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July 27, 2004

FinCEN
P.O. Box 39
Vienna, VA 22183

Re: RIN 1506-AA64
Proposed Special Measure Against
Commercial Bank of Syria

Dear Sirs:

The Clearing House Association L.L.C. ("The Clearing House")[1] is pleased to comment on FinCEN's proposal to impose a special measure against Commercial Bank of Syria ("CBS") as a financial institution of primary money-laundering concern.[2]

The Clearing House and its member banks are committed to assisting the Government's efforts to detect and prevent money laundering and terrorist financing. We appreciate the Government's concerns regarding Syria and believe that

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[1] The Clearing House was formerly named The New York Clearing House Association L.L.C. The members of The Clearing House are: Bank of America, National Association; The Bank of New York; Citibank, N.A.; Deutsche Bank Trust Company Americas; HSBC Bank USA, National Association; JPMorgan Chase Bank; LaSalle Bank National Association; U.S. Bank, National Association; Wachovia Bank, National Association; and Wells Fargo Bank, National Association. American Express Bank, Ltd.; Barclay's Bank PLC; and UBS AG, Stamford Branch, participants in the Clearing House Interbank Payments System ("CHIPS"), also support the positions taken in this letter.

[2] 69 Fed. Reg. 28,098 (May 18, 2004). The special measure would also be directed against CBS's subsidiary, Syrian Lebanese Commercial Bank.

some special measures are warranted; we also appreciate the care with which FinCEN has taken to craft regulations that isolate CBS while attempting to minimize the burdens on the banks. Nevertheless, after having reviewed the proposed rule, we now wish to seek clarification of the proposed regulations, primarily with regard to funds transfers and letters of credit.

Funds Transfers

The proposal states that banks will be required to take

> reasonable steps to identify any indirect use of its correspondent accounts by Commercial Bank of Syria, *to the extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.*[3]

The explanatory matter published in the *Federal Register* provides one example of such reasonable steps:

> a covered financial institution would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed CBS as the originator's or beneficiary's financial institution or otherwise referenced CBS.[4]

Any bank that applies a screening mechanism similar to one it has in place in place for complying with U.S. economic sanctions programs will undoubtedly identify numerous "hits," each of which will require manual investigation. As many of these will subsequently be identified as "false hits," use of a sanctions-type filter is likely to lead to the delay of legitimate transactions with the attendant interest compensation claims.

We also note that there is nothing in the proposed rule to suggest that a covered financial institution would be required to block a funds transfer involving CBS or that would impose any penalties on a U.S. bank that processed a funds transfer involving CBS as long as it had exercised due diligence with respect to its correspondents. If our interpretation is correct and the final regulation will not require rejection or blocking of a payment order involving CBS, then whether the filtering is

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[3] Proposed 31 C.F.R. § 103.188(b)(2)(B)(ii) (emphasis added).

[4] 69 Fed. Reg. at 28,102.

done before or after the bank would have to execute its customer's payment order should make no difference.

We, therefore, suggest that the final regulation explicitly allow a covered financial institution to engage in post-transaction monitoring, similar to the monitoring banks currently use to assist in the identification of possible suspicious activity.[5]

Letters of Credit

A number of U.S. banks have issued standby letters of credit ("SLCs") to cover performance bonds issued by CBS. In the typical situation, a U.S. corporation enters into a contract to perform services for the Syrian government or a Syrian corporation. Under Syrian law, the U.S. corporation is required to obtain a performance bond from a Syrian bank that will provide payment to the Syrian entity should the U.S. corporation default. The U.S. corporation requests its U.S. bank to arrange for CBS to issue the performance bond and to issue an SLC in favor of CBS so that CBS is not ultimately at risk of loss should the U.S. corporation fail to perform. These SLCs are ordinarily for short terms (usually 90 days) and are automatically renewable. Receipt by CBS of a notice not to renew will trigger CBS's right to draw down funds under the existing SLC.

We do not believe that it would serve any useful purpose to require U.S. banks to terminate or not renew existing SLCs under these circumstances and will, in fact, be counterproductive. Although special measures have been proposed for CBS, Syria itself has not been blocked by the U.S. government, and U.S. corporations may still do business in Syria and with the Syrian government, and they are still permitted to obtain performance bonds from CBS. A requirement that U.S. banks terminate existing SLCs in favor of CBS, will, as noted, give rise to CBS's right to draw on each terminated SLC, with the result that the U.S. banks that issued these SLCs will have to make the required payment to CBS and obtain reimbursement from their U.S. corporate customers. Thus a requirement that is intended to cut CBS off from the U.S. financial system will result in the payment of millions of dollars to CBS at the expense of U.S. corporations that are doing business legally in Syria.

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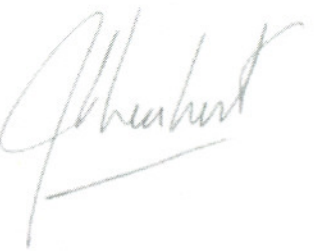
[5] We also seek guidance as to whether there is an expectation that banks will file suspicious activity reports merely because a transaction with a connection to CBS was attempted or completed.

We therefore request that FinCEN announce with the final rule that the special measure will not prohibit U.S. banks from extending standby letters of credit for the benefit CBS.[6]

The Clearing House and its member banks appreciate this opportunity to comment on the proposed special measures against the Commercial Bank of Syria and would be pleased to discuss any of the points made in this letter. Should you have any questions, please contact Norman R. Nelson, General Counsel, at 212-612-9205 or Joseph R. Alexander, Senior Counsel, at 212-612-9334.

Very truly yours,



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[6] We urge FinCEN to announce this rule promptly because the short-term duration of most of these SLCs means that the issuing banks will be required to make decisions on renewing these SLCs very soon.