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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

RIN 1506-AB23

Imposition of Special Measure against Liberty Reserve S.A. as a Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding, notice of which was published elsewhere in this issue of the *Federal Register* (Notice of Finding), the Director of FinCEN found that Liberty Reserve S.A. (Liberty Reserve) is a financial institution operating outside of the United States that is of primary money laundering concern pursuant to 31 U.S.C. 5318A. FinCEN is issuing this notice of proposed rulemaking (NPRM) to propose the imposition of a special measure against Liberty Reserve.

DATES: Written comments on this NPRM must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 1506-AB23, by any of the following methods:

- *Federal E-rulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments. Include RIN 1506-AB23 in the submission.

- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AB23 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov*. Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FUTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. 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 (the USA PATRIOT Act), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money

laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the Secretary) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (Section 311), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern.

II. Imposition of Special Measure Against Liberty Reserve as a Financial Institution of Primary Money Laundering Concern

A. Special Measure

As noticed elsewhere in this issue of the *Federal Register*, on May 28, 2013, the Director of FinCEN found that Liberty Reserve is a financial institution operating outside the United States that is of primary money laundering concern (Finding). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measure proposed in this NPRM, the Director of FinCEN proposes to impose the special measure authorized by section 5318A(b)(5) (the fifth special measure). In connection with this action, FinCEN consulted with representatives of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

B. Discussion of Section 311 Factors

In determining which special measures to implement to address the primary money laundering concern, FinCEN considered the following factors.

1. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups against Liberty Reserve

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: (1) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve; and (2) require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against processing transactions involving Liberty Reserve. FinCEN encourages other countries to take similar action based on the information contained in this notice and the Finding.

2. Whether the Imposition of the Fifth 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 fifth special measure proposed by this rulemaking would prohibit covered financial institutions from opening or maintaining correspondent accounts for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve after the effective date of the final rule implementing the fifth special measure. U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially-available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control

(OFAC) of the Department of the Treasury and to detect potential suspicious activity. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect transactions involving Liberty Reserve. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to Liberty Reserve. This would involve a minimal burden in transmitting a one-time notice to certain foreign correspondent account holders concerning the prohibition on processing transactions involving Liberty Reserve through the U.S. correspondent account, but otherwise is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Liberty Reserve

The requirements proposed in this NPRM would target Liberty Reserve specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Liberty Reserve is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the fifth special measure against Liberty Reserve would not have a significant adverse systemic impact on the international payment, clearance, and settlement system. As discussed further in the Notice of Finding, there appears to be little or no incentive for legitimate use of Liberty Reserve, due to its structure, associated fees, and lack of basic protections for users.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The exclusion of Liberty Reserve from the U.S. financial system as required by the fifth special measure would enhance national security by making it more difficult for money launderers, other criminals or terrorists to access the U.S. financial system. More generally, the imposition of the fifth special measure would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering and terrorism financing.

Therefore, pursuant to the Finding that Liberty Reserve is a financial institution operating outside of the United States of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN proposes to impose the fifth special measure.

III. Section-by-Section Analysis for Imposition of the Fifth Special Measure

A. 1010.660(a) – Definitions

1. Liberty Reserve

Section 1010.660(a)(1) of the proposed rule would define Liberty Reserve to include all branches, offices, and subsidiaries of Liberty Reserve S.A. operating in Costa Rica or in any other jurisdiction.

Covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Liberty Reserve.

2. Correspondent Account

Section 1010.660(a)(2) of the proposed rule would define the term "correspondent account" by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to

receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, "payable through accounts" are a type of correspondent account.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions, including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. FinCEN is using the same definition of "account" for purposes of this rule as was established for depository institutions in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[1]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies ("mutual funds"), FinCEN is also using the same definition of "account" for purposes of this rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act requiring enhanced due diligence for correspondent accounts maintained for certain foreign banks.[2]

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[1] *See* 31 CFR 1010.605(c)(2)(i).
[2] *See* 31 CFR 1010.605(c)(2)(ii)-(iv).

3. Covered Financial Institution

Section 1010.660(a)(3) of the proposed rule would define "covered financial institution" with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,[3] which in general includes the following:

- an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;
- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Subsidiary

Section 1010.660(a)(4) of the proposed rule would define "subsidiary" as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Liberty Reserve.

[3] *See* 31 CFR 1010.605(e)(1).

B. 1010.660(b) – Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Use of Correspondent Accounts

Section 1010.660(b)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for or on behalf of a foreign bank if such correspondent account is being used to process transactions involving Liberty Reserve, including any of its branches, offices or subsidiaries.

2. Special Due Diligence for Correspondent Accounts to Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts that are being used to process transactions involving Liberty Reserve, section 1010.660(b)(2) of the proposed rule would require a covered financial institution to apply special due diligence to all of its foreign correspondent accounts that is reasonably designed to guard against processing transactions involving Liberty Reserve. That special due diligence must include notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not provide Liberty Reserve with access to the correspondent account maintained at the covered financial institution and implementing appropriate risk-based procedures to identify transactions involving Liberty Reserve.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to Liberty Reserve:

> Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, see 31 CFR 1010.660, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of a foreign bank if such correspondent account processes any transaction involving Liberty Reserve or any of its subsidiaries. The regulations also require us to notify you that you may not provide Liberty Reserve or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Liberty Reserve or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution may, for example, have knowledge through transaction screening software that the correspondents process transactions for Liberty Reserve. The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Liberty Reserve from accessing the U.S. financial system. However, FinCEN would not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that access will not be provided to comply with this notice requirement. Methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or e-mail. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

The special due diligence would also include implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Liberty Reserve. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Liberty Reserve as the financial institution of the originator or beneficiary, or otherwise referenced Liberty Reserve in a manner detectable under the financial institution's

normal screening mechanisms. Transactions involving Liberty Reserve typically indicate such involvement by the presence of the "LR" abbreviation and Liberty Reserve account number. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

A covered financial institution would also be required to implement risk-based procedures to identify disguised use of its correspondent accounts, including through methods used to hide the beneficial owner of a transaction. Specifically, FinCEN is concerned that Liberty Reserve may attempt to disguise its transactions by relying on types of payments and accounts that would not explicitly identify Liberty Reserve as an involved party. A financial institution may develop a suspicion of such misuse based on other information in its possession, patterns of transactions, or any other method available to it based on its existing systems. Under the proposed rule, a covered financial institution that suspects or has reason to suspect use of a correspondent account to process transactions involving Liberty Reserve must take all appropriate steps to attempt to verify and prevent such use, including a notification to its correspondent account holder per section 1010.660(b)(2)(i)(A) requesting further information regarding a transaction, requesting corrective action to address the perceived risk and, where necessary, terminating the correspondent account. A covered financial institution may re-establish an account closed under the rule if it determines that the account will not be used to process transactions involving Liberty Reserve. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions

take reasonable steps to prevent any processing of transactions involving Liberty Reserve.

3. Recordkeeping and Reporting

Section 1010.660(b)(3) of the proposed rule would clarify that subsection (b) of the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not process any transaction involving Liberty Reserve through the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose the fifth special measure against Liberty Reserve and specifically invites comments on the following matters:

1. The impact of the proposed special measure upon legitimate transactions utilizing Liberty Reserve involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business.

2. The form and scope of the notice to certain correspondent account holders that would be required under the rule;

3. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any use of its correspondent accounts to process transactions involving Liberty Reserve; and

4. The appropriate steps a covered financial institution should take once it identifies use of one of its correspondent accounts to process transactions involving Liberty Reserve.

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to "prepare and make available for public comment an initial regulatory flexibility analysis" that will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal to Prohibit Covered Financial Institutions from Opening or Maintaining Correspondent Accounts with Certain Foreign Banks under the Fifth Special Measure

1. Estimate of the number of small entities to whom the proposed fifth special measure will apply:

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $175,000,000 in assets.[4] Of the estimated 8,000 banks, 80

[4] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards at 27 (SBA Oct. 1, 2012) [hereinafter *SBA Size Standards*].

percent have less than $175,000,000 in assets and are considered small entities.[5] Of the estimated 7,000 credit unions, 90 percent have less than $175,000,000 in assets.[6]

Broker-dealers are defined in 31 CFR 1010.100(h) as those broker-dealers required to register with the Securities and Exchange Commission (SEC). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the Small Business Administration (SBA). The SEC has defined the term ''small entity'' to mean a broker or dealer that: "(1) had total capital (net worth plus subordinated liabilities of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.''[7] Currently, based on SEC estimates, 18 percent of broker-dealers are classified as ''small'' entities for purposes of the RFA.[8]

Futures commission merchants (FCMs) are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission (CFTC) under the Commodity Exchange Act

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[5] Federal Deposit Insurance Corporation, *Find an Institution*, http://www2.fdic.gov/idasp/main.asp ; *select* Size or Performance: Total Assets, *type* Equal or less than $: "175000", *select* Find.
[6] National Credit Union Administration, *Credit Union Data*, http://webapps.ncua.gov/customquery/; *select* Search Fields: Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "175000000", *select* Go.
[7] 17 CFR 240.0—10(c).
[8] 76 FR 37572, 37602 (June 27, 2011) (The SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

(CEA), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act," the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.[9] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities is considered small if it has less than $7,000,000 in gross receipts annually.[10] Based on information provided by the National Futures Association (NFA), there were 1249 introducing brokers-commodities that were members of NFA as of April 30, 2013, 95 percent of which have less than $7 million in Adjusted Net Capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010.100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term "small entity" under the Investment Company Act to mean "an investment company that, together with other investment companies in the same group of related investment companies, has net assets

[9] 47 FR 18618, 18619 (Apr. 30, 1982).
[10] SBA Size Standards at 28.

of $50 million or less as of the end of its most recent fiscal year.[11] Currently, based on SEC estimates, 7 percent of mutual funds are classified as ''small entities'' for purposes of the RFA under their definition.[12]

As noted above, 80 percent of banks, 90 percent of credit unions, 18 percent of broker-dealers, 95 percent of introducing brokers-commodities, zero FCMs, and 7 percent of mutual funds are small entities. The limited number of foreign banking institutions with which Liberty Reserve maintains or will maintain accounts will likely limit the number of affected covered financial institutions to the largest U.S. banks, which actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions that engage in transactions involving Liberty Reserve under the fifth special measure would not impact a substantial number of small entities.

2. Description of the projected reporting and recordkeeping requirements of the fifth special measure:

The proposed fifth special measure would require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving Liberty Reserve from accessing the U.S. financial system. FinCEN estimates that the burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to directly or indirectly process transactions involving Liberty Reserve. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC

[11] 17 CFR 270.0-10.
[12] 78 FR 23637, 23658 (April 19, 2013) (The SEC estimates 119 small mutual funds of the 1692 total active registered mutual funds).

sanctions and suspicious activity reporting requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banks that involve Liberty Reserve. Thus, the special due diligence that would be required by the imposition of the fifth special measure – *i.e.,* the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect use of correspondent accounts – would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Certification:

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking would have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule would not have a significant economic impact on a substantial number of small entities.

FinCEN invites comments from members of the public who believe there would be a significant economic impact on small entities from the imposition of the fifth special measure regarding Liberty Reserve.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information

and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, D.C. 20503 (or by e-mail to oira submission@omb.eop.gov) with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.659 is presented to assist those persons wishing to comment on the information collection.

A. Proposed Information Collection under the Fifth Special Measure

The notification requirement in section 1010.660(b)(2)(i) is intended to aid cooperation from correspondent account holders in denying Liberty Reserve access to the U.S. financial system. The information required to be maintained by section 1010.660(b)(3)(i) would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.660. The collection of information would be mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours Per Affected Financial Institution: The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

VII. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 31 CFR Chapter X

Administrative practice and procedure, banks and banking, brokers, counter-money laundering, counter-terrorism, foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, Chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

CHAPTER X – FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

1. The authority citation for Chapter X continues to read as follows:

   Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332 Title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Subpart F of Part 1010 of Chapter X is proposed to be amended by adding new § 1010.660, as follows:

§ 1010.660 Special measures against Liberty Reserve

(a) Definitions. For purposes of this section:

(1) Liberty Reserve means all branches, offices, and subsidiaries of Liberty Reserve operating in any jurisdiction.

(2) Correspondent account has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) Covered financial institution has the same meaning as provided in § 1010.605(e)(1).

(4) Subsidiary means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) Prohibition on accounts and due diligence requirements for covered financial institutions

(1) Prohibition on use of 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 foreign bank if such correspondent account is being used to process transactions that involve Liberty Reserve.

(2) Special due diligence of correspondent accounts to prohibit use.

(i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Liberty Reserve. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Liberty Reserve that such correspondents may not provide Liberty Reserve with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its foreign correspondent accounts by Liberty Reserve, to the

extent that such use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it reasonably must adopt to guard against the use of its foreign correspondent accounts to process transactions involving Liberty Reserve.

(iii) A covered financial institution that obtains knowledge that a foreign correspondent account may be being used to process transactions involving Liberty Reserve shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) and, where necessary, termination of the correspondent account.

(3) Recordkeeping and reporting.

(i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this subsection (c) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: 5/28/13

/s/

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network