

April 28, 2005

Director William Fox
PO Box 39
Vienna Va. 22183

Submitted via E-mail: regcomments@fincen.treas.gov

Re: Notice of proposed rulemaking-Financial Crimes Enforcement Network
(FinCEN), Treasury--RIN 1506-AA82

Dear Director Fox:

The Law Offices of Breschel & Rubin, LLP (as noted in our letter of April 28, 2005) and Dudinsky & Associates have been retained to represent VEF Banka (VEF) to address the Notice of Proposed Rulemaking contained in RIN 1506-AA82. We present the following comments on behalf of VEF.

VEF wants to join with the Government of Latvia and the United States Department of Treasury in improving the banking system of Latvia and finding solutions to some of the problems noted in the proposed rule referenced above. Although VEF does not agree with certain of the points stated in the proposed rule (as detailed below) VEF is anxious to cooperate with efforts by both the Latvian and United States governments to combat illegal or improper activities carried out in the financial services sector in either country.

It should be noted that whereas in United States bureaucratic terms, this agency issuance is merely a proposed rule, published for the purpose of comment, discussion and possible revision prior to possible issuance in final form of an order covering only correspondent relationships of US banks with VEF, it was seen by many Latvians as some kind of reasoned determination by the US government that VEF is a wrongdoer. The negative impact of the proposed rule on VEF has been multiplied by the high esteem many Latvians correctly feel toward the United States because of US support for Latvian independence. This week, following publication of the proposed rule concerning VEF, many other Latvian and multinational banks and account holders immediately terminated their relationships with VEF with devastating results to the bank.

As evidence of VEF's readiness to work with the US government, the Chairman of Council of VEF, Alexey Durandin, has traveled to Washington DC this week to be personally available for discussions with US authorities to address issues raised in the proposed rule. For all of these reasons, VEF requests an urgent meeting with appropriate

officials of the Treasury Department to discuss measures that VEF can undertake to address the issues raised in the proposed rule, including, but not limited to, audit procedures and audit access (in past years, VEF has been audited by Deloitte & Touche; this year, the audit contract was awarded to Price WaterhouseCoopers), document and identity authentication, and web based banking procedures.

VEF is proud of its history, beginning in the Soviet-era as a consumer electronics manufacturer well-known as a brand name in the Baltics and Eastern Europe, becoming a small but highly respected bank when independence was restored to Latvia in 1991. For the last five years, profits have not been distributed but reinvested in the bank to enable it to grow.

2. VEF states that as a matter of primary policy it operates totally in compliance with the laws of Latvia and the European Union, of which Latvia is a member.

Some specific comments on portions of the proposed rule follow (for identification purposes we will proceed by the successive pages of the Federal Register (Vol. 70, No. 79, April 27, 2005, pp.21369-21376), followed by a section reference and the first few words of the relevant sentence or paragraph):

3. P. 21370/Section B/”It guarantees not revealing...” Comment: Of course, in accordance with Latvian Law, VEF does not permit access to account information by third persons unless the third person has a legal right to know the information. This is a positive point, not a negative one, and, as far as we know, is in conformance with every other banking law in the world.
4. “Less than 20 percent...” Comment: The development of Latvia’s banking system is in large part a function of history and geography. Latvia is a small country (the size of Rhode Island) with a relatively stable currency since the restoration of independence. Traveling 200 miles in any direction places one in a foreign country. Also, in the Soviet days the Baltic borders were not enforced and huge amounts of soft and hard currency moved around the region. These factors have influenced the development of the Latvian banking system and matters such as the growth of non-resident accounts and the establishment of a large number of banks in Latvia in relation to its size. VEF suggest that these matters of history and geography are largely overlooked in the background discussions in the proposed rule.
5. “Additionally, approximately 75 percent. .” Comment: The accurate figure for VEF is 33%.

6. P. 21371/Section C/"Latvia's geographical position. " Comment: see comment above about geography and history.
- 7 "Sources of laundered money..." Comment: the relevance of this comment to VEF specifically is not apparent. As to the words pertaining to Latvia here and in the following sentences and paragraphs, VEF would like to associate itself with the comments on the proposed rule on April 25 by Prime Minister Kalvitis of Latvia (attached, as a news release, in Latvian; we do not yet have the official English translation).
8. "Latvia's 23 banks held approximately \$5 billion in nonresident..." Comment: VEF held only \$5 million of this \$5 billion total in nonresident deposits!
9. "Latvia has a general reputation for permissive bank secrecy laws....and VEF, in particular." Comment: VEF does not agree that it stands out in this regard.
10. "Recognizing the existence of widespread official corruption,..." Comment: VEF does not understand the relevance of these criticisms of the Latvian government to VEF.
11. "Proceeds of illicit activity have been transferred..."Comment: VEF does not have any information about these transactions, and therefore cannot take any action. VEF would like to cooperate by taking appropriate action if information were to be provided by the US government through appropriate Latvian authorities.
12. "A significant number of companies,..." Comment: VEF doesn't understand or agree with the negative inference here.
13. "VEF initiated or accepted on behalf of..." Comment: VEF believes this reference pertains to a particular wealthy client of the bank who participates in large, normal and legitimate documented business transactions.
14. P.21372/"Many of the private shell companies..." Comment: VEF notes that audits of offshore companies are not required under the laws of the European Union. Nevertheless, VEF would be willing to discuss these audit issues with Treasury.
15. "In fact, several VEF accountholders..." Comment: Again, VEF does not have this information, but it would be willing to work with US and Latvian banking regulators to take appropriate corrective action. On two occasions in the past, Latvian authorities asked VEF to freeze certain accounts and VEF immediately did so. Later Latvian authorities informed

VEF that the same accounts had been “cleared,” instructed VEF to unfreeze the accounts, and VEF did so. On those occasions, VEF was not provided with any underlying information.

16. “The defendants and their co-conspirators...” Comment: As noted above VEF does not have this information, but would be pleased to cooperate with US and Latvian banking authorities to take appropriate corrective action.
17. “One reason that internet financial crime groups...” Comment: The limit on monthly ATM withdrawals under Latvian law is \$80,000US/month. In checking VEF records, the largest withdrawal in one month was \$31,000US. Only 100 debit cards have been issued by VEF. VEF notes that while the legal limit on Cirrus cards was also \$80,000US/month, VEF set a lower limit of \$60,000/month, which it has recently lowered to \$15,000US/month. VEF reiterates its willingness to cooperate with Treasury on credit card issues.
18. “Criminals who have applied for...” Comment: VEF never received any information on such activities. If it had, it would have acted. If the authorities have such information, they should share it with VEF, so VEF can take appropriate action.
19. “The legitimacy of these documents...” Comment: VEF does not have the authority to investigate the authenticity of such documents under Latvian law. VEF understands it is possible to create false documents and would like to work with US and Latvian authorities to improve enforcement and verification procedures.
20. “Through Web Money’s accounts at VEF,...” Comment: Again, VEF does not know this information. If such information were passed to VEF through Latvian banking regulators, VEF would take appropriate action.
- 2 “It is difficult to determine the extent...” Comment: VEF does not agree with the inference of this remark. However, VEF is ready, willing and able to work with US and Latvian authorities to address this issue.
22. As a general comment, VEF is puzzled that following a largely negative background analysis of the Latvian banking system, Treasury focuses the proposed rule on a small bank representing less than 1% of the assets in the system.
23. The proposed rule is deficient in its analysis according to its own listed requirements in several instances. For example, according to the proposed rule, the agency must consider

“The Extent to Which the Proposed Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of VEF.” (Section II.B. 3, p. 21372)

The proposed rule does not respond to this requirement at all, noting instead the effect of the rule on legitimate businesses dealing with VEF, as follows:

“In light of the reasons for imposing this special measure, FinCEN does not believe that it will impose an undue burden on legitimate business activities, and notes that the presence of approximately 15 larger banks in Latvia will alleviate the burden on legitimate business activities within that jurisdiction.” (Section II B.3, op. cit.)

Note that the rulemaking requirement is to consider the effect of the rule on “Legitimate Business Activities of VEF,” not the effect of the rule on legitimate business activities within the jurisdiction. In fact, the effect of even the proposed rule on legitimate business activities of VEF is devastating.

VEF objects to the issuance of the proposed rule without any notice to the bank or any opportunity to discuss any of the allegations against VEF or possible steps that might be taken by the bank to address perceived problems. This occurred even though VEF was recently engaged in a series of meetings with US Embassy officials about improvements in the banking system. The Chairman of VEF first learned of the proposed rule by reading a press release.

As evidence of VEF’s commitment to preventing improper financial transactions, in recent months, VEF has submitted 122 reports of questionable financial activities to the Latvian Commission to Prevent Criminal Financial Activity. Even though VEF rejects the suggestion that VEF is being used to facilitate improper activities, it stands ready to undertake and implement immediate steps to address concerns highlighted by the proposed rule. To this end, VEF requests an urgent meeting with appropriate Treasury officials to discuss possible modifications to its procedures, including, but not limited to, identification security procedures, audit access, web-based banking, and similar substantive and procedural issues.

We outlined above the damage that has been inflicted upon VEF by this proposed rule. It would seem contrary to the expressed purposes of the Patriot Act and the evident intent of the proposed rule to improve the Latvian banking system to propose the rule but deny VEF the opportunity to discuss solutions acceptable to Treasury while the bank still exists as a viable institution to implement changes.

VEF is anxious not to be an example of a ‘questionable’ bank, but rather wants to be seen as a symbol of reliability and stability in a maturing banking system. VEF seeks cooperation with the US government for reform/improvements in the Latvian banking sector. This would be especially valuable to the bank and both governments given the upcoming visit by President Bush to Latvia.

Thank you for your consideration of our comments and our urgent request for a meeting,

Sincerely,

//s//
Steven Adam Rubin
Breschel & Rubin, LLP

//s//
Dennis Foreman
Dudinsky & Associates