banks are linked to the United Wa State Army (UWSA), an organization involved in narcotics trafficking, and designated as significant narcotics traffickers under the Foreign Narcotics Kingpin Designation Act,[7] and, in the case of the Asia Wealth Bank, the owners are linked to organized crime.

As provided by section 311, the Secretary also considered the following three factors, all of which counsel in favor of designating both banks:

### *1. The Extent to Which Such Financial Institutions, Transactions, or Types of Accounts Are Used To Facilitate or Promote Money Laundering in or Through the Jurisdiction*

The Secretary has information that Mayflower Bank is owned and controlled by convicted narcotics traffickers, is essentially controlled by the UWSA, and has been used to facilitate money laundering. For example, public sources indicate that Mayflower Bank is owned by Kyaw Win. His name has been linked to a former drug lord and to others who have been identified in connection with the narcotics trade.[8] Various sources establish the connection between officials of the UWSA and Mayflower Bank, both in terms of their control over the institution as well as the use of the institution to launder funds.[9] The UWSA operates an extensive drug trafficking operation.

Asia Wealth Bank, one of Burma's largest private banks, is affiliated with prominent organizations and figures in the drug trade, including members of the Kokang ethnic group headed by notorious druglord Peng Chia-Sheng. Eike Htun, the vice chairman of the bank, has been specifically identified as having connections with Burma's narcotics trade.[10] The bank has also been a repository for funds with illicit origins, and counterfeit notes.[11]

### *2. The Extent to Which Such Institutions, Transactions, or Types of Accounts Are Used for Legitimate Business Purposes in the Jurisdiction*

In response to economic turmoil, Burma recently suspended the banking operations of all private banks, including Mayflower Bank and Asia Wealth Bank. Although it appears that some private banks may be conducting operations despite the suspension, it is difficult to conduct legitimate business at this time. Additionally, Burmese law does not allow private banks to engage in foreign currency transactions. All foreign currency transfers into Burma are required to be executed by one of three of Burma's state banks (Myanmar Economic Bank, Myanmar Investment and Commercial Bank, and Myanmar Foreign Trade Bank).

Generally, Burma's poorly regulated banking system and ineffective money laundering legislation have created a business and investment environment conducive to the use of drug-related proceeds in legitimate commerce. Burma's economy continues to be vulnerable to drug money laundering because of its under-regulated financial system, weak anti-money laundering regime, and policies that facilitate the funneling of drug money into commercial enterprises and infrastructure investment.[12] According to a March 1998 report of Jane's Intelligence Review, about 60 percent of Burma's private investment is in one way or another related to narcotics.

### *3. The Extent to Which Such Action Is Sufficient To Ensure, With Respect To Transactions Involving the Jurisdiction and Institutions Operating in the Jurisdiction, That the Purposes of the BSA Continue To Be Fulfilled, and To Guard Against International Money Laundering and Other Financial Crimes*

A determination that Mayflower Bank and Asia Wealth Bank—institutions operating in a jurisdiction with inadequate anti-money laundering laws and regulations, believed to be

[7] 21 U.S.C. 1901–1908, 8 U.S.C 1182.

[8] *See* The Age Company Limited (Melbourne), ''Burma's Banking Meltdown Goes Unnoticed Beyond its Borders,'' March 20, 2003; Asian Company Profiles Ltd., Mayflower Bank profile, July 3, 2003.

[9] The Financial Times reports that the UWSA, one of the world's largest organizations of armed drug traffickers, has taken over the Mayflower Bank in Rangoon. *See* Heritage Foundation Reports, January 2002. A Thailand article from 2002 indicates that the UWSA bought shares in the Mayflower Bank and has been providing assistance to it, describing the Bank as part of the UWSA Business Empire. *See* Bangkok Phuchatkan, January 2, 2002.

[10] *See* Backman, The Age (Melbourne), March 20, 2003; Global News Wire, BBC Monitoring, February 14, 2003.

[11] As recently as October 2002, significant funds from Yang Kya Haw, arrested for drug trafficking, were discovered in the Asia Wealth Bank. *See* Shanland (internet website), February 19, 2003. On April 30, 2002, counterfeit 1,000 Kyat notes were found at the Asia Wealth Bank branch in Pa-an, Burma. *See* Oslo Democratic Voice of Burma, May 2, 2002.

[12] *See* U.S. Department of State, International Narcotics Control Strategy Report, March 2003.

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.

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 Act [14] 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).

prohibited under existing sanctions from maintaining correspondent accounts for Mayflower Bank and Asia Wealth Bank. Given the limitations placed by the Burmese government on the international activities of these banks, Treasury and FinCEN believe that few foreign correspondent bank customers of small U.S. financial institutions covered by the proposed rulemaking will themselves maintain correspondent accounts for Mayflower Bank or Asia Wealth Bank. Treasury and FinCEN specifically request comment on the extent to which the prohibition contained in the proposed rule would affect small U.S. financial institutions beyond obligations already imposed by existing economic sanctions.

**VIII. Executive Order 12866**

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866, ''Regulatory Planning and Review.''

**List of Subjects in 31 CFR Part 103**

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as follows:

## PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, sec. 311, 312, 313, 314, 319, 326, 352, Pub.L. 107–56, 115 Stat. 307; 12 U.S.C. 1818; 12 U.S.C. 1786(q).

2. Subpart I of part 103 is proposed to be amended by adding § 103.187 under the undesignated centerheading ''SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS'' to read as follows:

**§ 103.187 Special measures against Myanmar Mayflower Bank and Asia Wealth Bank.**

(a) *Definitions*. For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5)) that is an open-end company (as defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) and that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Myanmar Mayflower Bank* means all headquarters, branches, and offices of Myanmar Mayflower Bank operating in Burma or in any jurisdiction.

(4) *Asia Wealth Bank* means all headquarters, branches, and offices of Asia Wealth Bank operating in Burma or in any jurisdiction.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts*. A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Myanmar Mayflower Bank or Asia Wealth Bank.

(2) *Prohibition on indirect correspondent accounts*. (i) If a covered financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is being used by the foreign bank to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank, the covered financial institution shall ensure that the correspondent account is no longer used to provide such services, including, where necessary, terminating the correspondent account; and

(ii) A covered financial institution required to terminate an account pursuant to paragraph (b)(2)(i) of this section:

(A) Shall do so within a commercially reasonable time, and shall not permit the foreign bank to establish any new positions or execute any transactions through such account, other than those necessary to close the account; and

(B) May reestablish an account closed pursuant to this paragraph if it determines that the account will not be used to provide banking services indirectly to Myanmar Mayflower Bank or Asia Wealth Bank.

(3) *Reporting and recordkeeping not required*. Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by law or regulation.

Dated: November 19, 2003.

**William F. Baity,**

*Acting Director, Financial Crimes Enforcement Network.*

[FR Doc. 03–29288 Filed 11–24–03; 8:45 am]

BILLING CODE 4810–02–P