

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506—AA63

Repeal of the Final Rule Imposing Special Measures and Withdrawal of the Findings of Primary Money Laundering Concern against Myanmar Mayflower Bank and Asia Wealth Bank

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

ACTION: Final rule.

SUMMARY: This document repeals FinCEN’s final rule, “Imposition of Special Measures Against Myanmar Mayflower Bank and Asia Wealth Bank” of April 12, 2004, and withdraws the findings of Myanmar Mayflower Bank and Asia Wealth Bank as Financial Institutions of Primary Money Laundering Concern of November 25, 2003, issued pursuant to 31 U.S.C. 5318A of the Bank Secrecy Act (the “BSA”).

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

FOR FURTHER INFORMATION CONTACT: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, (800) 949-2732 and select Option 1

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism

Act of 2001, Public Law 107-56 (“USA PATRIOT Act”). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the BSA, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X.¹ The Secretary of the Treasury (the “Secretary”) has delegated his authority to administer the BSA and its implementing regulations to the Director of the Financial Crimes Enforcement Network.²

Section 311 of the USA PATRIOT Act (“section 311”) added Section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and domestic financial agencies to take certain “special measures” against the primary money laundering concern.³

Taken as a whole, Section 5318A provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful

¹ On October 26, 2010, FinCEN issued a final rule creating a new Chapter X in Title 31 of the Code of Federal Regulations for the BSA regulations. *See* 75 FR 65806 (October 26, 2010) (Transfer and Reorganization of Bank Secrecy Act Regulations Final Rule) (referred to herein as the “Chapter X Final Rule”). The Chapter X Final Rule became effective on March 1, 2011.

² Therefore, references to the authority of the Secretary under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

³ 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).

pressure on those jurisdictions and institutions that pose money-laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, FinCEN can: gain more information about the concerned jurisdictions, financial institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, financial institutions, transactions, and accounts; and, ultimately, protect U.S. financial institutions from involvement with jurisdictions, financial institutions, transactions, or accounts that pose a money laundering concern.

B. Myanmar Mayflower Bank and Asia Wealth Bank

Myanmar Mayflower Bank was incorporated in 1996 as a full-service commercial bank in Rangoon, Burma. At the time of the final rule, the bank maintained 25 branches and had 1,153 employees. The Banker's Almanac and Dun and Bradstreet reports indicated that Mayflower Bank was incorporated in 1994.

Asia Wealth Bank started its banking operation in 1995, was one of the largest private banks in Burma, and offered 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).

II. The Finding, Final Rule, and Subsequent Developments

A. The Finding and Final Rule

Based upon review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary found that reasonable grounds existed for

concluding that Myanmar Mayflower Bank and Asia Wealth Bank (“the Banks”) were financial institutions of primary money laundering concern.⁴ Based on that finding, FinCEN issued a notice of proposed rulemaking to impose the special measure authorized under 31 U.S.C. 5318A(b)(5) against the Banks.⁵

After consulting with required Federal agencies and parties, reviewing public comments received on the notice of proposed rulemaking, and considering additional relevant factors, FinCEN issued a final rule on April 12, 2004 that imposed the special measure authorized under 31 U.S.C. 5318A(b)(5) against the Banks.⁶ The final rule requires covered financial institutions to terminate any correspondent or payable-through accounts for, or on behalf of, the Banks, and to apply due diligence reasonably designed to guard against indirect use of their correspondent or payable-through accounts by the Banks.

III. Withdrawal of the Finding of Primary Money Laundering Concern against Myanmar Mayflower Bank and Repeal of the Final Rule

Subsequent to the issuance of the final rule related to the Banks, the Government of Burma revoked the licenses of the Banks in 2005 and neither financial institution currently exists.⁷ Therefore, FinCEN hereby withdraws the finding that Myanmar Mayflower Bank and Asia Wealth Bank are financial institutions of primary money laundering concern, as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. FinCEN is also repealing the final rule, as published in the **Federal Register** on April 12, 2004 (69 FR 19098) as 31 CFR 103.187 (now 31 CFR 1010.652),

⁴ See 68 FR 66298 (November 25, 2003).

⁵ See 68 FR 66305 (November 25, 2003).

⁶ See 69 FR 19098 (April 12, 2004).

⁷ See International Narcotics Control Strategy Report, Volume II, Department of State, at 120 (March 2007).

that was based upon the finding. FinCEN's withdrawal of the finding of primary money laundering concern against the Banks and the repeal of the related final rule do not acknowledge any remedial measures taken by the Banks, but are the result of the revocation of their licenses by the Government of Burma and the cessation of their business activities. Notwithstanding this document, the finding that the jurisdiction of Burma is of primary money laundering concern and the related outstanding 311 final rule imposing the special measure authorized under 31 U.S.C. 5318A(b)(5) on the jurisdiction of Burma are still in effect.⁸

IV. Regulatory Matters

Although section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq.) requires notice and an opportunity for comment before an agency issues a final rule as well as a 30-day delayed effective date, it provides that an agency may dispense with these procedures when good cause exists. In this final rule, FinCEN has found that public comment procedures and delaying the effective date of the removal of the regulation would be contrary to the public interest. As discussed in this preamble, the Government of Burma revoked the licenses of the Banks that are the subject of the regulations and neither financial institution currently exists. Accordingly, FinCEN has found that good cause exists to dispense with prior notice and comment and a delay in effective date.

⁸ Burma was described at length in the November 25, 2003 notice of proposed rulemaking, 68 FR 66305, and April 12, 2004 final rule, 69 FR 19100. Today's repeal of the final rule and withdrawal of the findings of primary money laundering concern against Myanmar Mayflower Bank and Asia Wealth Bank do not provide an update on jurisdictional developments nor does it withdraw the November 25, 2003 finding that the jurisdiction of Burma is of primary money laundering concern (68 FR 66298). Further discussion of jurisdictional developments can be found at the U.S. Department of State's "2012 International Narcotics Control Strategy Report" at page 68 (<http://www.state.gov/documents/organization/185866.pdf>).

A. *Executive Order 12866*

It has been determined that this rulemaking is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

B. *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104–4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. FinCEN has determined that it is not required to prepare a written statement under Section 202 and has concluded that on balance the rule provides the most cost-effective and least burdensome alternative to achieve the objectives of the rule.

C. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), FinCEN certifies that this final regulation likely will not have a significant economic impact on a substantial number of small entities. The regulatory changes in this final rule merely remove the current obligations for financial institutions under 31 CFR 103.187 (now 31 CFR 1010.652).

D. Paperwork Reduction Act

This regulation discontinues the Office of Management and Budget Control Number 1506-AA63 assigned to the final rule and, as a result, reduces the estimated average burden of one hour per affected financial institution, totaling 5,000 hours. This regulation contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d) et seq.).

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

Authority and Issuance

For the reasons set forth above, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for 31 CFR part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314 and 5316-5332; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307.

§ 1010.652 [Removed]

2. Section 1010.652 is removed.

Dated: Sept. 25, 2012


Peter S. Alvarado
Deputy Director,
Financial Crimes Enforcement Network