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**DEPARTMENT OF THE TREASURY**

**Financial Crimes Enforcement Network**

**31 CFR Chapter X, Part 1010**

**RIN 1506-AB71**

**Proposal of Special Measure Regarding MBaer Merchant Bank AG as a Financial Institution Operating Outside of the United States of Primary Money Laundering Concern**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** FinCEN is issuing a notice of proposed rulemaking, pursuant to section 311 of the USA PATRIOT Act, that finds MBaer Merchant Bank AG (MBaer), a financial institution based in Switzerland, to be of primary money laundering concern, and proposes imposing a special measure to: (1) prohibit U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, MBaer; (2) require U.S. financial institutions to take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves MBaer; and (3) require U.S. financial institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving MBaer.

**DATES:** Written comments on the notice of proposed rulemaking must be submitted on or before [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

**ADDRESSES:** Comments must be submitted in one of the following two ways (please choose only one of the ways listed):

- *Federal E-rulemaking Portal:* https://www.regulations.gov. If you are reading this document on federalregister.gov, you may use the green "SUBMIT A PUBLIC COMMENT" button beneath this rulemaking's title to submit a comment to the regulations.gov docket.
- *Mail*: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2026-0001 in the submission.

Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments are public records; they are publicly displayed exactly as received, and will not be deleted, modified, or redacted. Comments may be submitted anonymously. Follow the search instructions on https://www.regulations.gov to view public comments.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at www.fincen.gov/contact.

**SUPPLEMENTARY INFORMATION:**

## I. Statutory Provisions

Section 311 of the USA PATRIOT Act[1] (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) the authority to make a finding that "reasonable grounds exist for concluding" that any of the following "is of primary money laundering concern":

(i) A jurisdiction outside of the United States;

[1] Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001) (USA PATRIOT Act).

(ii) One or more financial institutions operating outside of the United States;

(iii) One or more classes of transactions within, or involving, a jurisdiction outside of the United States; or

(iv) One or more types of accounts.[2]

Upon making such a finding, the Secretary is authorized to require domestic financial institutions and domestic financial agencies—collectively, "covered financial institutions"—to take certain "special measures." Specifically, pursuant to section 311, the Secretary may impose one or more of five possible special measures as safeguards to defend the U.S. financial system from money laundering and terrorist financing risks. Through special measures one through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered financial institutions.[3] Through special measure five, the Secretary may "prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account" for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves the financial institution operating outside of the United States found to be of primary money laundering concern.[4]

Before making a finding that reasonable grounds exist for concluding that a financial institution operating outside of the United States (or other jurisdiction, account, or class of transactions) is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.[5] In addition, among the information the

[2] 31 U.S.C. 5318A(a)(1).
[3] 31 U.S.C. 5318A(b)(1)–(4). For purposes of this proposed rulemaking, the term "covered financial institution" has the same meaning as provided at 31 C.F.R. 1010.605(e)(1); *see infra* Section VI.A.3.
[4] 31 U.S.C. 5318A(b)(5).
[5] 31 U.S.C. 5318A(c)(1).

Secretary determines to be relevant in making such a finding about a financial institution, the Secretary is required to consider the following potentially relevant institutional factors:

- The extent to which such a financial institution is used to facilitate or promote money laundering in or through a jurisdiction outside the United States, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles.
- The extent to which such a financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which the action being proposed is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of section 311 continue to be fulfilled, and to guard against international money laundering and other financial crimes.[6]

In selecting one or more special measures, the Secretary "shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find appropriate."[7] When imposing special measure five, the Secretary must do so "in consultation with the Secretary of State, the

[6] 31 U.S.C. 5318A(c)(2)(B)(i)-(iii). In addition, in the case of a finding relating to a particular jurisdiction, section 311 sets out certain "jurisdictional factors" that the Secretary may consider, which are not relevant here. *See* 31 U.S.C. 5318A(c)(2)(A)(i)-(vii).
[7] 31 U.S.C. 5318A(a)(4)(A).

Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System."[8] In addition, the Secretary is required to consider the following 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 jurisdiction, institution, class of transactions, or type of account; and
- The effect of the action on United States national security and foreign policy.[9]

The authority of the Secretary to administer the Bank Secrecy Act (BSA)[10] and its implementing regulations, including the authority under section 311 to make such a finding and to impose special measures, has been delegated to FinCEN.[11]

## II. Summary

Switzerland-based MBaer Merchant Bank AG (MBaer) is a small, private Swiss financial institution with a single office headquartered in Zürich, Switzerland, offering a variety of financial services.[12] Based on public and non-public information, FinCEN assesses that, for

[8] 31 U.S.C. 5318A(b)(5).
[9] 31 U.S.C. 5318A(a)(4)(B)(i)-(iv).
[10] The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951-1960 and 31 U.S.C. 5311-5314, 5316-5336, and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.
[11] *See* Treasury Order 180-01 (Jan. 14, 2020).
[12] MBaer, *The services*, https://www.mbaerbank.com/eng/the-services (last accessed Jan. 7, 2026); MBaer, *Heritage & history,* https://www.mbaerbank.com/eng/the-bank/heritage-history (last accessed Jan. 7, 2026); MBaer, *Ownership*, https://www.mbaerbank.com/eng/the-bank/ownership (last accessed Jan. 7, 2026). TheBanks.eu, *MBaer Merchant Bank AG - Business Summary*, https://thebanks.eu/banks/19055#products (last accessed Jan. 7, 2026).

years, MBaer has directly or indirectly facilitated money laundering for or on behalf of illicit actors, including through processing transactions related to Venezuelan corruption and Russian and Iranian illicit activities.

This NPRM sets forth FinCEN's finding, based on public and non-public information, that MBaer is a financial institution operating outside of the United States of primary money laundering concern. Accordingly, FinCEN proposes that, under special measure five, covered financial institutions: (1) be prohibited from opening or maintaining a correspondent account for, or on behalf of, MBaer; (2) take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves MBaer; and (3) apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving MBaer.

## III. Finding that MBaer Is a Financial Institution Operating Outside of the United States

As set forth above, section 311 authorizes FinCEN, through delegated authority and in pertinent part, to make a finding "that reasonable grounds exist for concluding" that "[one] or more financial institutions operating outside of the United States" is "of primary money laundering concern."[13] A prerequisite to such a finding is that the relevant institution is a "financial institution operating outside of the United States."[14]

[13] 31 U.S.C. 5318A(a)(1).

[14] 31 U.S.C. 5318A(a)(1) authorizes the imposition of special measures on, among others, "financial institutions operating outside of the United States." Of the five special measures authorized by the statute, the fifth measure authorizes "Prohibitions or Conditions on Opening or Maintaining Certain Correspondent or Payable-Through Accounts." The statute goes on to define the terms "correspondent account" and "payable-through account" with reference to payments made on behalf of a "foreign financial institution" – a term otherwise undefined. For the purposes of this NPRM, and under these facts, FinCEN finds that MBaer is both a foreign financial institution and a financial institution outside of the United States.

MBaer is a commercial bank with a single office headquartered in Zürich, Switzerland.[15] A "financial institution" for purposes of section 311 includes "a commercial bank or trust company."[16] MBaer is therefore a financial institution within the meaning of section 311.

Established in 2018, MBaer operates under Swiss banking regulations and is regulated by the Swiss Financial Markets Supervisory Authority (FINMA), the Swiss financial supervisor.[17] MBaer advertises itself as a bank for entrepreneurs, offering a variety of financial services, including but not limited to depository accounts for individuals and businesses, funds transmission, and wealth management.[18] MBaer is majority owned by Swiss investors with minority shareholders based in Asia and the Middle East.[19] Accordingly, FinCEN finds that reasonable grounds exist to conclude that MBaer is a financial institution operating outside of the United States.

## IV. Finding that MBaer Is of Primary Money Laundering Concern

Pursuant to 31 U.S.C. 5318A(a)(1), FinCEN finds that reasonable grounds exist for concluding that MBaer is a financial institution operating outside of the United States of primary money laundering concern. Below is a discussion of the relevant statutory factors FinCEN considered in making this finding.

[15] MBaer has no branches other than its headquarters location.
[16] 31 U.S.C. 5312(a)(2)(B).
[17] FINMA, *Authorized Institutions*, https://www.finma.ch/en/finma-public/authorised-institutions-individuals-and-products.
[18] MBaer, *The services*, https://www.mbaerbank.com/eng/the-services (last accessed Jan. 7, 2026); TheBanks.eu, *MBaer Merchant Bank AG (Switzerland) – Business Summary*, https://thebanks.eu/banks/19055#products (last accessed Jan. 7, 2026).
[19] MBaer, *Ownership*, https://www.mbaerbank.com/eng/the-bank/ownership (last accessed Jan. 7, 2026).

### A. *The extent to which MBaer is used to facilitate or promote money laundering, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of WMD or missiles*

Based on public and non-public information, FinCEN assesses that MBaer is used to facilitate money laundering and terrorist financing, as demonstrated through: (1) MBaer's business model; (2) MBaer's facilitation of Venezuelan corruption and money laundering; (3) MBaer's facilitation of Russian money laundering; and (4) MBaer's facilitation of Iranian money laundering and terrorist financing.

#### 1. *An Overview of MBaer's Business Model*

Founded in December 2018, MBaer is a small, private Swiss financial institution with a single office headquartered in Zürich, Switzerland, offering a variety of financial services.[20] FinCEN assess that, since its founding, MBaer has profited from offering these services to customers that engage in money laundering. While financial institutions may mitigate money laundering risks through risk-based anti-money laundering/countering the financing of terrorism (AML/CFT) programs, MBaer maintained a higher-risk customer base without implementing sufficiently mitigating controls that would prohibit such customers from engaging in illicit activities, and in some cases deliberately acted to facilitate those illicit activities. Indeed, based on public and non-public information, FinCEN assesses that, as set out below, MBaer executives and employees should have been aware of, and in some cases were likely complicit in, their clients' money laundering activities, including money laundering through shell companies that conceal the true nature of, and parties involved in, illicit transactions.

#### 2. *MBaer's Beginnings Anchored in Venezuela Corruption*

[20] MBaer, *The services*, https://www.mbaerbank.com/eng/the-services (last accessed Jan. 7, 2026); MBaer, *Heritage & history,* https://www.mbaerbank.com/eng/the-bank/heritage-history (last accessed Jan. 7, 2026); MBaer, *Ownership*, https://www.mbaerbank.com/eng/the-bank/ownership (last accessed Jan. 7, 2026). TheBanks.eu, *MBaer Merchant Bank AG - Business Summary*, https://thebanks.eu/banks/19055#products (last accessed Jan. 7, 2026).

Venezuela's state-oil company, Petróleos de Venezuela, SA (PdVSA), was plundered over decades, resulting in billions of dollars lost to corruption.[21] The schemes involved bribery, money laundering, and the mismanagement of funds, leading to U.S. and international investigations around the time of the founding of MBaer in 2018. Those investigations resulted in charges against individuals involved in schemes to launder money, former PdVSA officials pleading guilty, and U.S. sanctions against PdVSA and the networks of individuals and entities that facilitated the corrupt activities.[22]

According to public information, beginning in 2020 and coinciding with the timeframe when the illicit networks connected to PdVSA would have been seeking alternate financial institutions through which to launder their funds as international pressure grew and investigations broadened, the recently founded MBaer played a key role in handling funds tied to the PdVSA oil corruption schemes. A former MBaer Vice Chairperson of the Board has been accused in press reports of using the bank to launder proceeds of Venezuelan corruption related to a PdVSA corruption scheme, in which Treasury's Office of Foreign Assets Control (OFAC)-designated PdVSA allegedly secretly sold millions of barrels of Venezuelan crude oil in circumvention of U.S. sanctions and embezzled the proceeds of said sales in a manner that

[21] *See, e.g.,* Treasury, Press Release, *Treasury Targets Venezuela Currency Exchange Network Scheme Generating Billions of Dollars for Corrupt Regime Insiders* (Jan. 8, 2019), https://home.treasury.gov/news/press-releases/sm583.

[22] *See, e.g.*, U.S. Department of Justice, Press Release, *Former Swiss Bank Executive Pleads Guilty to Role in Billion-Dollar International Money Laundering Scheme Involving Funds Embezzled from Venezuelan State-Owned Oil Company* (Aug. 22, 2018), https://www.justice.gov/archives/opa/pr/former-swiss-bank-executive-pleads-guilty-role-billion-dollar-international-money-laundering; U.S. Department of Justice, Press Release, *Former Executive Director at Venezuela State-Owned Oil Company, Petroleos De Venezuelas, S.A., Pleads Guilty to Role in Billion-Dollar Money Laundering Scheme* (Oct. 31, 2018), https://www.justice.gov/archives/opa/pr/former-executive-director-venezuelan-state-owned-oil-company-petroleos-de-venezuela-sa-pleads; U.S. Department of Justice, Press Release, *Five Former Venezuelan Government Officials Charged in Money Laundering Scheme Involving Foreign Bribery* (Feb. 12, 2018), https://www.justice.gov/archives/opa/pr/five-former-venezuelan-government-officials-charged-money-laundering-scheme-involving-forei-0; Treasury, Press Release, *Treasury Sanctions Venezuela's State Owned Oil Company Petroleos de Venezuela, S.A.* (Jan. 29, 2019), https://home.treasury.gov/news/press-releases/sm594; Treasury, Press Release, *Treasury Targets Venezuelan Oil Sector Sanctions Evasion Network* (Jan. 19, 2021), https://home.treasury.gov/news/press-releases/sm1239.

deprived the Venezuelan public of the benefits of these illegal sales.[23] Specifically, Siri Evjemo-Nysveen (Evjemo-Nysveen), MBaer's Vice Chairperson from September 2020 through May 2023 and board member from 2019 to 2023, reportedly used her position to further payments through MBaer related to a PdVSA corruption scheme after OFAC's designation of PdVSA.[24] She reportedly did so on behalf of her husband, Alessandro Bazzoni (Bazzoni), a minority shareholder of MBaer at the time, who was sanctioned by OFAC in January 2021 for providing material support to PdVSA in his role as a core facilitator of the sanctions evasion network.[25] Although Bazzoni has since been removed from the OFAC sanctions list, Evjemo-Nysveen's activities took place while he was on the OFAC list.

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[23] Treasury, Press Release, *Treasury Sanctions Venezuela's State-Owned Oil Company Petroleos de Venezuela, S.A.* (Jan. 28, 2019), https://home.treasury.gov/news/press-releases/sm594; El Nacional, *The Swiss-Emirati connection to corruption in PDVSA* (Sept. 13, 2023), https://www.elnacional.com/2023/09/la-conexion-suiza-emirati-de-la-corrupcion-en-pdvsa/; The Politician, *First Report Unveils the Network That Moved Millions from PDVSA Corruption* (May 17, 2023), https://noticias2025.com/primer-informe-devela-la-red-que-movio-millones-de-la-corrupcion-de-pdvsa/; Transparencia Venezuela, *PDVSA-Crypto* (Oct. 1, 2023), https://transparenciave.org/wp-content/uploads/2024/03/PDVSA-CRYPTO-An-precedented-Fraud-with-Tremendous-Economic-and-Social-Impact-_OCT2023.pdf.

[24] *See* El Nacional, *The Swiss-Emirati connection to corruption in PDVSA* (Sept. 13, 2023), https://www.elnacional.com/2023/09/la-conexion-suiza-emirati-de-la-corrupcion-en-pdvsa/; The Politician, *First Report Unveils the Network That Moved Millions from PDVSA Corruption* (May 17, 2023), https://noticias2025.com/primer-informe-devela-la-red-que-movio-millones-de-la-corrupcion-de-pdvsa/; Transparencia Venezuela, *PDVSA-Crypto* (Oct. 1, 2023), https://transparenciave.org/wp-content/uploads/2024/03/PDVSA-CRYPTO-An-precedented-Fraud-with-Tremendous-Economic-and-Social-Impact-_OCT2023.pdf.

[25] *See* Hable Se, *Was the Swiss connection of Siri Evjemo-Nysveen and Alessandro Bazzoni with the MBaer Merchant Bank at the service of oil corruption in Venezuela?* (June 24, 2023), https://hable.se/2023/06/estuvo-la-conexion-suiza-de-siri-evjemo-nysveen-y-alessandro-bazzoni-con-el-mbaer-merchant-bank-al-servicio-de-la-corrupcion-petrolera-en-venezuela.html; Infodio, *Did SEC approve Michael Bar's offering in U.S. soil?* (June 24, 2021), https://infodio.com/21062021/sec/gov/michael/baer/mbaer/francisco/dagostino/alessandro/bazzoni; AlbertoNews, *First Report: Italian businessman Alessandro Bazzoni, Tareck El Aissami's operative, to defy US sanctions* (Nov. 16, 2023), https://bitlyanews.com/internacionales/primer-informe-el-empresario-italiano-alessandro-bazzoni-el-operador-de-tareck-el-aissami-para-desafiar-las-sanciones-de-estados-unidos/; abc Noticias, *Richard David Rothenberg, Erik Roveta's Partner, Key in the $21 Billion Embezzlement from PdVSA* (Aug. 8, 2023), https://www.abcnoticias.net/richard-david-rothenberg-socio-de-erik-roveta-clave-en-desfalco-a-pdvsa-por-21-mil-millones-de-dolares/; Alberto News, *Argentina arrests Jorge Germán Bonelli, front man of Alessandro Bazzoni and Siri Evjemo-Nysveen: linked to corruption at PDVSA* (Mar. 22, 2024), https://albertonews.com/nacionales/argentina-detiene-a-jorge-german-bonelli-testaferro-de-alessandro-bazzoni-y-siri-evjemo-nysveen-vinculado-a-la-corrupcion-en-pdvsa; *The Politician, First Report Unveils the Network That Moved Millions from PDVSA Corruption* (May 17, 2023), https://noticias2025.com/primer-informe-devela-la-red-que-movio-millones-de-la-corrupcion-de-pdvsa/.

Further, while the PdVSA money laundering scheme was ongoing, MBaer maintained an account for Jose Luis Chavez Calva (Calva), a key figure involved in laundering billions of dollars obtained through PdVSA corruption through European banks.[26] Calva was also alleged to be a financial facilitator handling funds derived from corruption on behalf of both Bazzoni and Alex Saab, a close associate of Bazzoni who was also sanctioned by OFAC for his prominent role in laundering funds derived from Venezuelan public corruption.[27]

According to public and non-public information, MBaer also maintained accounts for two companies controlled by a Swiss investor named in press reporting as early as 2021 as linked to the regime of Nicolás Maduro in Venezuela.[28] As of early 2025 he was allegedly under investigation by Swiss and French authorities for laundering the proceeds of funds embezzled by Venezuelan public officials, including through airline Plus Ultra Lineas Aereas SA (Plus Ultra).[29] Given that one of the Swiss investor's two MBaer accounts received over $519,000 in 2021 from Plus Ultra, and that the same account paid a salary to an individual later named as a

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[26] Cuentas Claras Digital, *Venezuelan Prosecutor's Office issues arrest warrant against international operators involved in the PDVSA-Crypto scheme* (June 26, 2023), https://www.cuentasclarasdigital.org/2023/06/fiscalia-de-venezuela-emite-orden-de-detencion-contra-operadores-internacionales-involucrados-en-el-esquema-pdvsa-cripto/; El Farro del Morro, *Who are the 17 fugitives in the PDVSA Crypto case?* (Aug. 24, 2023), https://elfarodelmorro.net/pdvsa-cripto-interpol/; Cámara Boliviana de Hidrocarburos y Energía, *Venezuela - Escándalo de corrupción de PDVSA en la mira de agencias federales en EEUU* (Apr. 5, 2023), https://www.cbhe.org.bo/index.php/noticias/63379-venezuela-escandalo-do-corrupcion-de-pdvsa-en-la-mira-de-agencias-federales-en-eeuu.

[27] *Id.*; Treasury, Press Release, *Treasury Disrupts Corruption Network Stealing From Venezuela's Food Distribution Program, CLAP* (July 25, 2019), https://home.treasury.gov/news/press-releases/sm741.

[28] Voz Populi, *Plus Ultra guaranteed 1.3 million of the bailout to a Swiss lender linked to Chavismo* (June 16, 2021), https://www.vozpopuli.com/economia/plus-ultra-suizo.html; Voz Populi, *Switzerland is investigating a Plus Ultra creditor for money laundering after he received ransom money* (Feb. 13, 2025), https://www.vozpopuli.com/espana/suiza-investiga-por-blanqueo-a-un-acreedor-de-plus-ultra-que-recibio-dinero-del-rescate.html.

[29] Voz Populi, *One out of every four million from the Plus Ultra bailout will go to companies linked to Chavismo* (June 21, 2021), https://www.vozpopuli.com/economia/plus-ultra-chavismo.html; Voz Populi, *Plus Ultra guaranteed 1.3 million of the bailout to a Swiss lender linked to Chavismo* (June 16, 2021), https://www.vozpopuli.com/economia/plus-ultra-suizo.html; Voz Populi, *Switzerland is investigating a Plus Ultra creditor for money laundering after he received ransom money* (Feb. 13, 2025), https://www.vozpopuli.com/espana/suiza-investiga-por-blanqueo-a-un-acreedor-de-plus-ultra-que-recibio-dinero-del-rescate.html; Impact Spain News, *53 million in the air: Anti-corruption authorities tighten the net around the Plus Ultra bailout* (Sept. 30, 2025), https://impactoespananoticias.es/contenido/31362/53-millones-en-el-aire-anticorrupcion-estrecha-el-cerco-sobre-el-rescate-de-plus.

facilitator of the laundering, FinCEN assesses that the account was likely used to launder funds derived from Venezuelan public corruption.

Taken together, FinCEN assesses that MBaer's provision of services to these individuals is emblematic of the bank's AML/CFT program inadequacies and failure to adequately prevent its customers from using their MBaer accounts to engage in money laundering.

3. *MBaer Exposure to Russian Money Laundering*

MBaer also has significant exposure to illicit Russian activity, as accounts belonging to Russian persons likely represent the largest portion of its assets under management, and MBaer reportedly relies on wealthy Russians, some of whom are subject to sanctions, as a central customer group.[30] According to non-public information available to FinCEN, as of late 2024, MBaer had retained its most critical Russian clients, despite Russia-related sanctions. The bank stored the data of these Russian clients in a concealed manner. The principal MBaer employee overseeing all coordination and activities related to MBaer's Russian clients is a founding partner. These protective measures, put in place in 2024, coincided with its Swiss regulator opening an investigation into MBaer.[31] FinCEN assesses that, giving the timing of these two events, MBaer, as of late 2024, may be deliberately concealing information from its regulator in an effort to disguise Russia-related facts about its client base.

FinCEN assesses that at least two of MBaer's employees, in their role at the bank, have likely enabled the illicit activities of Sergey Kurchenko (Kurchenko). OFAC designated Kurchenko in 2015 for his role in misappropriating state assets of Ukraine, or of an economically significant entity in Ukraine. And, in 2018, OFAC designated one company controlled by

[30] Inside Paradeplatz, *Oligarch sanctions: Mike Bär's bank under pressure* (Feb. 28, 2022), https://insideparadeplatz.ch/2022/02/28/oligarchen-sanktionen-mike-baer-unter-druck/.
[31] Inside Paradeplatz, *Finma has opened enforcement proceedings against Mike Bär's bank* (Sept. 4, 2024), https://insideparadeplatz.ch/2024/09/04/finma-hat-enforcement-gegen-bank-von-mike-baer-eroeffnet/.

Kurchenko for providing material support to separatist-controlled regions of eastern Ukraine.[32] In subsequent years, Kurchenko has utilized a network of individuals and entities to engage in money laundering and evasion of OFAC's sanctions.[33] As of 2022, at least two employees of MBaer probably managed trust and front companies involved in a Ukrainian sanctions evasion scheme linked to Kurchenko. FinCEN assesses that MBaer's employees enabled Kurchenko's money laundering and sanctions evasion schemes through the management of his trusts and front companies.

FinCEN also assesses that MBaer has repeatedly facilitated money laundering efforts by enabling shell companies to execute transactions for the benefit of various Russian oligarchs and high-risk politically exposed persons (PEPs) or their close associates, including individuals engaged in sanctions evasion. FinCEN has identified multiple such networks suspected of exploiting MBaer's propensity to facilitate high-risk shell company business to obscure illicit activities.

For example, based on public and non-public information, FinCEN assesses that MBaer maintained two accounts that were controlled by, and used to launder the funds of, Victor Volodymyrovych Medvedchuk (Medvedchuk), a pro-Kremlin Ukrainian politician with close ties to Russian President Putin.[34] OFAC sanctioned Medvedchuk in 2014, pursuant to

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[32] *See* Treasury, Press Release, *Treasury Sanctions Individuals and Entities Involved In Sanctions Evasion Related to Russia and Ukraine* (July 30, 2015), https://home.treasury.gov/news/press-releases/jl0133; Treasury, Press Release, *Treasury Sanctions Additional Individuals and Entities in Connection with the Conflict in Ukraine and Russia's Occupation of Crimea* (Jan. 26, 2018), https://home.treasury.gov/news/press-releases/sm0266.

[33] *See* U.S. Department of Justice, Press Release, *Two Florida Steel Traders Sentenced for Money Laundering and Russia-Ukraine Sanctions Violations* (Apr. 19, 2024), https://www.justice.gov/archives/opa/pr/two-florida-steel-traders-sentenced-money-laundering-and-russia-ukraine-sanctions-violations.

[34] *See* Kyiv Post, *Zakarpattia on verge of ecological catastrophe, company allegedly linked to Medvedchuk to blame* (Oct. 29, 2021), https://archive.kyivpost.com/ukraine-politics/zakarpattia-on-verge-of-ecological-catastrophe-company-allegedly-linked-to-medvedchuk-to-blame.html; Kyiv Post, *Ukraine imposes sanctions on Medvedchuk, his wife, associates, freezes their assets* (Feb. 19, 2021), https://archive.kyivpost.com/ukraine-politics/ukraine-imposes-sanctions-against-medvedchuk-his-wife-associates-freezes-their-assets.html; Belsat EU, *Putin's best friend and Lukashenko's wallet* (May 2021), https://en.belsat.eu/81619862/putins-best-friend-and-lukashenkos-wallet;

E.O. 13660, for his role in undermining Ukrainian sovereignty, and OFAC described him in January 2022 as taking part in directing a plot to establish a collaborator government in Ukraine in the wake of a Russian invasion.[35] On June 4, 2024, the Swiss State Secretariat for Economic Affairs (SECO), following a May 20, 2024, European Union (EU) action, sanctioned Medvedchuk, among others, for spreading disinformation and pro-Russian propaganda to Ukraine and beyond.[36] Despite press reporting going back to 2017 asserting Medvedchuk's control of the two companies holding MBaer accounts, both accounts remained active and continued to transact in U.S. dollars. At least one account was active after the imposition of Swiss sanctions.

Moreover, one of the two accounts controlled by Medvedchuk likely facilitated the attempted theft of Ukrainian state property. The account was used to remit over $630,000 throughout 2021 to LLC PrikarpatZakhidTrans, the operator of the Ukrainian section of the Russian-owned Samara-West oil pipeline. In 2021, the Security Service of Ukraine stated that employees of LLC PrikarpatZakhidTrans used forged documents in an attempt to illegally seize the Ukrainian pipeline, valued at approximately $7.4 million.[37] Press reporting going back to

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EnergyPost.Eu, *A dangerous energy policy: Ukraine, despite war, is making itself dependent on Russian oil* (Sept. 8, 2017), https://energypost.eu/15647-2/.

[35] *See* Treasury, Press Release, *Treasury Designates Four Individuals Involved in Violating Ukrainian Sovereignty* (Mar. 17, 2014), https://home.treasury.gov/news/press-releases/jl2326; Treasury, Press Release, *Treasury Sanctions Russian-Backed Actors Responsible for Destabilization Activities in Ukraine* (Jan. 20, 2022), https://home.treasury.gov/news/press-releases/jy0562.

[36] *See* State Secretariat for Economic Affairs, *Situation in Ukraine 2024-06-24* (June 4, 2024), https://www.seco.admin.ch/dam/seco/de/dokumente/Aussenwirtschaft/Wirtschaftsbeziehungen/Exportkontrollen/Sanktionen/Verordnungen/Russland,%20Ukraine/situation_ukraine_2024-06-04.pdf.download.pdf/Situation%20in%20der%20Ukraine_2024-06-04.pdf; Official Journal of the European Union, *Council Decision (CFSP) 2024/1508* (May 27, 2024), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L_202401508.

[37] *See* New Eastern Europe, *Zelenskyy takes on Russia's information warfare campaign against Ukraine* (Apr. 11, 2021), https://neweasterneurope.eu/2021/04/11/zelenskyy-takes-on-russias-information-warfare-campaign-against-ukraine/; Interfax Ukraine, *SBU prevents illegal seizure of eight strategic enterprises of Ukraine since early 2021* (Oct. 28, 2021), https://en.interfax.com.ua/news/general/776053.html; National Anti-Corruption Bureau of Ukraine, *State expert becomes suspect in Samara-Western Direction oil product pipeline case* (Feb. 11, 2021), https://nabu.gov.ua/en/news/novyny-ekspertu-u-spravi-peredachi-truboprovodu-povidomleno-pro-pidozru/.

early 2021 asserts that Medvedchuk has controlled LLC PrikarpatZakhidTrans since 2017 through his wife.[38] FinCEN therefore assesses that Medvedchuk laundered funds through this MBaer account in an attempt to illicitly acquire the pipeline using a company under his control, which allegedly has supplied sanctioned Russian diesel and oil to Ukraine and the European Union using Belarusian licenses.[39] Importantly, according to non-public information available to FinCEN, this MBaer account continued remitting USD-denominated funds to LLC PrikarpatZakhidTrans until July 13, 2021—after the April 2021 statement by the Security Service of Ukraine linking LLC PrikarpatZakhidTrans to illicit activity, the April 2021 press report linking LLC PrikarpatZakhidTrans to Medvedchuk, and the 2014 sanctions applied to Medvedchuk by the United States.

The second account controlled by Medvedchuk made multiple, round dollar payments totaling $14.3 million to a same-name account held at a Russian financial institution. FinCEN assesses that this activity is indicative of money laundering to disguise Medvedchuk's ownership of the funds involved.

Separately, since late 2022, MBaer opened and maintained six separate accounts for a Russian billionaire PEP, family members, and related entities, despite public reporting that alleges connections to Russian organized crime, public corruption, illegal asset transfers, fraudulent schemes, and money laundering. Further, public reporting alleges the PEP acts as a proxy for U.S.-, EU-, UK-, and Swiss-sanctioned Dmitry Medvedev, the former President and Prime Minister of Russia and current Deputy Chairman of the Security Council of the Russian

[38] *See* New Eastern Europe, *Zelenskyy takes on Russia's information warfare campaign against Ukraine* (Apr. 11, 2021), https://neweasterneurope.eu/2021/04/11/zelenskyy-takes-on-russias-information-warfare-campaign-against-ukraine/.
[39] *See* New Eastern Europe, *Zelenskyy takes on Russia's information warfare campaign against Ukraine* (Apr. 11, 2021), https://neweasterneurope.eu/2021/04/11/zelenskyy-takes-on-russias-information-warfare-campaign-against-ukraine/

Federation.[40] According to non-public information, the funds transfers associated with these accounts are mostly large, round-dollar amounts between similarly named accounts, indicative of money laundering to disguise the ownership of the funds involved. For example, in late 2023 the PEP's MBaer account originated four transactions valued at over 14 million euros to accounts held in their name at another bank.

In a further example, based on public and non-public information, an MBaer account held by a Russian individual received a single wire of exactly $10 million from a same-name personal account held at another financial institution; this unusual transaction, which referenced no business purpose, occurred one month after publication of press reporting stating that individual was part of a chain of trust that facilitated an alleged Moscow-based kleptocratic scheme.[41]

Also, based on public and non-public information, FinCEN assesses that MBaer facilitated a Russian-led money laundering scheme that embezzled and laundered over $26 million. This scheme involved public funds derived from Equatorial Guinea in 2019.[42] Following the theft of this money from Equatorial Guinea, a portion was likely laundered through an account at MBaer. Moreover, the relevant account at MBaer continued to remain active even after Lithuanian law enforcement authorities indicted the ultimate controlling individual for large-scale money laundering and arms trafficking in 2023.[43]

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[40] *See* СокальINFO, *Igor Yusufov, The Oligarch and a Purse of the Medvedev Family Exposed* (Jan. 4, 2025), https://sokalinfo.com/01-101108-04.html (last accessed Jan. 7, 2026); *The Insider, Medvedev's son works for Yusufov's company: New evidence of the Russian ex-president's corrupt ties to a sanctions-dodging oligarch* (June 10, 2022), https://theins.ru/en/corruption/252090 (last accessed Jan. 7, 2026).

[41] *See* The Moscow Post, *Well, quite Karaput: Sobyanin's developer Pavel Tyo is preparing a 'flight' to Paris* (Mar. 18, 2024), https://www.msk-post.com/politics/well_quite_karaput_sobyanins_developer_pavel_tyo_is_preparing_a_flight_to_paris34173/ (last accessed Jan. 7, 2026).

[42] *See* OCCRP, *Lithuanian Tied to Money Laundering Funds Kremlin's Church* (Apr. 15, 2019), https://www.occrp.org/en/news/lithuanian-tied-to-money-laundering-funds-kremlins-church.

[43] *See* OCCRP, *Lithuanian Businessman Indicted for Money Laundering, Arms Dealing Exposed by OCCRP* (Nov. 27, 2023), https://www.occrp.org/en/news/lithuanian-businessman-indicted-for-money-laundering-arms-dealing-exposed-by-occrp.

Further, MBaer has a history of facilitating illicit transactions that support Russia's military. For example, based on public and non-public information, MBaer facilitated payments for five companies used to launder the proceeds of a large-scale scheme to sell stolen Ukrainian grain and procure equipment for export to the Russian military.[44] MBaer facilitated almost $40 million in payments, both before and after the scheme came to light. In another example, based on non-public information, MBaer facilitated payments for a company likely engaged in the unlawful procurement of microelectronics and other electronic components to Russia. In 2023, an MBaer client shipped microelectronics to Russian end-users, including shipments to an entity designated by BIS. Further, MBaer continued facilitating payments for that company years after press reporting used it as an example of how logistics companies distort shipping information to facilitate the import of controlled goods into Russia.

4. *MBaer Profits from Facilitation of Iranian Money Laundering and Terrorist Financing*

MBaer has also provided access to the U.S. financial system to persons providing material support to Iran-related money laundering and terrorist financing efforts, including support to Iranian foreign terrorist organizations (FTOs)—such as Iran's Islamic Revolutionary Guard Corps (IRGC) and its Quds Force (IRGC-QF)[45]—and through sanctions and export control evasion. In particular, according to non-public information available to FinCEN, MBaer facilitated over $37 million likely in connection with an Iranian international oil smuggling and money laundering scheme by IRGC-QF officials that involved Turkoca Import Export Transit

[44] *See* Talk Finance, *Aleksander Galkin, the Russian grain trader, is stealing Ukrainian grain* (Oct. 11, 2023), https://www.talk-finance.co.uk/international/aleksander-galkin/ (last accessed Jan. 7, 2026); Problematic, *Alexander Galkin: How a Russian who received Ukrainian citizenship steals Ukrainian grain and supplies components to the Russian army* (Nov. 22, 2023), https://problematic.news/aleksandr-galkin-kak-russkij-poluchivshij-grazhdanstvo-ukrainy-voruet-ukrainskoe-zerno-i-postavlyaet-komplektuyushhie-armii-rf/ (last accessed Jan. 7, 2026).

[45] The Department of State has authority to designate organizations as FTOs. Treasury's OFAC has also designated the IRGC and IRGC-QF, pursuant to multiple sanctions authorities.

Co LTD (Turkoca). Specifically, three MBaer customers remitted funds through MBaer to Turkoca, a pass-through entity used by IRGC-QF affiliates to launder funds for Iran.[46] FinCEN assesses that the three MBaer customers were involved in the money laundering scheme, given the successive, large, round dollar wires these customers originated to Turkoca that lacked substantive information in the "additional details" payment fields and do not have an apparent legitimate business purpose—red flags for money laundering that align with the pass-through nature of Turkoca as part of the scheme.

FinCEN also assesses that MBaer likely has facilitated, and continues to facilitate, evasion of sanctions on Iran's oil industry.[47] For example, according to non-public information, MBaer facilitated almost $27 million in multiple payments to a customer, where the counterparties were publicly involved in Iran's oil industry. Similarly, MBaer facilitated payments to an entity that owns an oil tanker that was part of Iran's shadow fleet, indicating that MBaer was facilitating a customer's purchase of illicit oil from Iran's shadow fleet.[48]

**B. *The extent to which MBaer is used for legitimate business purposes***

In making a finding that reasonable grounds exist for concluding that a financial institution operating outside of the United States is of primary money laundering concern so as to authorize the imposition of special measures, FinCEN may consider the extent to which the financial institution is "used for legitimate business purposes."[49]

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[46] Treasury, Press Release, *Treasury Targets Oil Smuggling Network Generating Hundreds of Millions of Dollars for Qods Force and Hizballah* (May 25, 2022), https://home.treasury.gov/news/press-releases/jy0799.

[47] U.S. persons are generally prohibited from engaging in transactions with blocked persons, as well as transactions involving Iranian-origin petroleum, petroleum products, and petrochemical products. *See* OFAC, *Guidance for Shipping and Maritime Stakeholders on Detecting and Mitigating Iranian Oil Sanctions Evasion* (Apr. 16, 2025), https://ofac.treasury.gov/media/934236/download?inline.

[48] Associated Press, *US seized Iran oil cargo as Biden considers easing sanctions* (Mar. 10, 2022), https://apnews.com/article/russia-ukraine-putin-business-iran-bahamas-c0577bf7718055d730a3b72802c132c2; War Sanctions, *Nostos IMO 9258014*, https://war-sanctions.gur.gov.ua/en/transport/shadow-fleet/945 (last accessed Jan. 7, 2026). FinCEN notes that prior to this activity the tanker was linked to U.S.-sanctioned oil trades with Venezuela, and shortly after this activity, the tanker switched to facilitating Russian oil smuggling schemes.

[49] 31 U.S.C. 5318A(c)(2)(B)(ii).

MBaer is a commercial bank offering a variety of financial services, including, but not limited to, depository accounts for individuals and businesses, funds transmission, and wealth management.[50] According to FINMA, MBaer is one of 278 authorized banks and securities firms in Switzerland. MBaer's current size and asset allocation are not publicly available. However, open-source reporting indicates MBaer had assets of just under CHF 650 million (approximately $717 million) as of mid-2023, making it one of Switzerland's smaller banks.[51] It has one direct U.S. correspondent relationship, and at least one indirect U.S. correspondent relationship through which it accesses the U.S. financial system.

Although FinCEN does not have fulsome insight into the scope of MBaer's legitimate activities, at least a portion of MBaer's business activities appear legitimate. MBaer has assets of about $700 million, while FinCEN has identified at least $100 million in illicit transactions through MBaer since 2019. However, FinCEN assesses that those legitimate activities do not outweigh the risks posed by abuse of the bank's services by money launderers, as discussed above, the extent to which MBaer facilitates the activities of illicit actors, and the need to protect U.S. financial institutions from the money laundering risks presented by MBaer.

### C. *The extent to which the action proposed by FinCEN would guard against international money laundering and other financial crimes*

In making a finding that reasonable grounds exist for concluding that a financial institution operating outside of the United States is of primary money laundering concern, thereby authorizing the imposition of special measures, FinCEN may consider the extent to which such action is "sufficient to ensure" that the purpose of BSA "continue[s] to be fulfilled,

[50] MBaer, *The services*, https://www.mbaerbank.com/eng/the-services (last accessed Jan. 7, 2026); TheBanks.eu, *MBaer Merchant Bank AG (Switzerland) – Business Summary*, https://thebanks.eu/banks/19055#products (last accessed Jan. 7, 2026).
[51] finews.com, *Mike Baer: Around 100 applications in two days* (Oct. 13, 2023), https://www.finews.com/news/english-news/59710-mike-baer-applications-banking-credit-suisse-interview (last accessed Jan. 7, 2026).

and to guard against international money laundering and other financial crimes."[52] FinCEN anticipates that, by finding that MBaer is a financial institution operating outside the United States of primary money laundering concern and imposing special measure five, as proposed here, U.S. financial institutions, their foreign correspondents, and their regulators, may act to mitigate the money laundering risks posed by transactions involving MBaer, and, that imposing special measure five would sufficiently safeguard the U.S., and international, financial systems by restricting the ability of MBaer to access the U.S. financial system.

## V. Proposed Special Measure

Having found that MBaer is a financial institution operating outside of the United States that is of primary money laundering concern, FinCEN proposes imposing a prohibition on covered financial institutions under special measure five. Special measure five authorizes the Secretary to prohibit or impose conditions upon the opening or maintaining in the United States of a correspondent account or payable-through account, if such account "involves" a financial institution of primary money laundering concern.[53] MBaer accesses the U.S. dollar through one direct and one indirect correspondent account with U.S. financial institutions. Thus, FinCEN has determined that special measure five will most effectively mitigate the risks posed by MBaer.

In proposing this special measure, FinCEN considered the factors set forth in section 311, as set forth below,[54] as well as the other special measures available under section 311. And, FinCEN consulted with representatives and staff of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the

[52] 31 U.S.C. 5318A(c)(2)(B)(iii).
[53] 31 U.S.C. 5318A(b)(5).
[54] 31 U.S.C. 5318A(a)(4)(B)(i)-(iv).

National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Attorney General.[55] These consultations involved obtaining interagency views on the imposition of special measure five and the effects that such a prohibition would have on the U.S. domestic and international financial systems.

**A.** ***Whether similar action has been or is being taken by other nations or multilateral groups regarding MBaer***

FinCEN is aware of an investigation by another nation regarding MBaer. That investigation has not yet resulted in an action that would protect the U.S. financial system from the money laundering risks presented by MBaer.

**B.** ***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***

While FinCEN assesses that the prohibition proposed in this NPRM would place some cost and burden on covered financial institutions, these burdens are neither undue nor inappropriate in view of the threat posed by the illicit activity facilitated by MBaer.

MBaer provides correspondent banking services to its customers directly through one correspondent relationship with a U.S. financial institution, and indirectly through at least one correspondent account that another foreign financial institution holds with U.S. financial institutions. These accounts may be used for commercial payments, as well as foreign exchange and money market transactions. Covered financial institutions and transaction partners have ample opportunity to arrange for alternative payment mechanisms in the absence of correspondent banking relationships with MBaer.

[55] *See* 31 U.S.C 5318A(b)(5).

Thus, a prohibition on correspondent banking with MBaer is expected to impose minimal additional compliance costs for covered financial institutions, which would most commonly involve adding MBaer to preexisting sanctions screening and money laundering monitoring tools. FinCEN assesses that given the risks posed by MBaer's facilitation of money laundering, the additional burden on covered financial institutions in preventing the opening of correspondent accounts with MBaer, as well as conducting due diligence on foreign correspondent account holders and notifying them of the prohibition, will be minimal and not undue.

### C. *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 of MBaer*

FinCEN assesses that imposing the proposed special measure would have minimal impact upon the international payment, clearance, and settlement system. MBaer is classified by FINMA as a "category 5" financial institution, meaning it has a small market participant and low risk to the financial system.[56] MBaer's assets are approximately 0.015 percent of total banking sector assets in Switzerland. As a comparatively small financial institution responsible for a nominal amount of transaction volume, MBaer is not a systemically important financial institution in Switzerland, or more broadly in the regional or global financial system. FinCEN assesses that prohibiting MBaer's access to U.S. correspondent banking channels would not affect overall cross-border transaction volumes. Further, a prohibition under special measure five would not prevent MBaer from conducting legitimate business activities in other foreign currencies, so long as a covered financial institution is not involved.

[56] FINMA, "Categorisation of banks and securities firms," https://www.finma.ch/en/supervision/banks-and-securities-firms/categorisation/ (last accessed Jan. 26, 2026); FINMA, "Authorised banks and securities firms," https://www.finma.ch/en/~/media/finma/dokumente/bewilligungstraeger/pdf/beh.pdf?la=en (last accessed Jan. 26, 2026).

**D.** ***The effect of the proposed action on United States national security and foreign policy***

As described above, evidence available to FinCEN demonstrates that MBaer serves as a significant conduit for money laundering by Venezuelan, Russian, and Iranian illicit actors. Imposing special measure five will: (1) close MBaer's access to the U.S. financial system; (2) inhibit MBaer's ability to act as an illicit finance facilitator; and (3) raise awareness of the ways illicit actors circumvent money laundering controls and international sanctions. As a result, U.S. national security would be enhanced by making it more difficult for money launderers and terrorist organizations to continue their illicit activities.

**E.** ***Consideration of alternative special measures***

In assessing the appropriate special measure to impose, FinCEN considered alternatives to a prohibition on the opening or maintaining in the United States of correspondent accounts or payable-through accounts, including the imposition of one or more of the first four special measures or imposing conditions on the opening or maintaining of correspondent accounts under special measure five. Having considered these alternatives, FinCEN assesses that, for the reasons set out below, none of the other special measures available under section 311 or merely imposing conditions under special measures five would appropriately address the risks posed by MBaer and the urgent need to prevent it from accessing the U.S. financial system through correspondent banking.

MBaer not only presents a significant money laundering risk, particularly related to Venezuelan, Russian, and Iranian illicit actors, but taken as a whole, MBaer's history of involvement in laundering proceeds of illicit activities presents a heightened risk that MBaer will continue to be used by illicit actors. Because of the nature and extent of illicit funds transiting MBaer, any special measure intended to mandate additional information collection would likely

be ineffective and insufficient to address the risks posed by MBaer's continued access to the U.S. financial system. For example, FinCEN considered special measure two, which may require domestic financial institutions to "obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person."[57] However, FinCEN determined that this special measure would likely be ineffective since the concerns involving MBaer do not involve the opening or maintaining of accounts in the United States by foreign persons. Likewise, FinCEN considered imposing additional reporting obligations under special measures one, three, and four, and determined that such obligations would not be effective. For instance, the provision under special measure one—that "the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer" be collected in records and reports—could be circumvented by the operations of shell companies, wherein the reported identity of the originator serves to obscure the true beneficial owner or originator,[58] or by efforts by MBaer to hide or obscure customer information to avoid regulatory scrutiny. Moreover, the requirements under special measures three and four that domestic financial institutions obtain "with respect to each customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States," are also likely to be ineffective for the same reasons.[59] Indeed, in respect of all such special measures, FinCEN is already generally aware of the money laundering threats posed by MBaer's customer base, which prompted this action, and merely requiring U.S.

[57] 31 U.S.C. 5318A(b)(2).
[58] 31 U.S.C. 5318A(b)(1)(B)(i).
[59] 31 U.S.C 5318A(b)(3)(B); (b)(4)(B).

institutions to collect additional information would impose a disproportionate compliance burden, with no guarantee that the risks presented by MBaer would be addressed.

FinCEN similarly assesses that merely imposing conditions under special measure five would be inadequate to address the risks posed by MBaer's activities. Special measure five enables FinCEN to impose conditions as an alternative to a prohibition on the opening or maintaining of correspondent accounts.[60] Given MBaer's facilitation of money laundering, FinCEN determined that imposing any condition would not be an effective measure to safeguard the U.S. financial system. FinCEN assesses that the millions of dollars' worth of funds laundered through MBaer, and the fairly limited exposure of U.S. financial institutions to MBaer, outweigh the value in providing conditioned access to the U.S. financial system for any purportedly legitimate business activity. Conditions on the opening or maintaining of correspondent accounts would likely be inefficient or, given MBaer's inadequate AML/CFT controls, insufficient to prevent illicit financial flows through the U.S. financial system.

In sum, FinCEN assesses that any condition or additional recordkeeping or reporting requirement would be an ineffective or inefficient way to safeguard the U.S. financial system from the illicit behavior facilitated by MBaer. Such measures would not prevent MBaer from accessing the correspondent accounts of U.S. financial institutions, thus leaving the U.S. financial system vulnerable to processing illicit transfers, resulting in significant national security and money laundering risk. In addition, no recordkeeping and/or reporting requirements or conditions would be sufficient to guard against the risks posed by a financial institution that processes transactions designed to obscure the transactions' true nature and are ultimately for the benefit of illicit actors. Therefore, FinCEN has determined that a prohibition on opening or

[60] 31 U.S.C. 5318A(b)(5).

maintaining correspondent banking relationships is the only special measure available under section 311 that can adequately protect the U.S. financial system from the illicit finance risk posed by MBaer. For these reasons, and after thorough consideration of alternate measures, FinCEN assesses that no measures short of full prohibition on correspondent or payable-through banking access would be sufficient to address the money laundering risks posed by MBaer.

## VI. Section-by-Section Analysis

The goal of this proposed rule is to combat and deter illicit activity, including illicit activity involving Venezuelan, Russian, and Iranian-affiliated money laundering and the laundering of proceeds through MBaer, and to prevent MBaer from using the U.S. financial system to enable illicit financial activity.

### A. *1010.666(a)—Definitions*

#### 1. *Definition of MBaer*

The term "MBaer" means all subsidiaries, branches, and offices of MBaer Merchant Bank AG operating as a financial institution in any jurisdiction outside of the United States.

#### 2. *Definition of Correspondent Account*

The term "correspondent account" is defined by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). In the case of a U.S. depository institution, this 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 proposed rule as is 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.[61] Under this definition, "payable-through accounts" are a type of correspondent account.

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of "account" for purposes of this proposed rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring due diligence for correspondent accounts maintained for certain foreign banks.[62]

**3.** *Definition of Covered Financial Institution*

The term "covered financial institution" is defined by reference to 31 CFR 1010.605(e)(1), the same definition used in the BSA rule (31 CFR 1010.610) requiring the establishment of due diligence programs for correspondent accounts for foreign financial institutions. In general, this definition includes the following:

- a bank;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker in commodities; and
- a mutual fund.

**4.** *Definition of Financial Institution Operating Outside of the United States*

Pursuant to 31 U.S.C. 5318A(e)(4), the term "financial institution operating outside of the United States" means any business or agency operating, in whole or in part, outside of the United States that engages in any activity which is similar to, related to, or a substitute for any activity in which any financial institution, as defined in 31 U.S.C. 5312(a)(2), engages.

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

FinCEN is including this definition as the proposed definition of "MBaer" incorporates this phrase. As discussed above, 31 U.S.C. 5312 permits FinCEN, by regulation, to define as a "financial institution" any business or activity that engages in any activity that FinCEN determines is an activity similar to, related to, or a substitute for any activity in which any business defined as a "financial institution" in 31 U.S.C. 5312 is authorized to engage.

**5.** *Definition of Foreign Banking Institution*

The term "foreign banking institution" means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

**6.** *Definition of Subsidiary*

The term "subsidiary" means a company of which more than 50 percent of the voting stock or an otherwise controlling interest is owned by another company.

### B. *1010.666(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions*

**1.** *Prohibition on Opening or Maintaining Correspondent Accounts*

Proposed section 1010.666(b)(1) prohibits covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, MBaer.

**2.** *Prohibition on Use of Correspondent Accounts Involving MBaer*

Proposed section 1010.666(b)(2) requires covered financial institutions to take reasonable steps not to process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves MBaer. Such reasonable steps are described in 1010.666(b)(3), which sets forth the special due diligence requirements a covered financial institution would be required to take when it knows or has reason to believe that a transaction involves MBaer.

**3.** *Special Due Diligence for Correspondent Accounts*

As a corollary to the prohibition set forth in proposed section 1010.666(b)(1) and (2), proposed section 1010.666(b)(3) requires covered financial institutions to apply special due diligence to all of their foreign correspondent accounts that is reasonably designed to guard against such accounts being used to process transactions involving MBaer. As part of that special due diligence, covered financial institutions would be required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to believe provide services to MBaer, that such correspondents may not provide MBaer with access to the correspondent account maintained at the covered financial institution. A covered financial institution may satisfy this notification requirement using the following notice:

> Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.666, we are prohibited from opening or maintaining in the United States a correspondent account for, or on behalf of, MBaer. The regulations also require us to notify you that you may not provide MBaer, including any of its subsidiaries, branches, and offices 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 MBaer, including any of its subsidiaries, branches, and offices, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving MBaer from accessing the U.S. financial system. FinCEN does 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 notice by mail, fax, or e-mail. The notice should be transmitted whenever a

covered financial institution knows or has reason to believe that a foreign correspondent account holder provides services to MBaer.

Special due diligence also includes implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving MBaer. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed MBaer as the financial institution of the originator or beneficiary, or otherwise referenced MBaer in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanisms used by a covered financial institution to comply with various legal requirements, such as commercially available software programs used to comply with the economic sanctions programs administered by the OFAC.

**4.** *Recordkeeping and Reporting*

Proposed section 1010.666(b)(4) clarifies that the proposed 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 notification requirement described above in section 1010.666(b)(3).

## VII. Request for Comments

FinCEN is requesting comments for 30 days after the publication of this NPRM. Given MBaer's consistent and longstanding ties to facilitating transactions for illicit actors, FinCEN assesses that a 30-day comment period for this NPRM strikes an appropriate balance between ensuring sufficient time for notice to the public and opportunity for comment on the proposed rule, while minimizing undue national security risk posed to the U.S. financial system in processing illicit transfers. FinCEN invites comments on all aspects of the proposed rule, including the following specific matters:

1. FinCEN's proposal of a prohibition under the fifth special measure under 31 U.S.C. 5318A(b), as opposed to imposing special measures one through four or imposing conditions under the fifth special measure;
2. The form and scope of the notice to certain correspondent account holders that would be required under the rule; and
3. The appropriate scope of the due diligence requirements in this proposed rule.

## VIII. Executive Order 14294

Section *5* of Executive Order 14294 directs that all future notices of proposed rulemaking (NPRMs) and final rules published in the Federal Register, the violation of which may constitute criminal regulatory offenses, should include a statement identifying that the rule or proposed rule is a criminal regulatory offense and the authorizing statute.[63] Executive Order 14294 directs agencies to draft this statement in consultation with the Department of Justice.

Executive Order 14294 further directs that the regulatory text of all NPRMs and final rules with criminal consequences published in the Federal Register after May 9, 2025 should explicitly state a mens rea requirement for each element of a criminal regulatory offense, accompanied by citations to the relevant provisions of the authorizing statute.

Willful violations of the proposed regulations set forth in this proposed rule may be subject to criminal penalties pursuant to 31 U.S.C. 5322 and regulations promulgated in 31 CFR Chapter X. The statutory authority for criminal liability requires a mens rea of willfulness as an element pursuant to 31 U.S.C. 5322(a) and 31 U.S.C. 5322(b). FinCEN's existing regulation, 31 CFR 1010.840, that sets out criminal penalties for violations of regulations promulgated in 31

[63] Executive Order 14294, "Fighting Overcriminalization in Federal Regulations" 90 FR 20367 (issued May 9, 2025; published May 14, 2025), https://www.federalregister.gov/executive-order/14294.

CFR Chapter X also includes a mens rea of willfulness. In drafting this statement, FinCEN has consulted with the Department of Justice.

## IX. Regulatory Impact Analysis

FinCEN has analyzed this proposed rule under Executive Orders 12866, 13563 the Regulatory Flexibility Act,[64] the Unfunded Mandates Reform Act,[65] and the Paperwork Reduction Act.[66]

As discussed above, the intended effects of the imposition of special measure five with respect to MBaer are twofold. The rule is expected to: (1) combat and deter money laundering in facilitation of Venezuelan, Russian, and Iranian illicit financing associated with MBaer; and (2) prevent MBaer from using the U.S. financial system to enable illicit financial activity. In the analysis below, FinCEN discusses the economic effects that are expected to accompany adoption of the rule as proposed and assesses such expectations in more granular detail. This discussion includes an explanation of how FinCEN's assumptions and methodological choices have influenced FinCEN's conclusions. The public is invited to comment on all aspects of FinCEN's practice.[67]

### A. *Executive Orders*

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

[64] 5 U.S.C. 603.
[65] 2 U.S.C. 1532.,
[66] 44 U.S.C. 3507(a)(1)(D).
[67] *See* Section VII; *see also* Section IX.D.

importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

It has been determined that this proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

**B. *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."[68] However, 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.

The population of affected covered financial institutions under the proposed rule is limited to those financial institutions that maintain foreign correspondent accounts. FinCEN is not in possession of any data, studies, or qualitative evidence that any such covered financial institution meets the applicable definitional criteria to be deemed a "small entity" under the RFA. Moreover, FinCEN assesses that if any covered financial institution were a small entity, the changes in activity necessary to comply with the proposed rule would be unlikely to have a significant economic impact on such entity.

Under the proposed special measure, covered financial institutions would be prohibited from opening or maintaining correspondent accounts for, or on behalf of, MBaer. As discussed above in Section V.B, FinCEN has identified fewer than five such accounts. The imposition of

[68] 5 U.S.C. 603(a).

the proposed special measure would therefore be more likely to prevent future correspondent accounts from being opened with small entities than require activity be undertaken with respect to currently maintained accounts. Given the relatively small size of MBaer as a financial institution operating outside of the United States and the current absence of account opening activity, the economic impact on small entities of continuing to forgo account opening is expected to be minimal.

Covered financial institutions would also be required to take reasonable measures to detect and prevent use of their correspondent accounts to process transactions involving MBaer. Neither set of newly required activities should introduce significant incremental burdens relative to current obligations and ongoing diligence activities. For example, all U.S. persons, including U.S. financial institutions, must comply with OFAC sanctions, and covered U.S. financial institutions generally have suspicious activity reporting requirements and systems in place to screen transactions to comply with OFAC sanctions and section 311 special measures administered by FinCEN. The systems that U.S. financial institutions have in place to comply with these requirements can easily be modified to adapt to this proposed rule. Thus, the special due diligence that would be required under the proposed rule—*i.e.,* preventing the processing of transactions involving MBaer and the transmittal of notification to certain correspondent account holders—is not expected to require a significant change in due diligence activities for small U.S. financial institutions. For these reasons, FinCEN certifies that the proposals contained in this rulemaking are not expected to have a significant impact on a substantial number of small businesses.

FinCEN invites comments from members of the public who believe there would be a significant economic impact on small entities from the imposition of a prohibition under special

measure five regarding MBaer.

### C. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995[69] (Unfunded Mandates Reform Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, adjusted for inflation.[70] If a budgetary impact statement is required, section 202 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.[71]

FinCEN has determined that this proposed rule would not result in expenditures by state, local, and tribal governments in the aggregate, or by the private sector, of an annual $100 million or more, adjusted for inflation ($187 million).[72] Accordingly, FinCEN has not prepared a budgetary impact statement or considered the regulatory alternatives outlined in Section V.E above within the framework of the Unfunded Mandates Reform Act.

### D. *Paperwork Reduction Act*

The recordkeeping requirements contained in this proposed rule that qualify as "collections of information" under the Paperwork Reduction Act of 1995 (PRA) will be submitted to the Office of Management and Budget (OMB) for review in accordance with the

[69] 2 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).
[70] *Id.*
[71] *Id.*
[72] The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of USD 100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product deflator for calendar year 1995, the year of the Unfunded Mandates Reform Act, as 66.939, and as 125.428 for the calendar year 2024, the most recent available. *See* U.S. Bureau of Economic Analysis, *Table 1.1.9. Implicit Price Deflators for Gross Domestic Product,* https://www.bea.gov/itable/ (last accessed Oct. 3, 2025). Thus, the inflation-adjusted estimate for USD 100 million is 125.428/66.939 × 100 million = USD 187.377 million.

PRA.[73] Under the PRA, an agency may not conduct or sponsor a collection of information unless it displays a valid control number assigned by the OMB.[74] Written comments and recommendations for the proposed prohibition can be submitted by visiting www.reginfo.gov/public/do/PRAMain. Find this particular document by selecting "Currently under Review—Open for Public Comments" or by using the search function. Comments are welcome and must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 1010.666 is presented to assist those persons wishing to comment on the information collections.

The provisions in this proposed rule pertaining to the collection of information can be found in sections 1010.666(b)(3)(i)(A) and 1010.666(b)(4). The notification requirement in section 1010.666(b)(3)(i)(A) is intended to aid cooperation from foreign correspondent account holders in preventing transactions involving MBaer from being processed by the U.S. financial system. The information required to be maintained by section 1010.666(b)(4) would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the notification requirement in section 1010.666(b)(3)(i)(A). The collection of information would be mandatory.

*Frequency*: As required.

[73] *See* 44 U.S.C. 3507(a)(1)(D). The PRA defines a "collection of information" as " the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format, calling for either (i) answers to identical questions posed to, or identical reporting or recordkeeping requirements imposed on, ten or more persons, other than agencies, instrumentalities, or employees of the United States; or (ii) answers to questions posed to agencies, instrumentalities, or employees of the United States which are to be used for general statistical purposes[.]" *See* 44 U.S.C. 3502(3).
[74] 44 U.S.C. 3507(a)(3).

*Description of Affected Financial Institutions:* Only those covered financial institutions defined in section 1010.666(a)(3) that are engaged in correspondent banking with, or processing transactions potentially involving, MBaer as defined in section 1010.666(b)(1) and (2) are expected to incur incremental economic effects.

*Estimated Number of Potential Respondents:* Approximately 15,710.[75]

**Table 1. Estimates of Covered Financial Institutions by Type**

| FINANCIAL INSTITUTION TYPE | NUMBER OF ENTITIES |
|---|---|
| Banks with a federal functional regulator (FFR)[a] | 8,995[b] |
| Banks without an FFR[c] | 395[d] |
| Broker-dealers in securities (broker-dealers)[e] | 3,320[f] |
| Open end mutual funds[g] | 2,036[h] |
| Futures commission merchants[i] | 65[j] |
| Introducing brokers in commodities[k] | 899[l] |

[a] *See* 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d).

[b] Bank data is as of January 17, 2025, from Federal Deposit Insurance Corporation BankFind, https://banks.data.fdic.gov/bankfind-suite/bankfind. Credit union data is as of September 2024 from the National Credit Union Administration Quarterly Data Summary Reports, https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports.

[c] 31 CFR 1020.210(b).

[d] The Board of Governors of the Federal Reserve System Master Account and Services Database contains data on financial institutions that utilize Reserve Bank financial services, including those with no federal regulator. FinCEN used this data to identify 395 banks and credit unions utilizing Reserve Bank financial services with no federal regulator. *See* Board of Governors of the Federal Reserve System, *Master Account and Services Database* (Dec. 19, 2025), https://www.federalreserve.gov/paymentsystems/master-account-and-services-database-existing-access.htm.

[e] 31 CFR 1010.100(t)(2).

[f] According to the Securities and Exchange Commission (SEC), there are 3,320 broker-dealers as of March 2025 from the website "Company Information About Active Broker-Dealers," https://www.sec.gov/foia-services/frequently-requested-documents/company-information-about-active-broker-dealers.

[g] *See* 31 CFR 1010.100(t)(10); *see also* 31 CFR 1010.100(gg).

[h] According to the SEC, in 2024 there were 2,036 open-end registered investment companies that report on Form N-CEN. SEC, "Form N-CEN Data Sets," https://www.sec.gov/dera/data/form-ncen-data-sets.

[i] 31 CFR 1010.100(t)(8).

[j] According to the Commodity Futures Trading Commission (CFTC), there are 65 futures commission merchants as of November 30, 2024. *See* CFTC, "Financial Data for FCMs," https://www.cftc.gov/MarketReports/financialfcmdata/index.htm.

[k] 31 CFR 1010.100(t)(9).

[l] According to the National Futures Association (NFA), there are 899 introducing brokers in commodities as of Dec. 31, 2024 from website "NFA Membership Totals," https://www.nfa.futures.org/registration-membership/membership-and-directories.html.

[75] This estimate is informed by public and non-public data sources regarding both an expected maximum number of entities that may be affected and the number of active, or currently reporting, registered financial institutions.

*Estimated Number of Expected Respondents:* Approximately 127.[76]

**Table 2. Estimates of Affected Financial Institutions by Type**

| FINANCIAL INSTITUTION TYPE | NUMBER OF ENTITIES |
|---|---|
| Banks with a FFR | 60[a] |
| Banks without a FFR | 17[b] |
| Broker-dealers | 26[c] |
| Open end mutual funds | 16[d] |
| Futures commission merchants | 1[e] |
| Introducing brokers in commodities | 7[f] |

[a] Data are from the Federal Financial Institution Examination Council Central Data Repository for Reports of Condition and Income (Call Reports) and Uniform Bank Performance Reports (UBPRs), available for most Federal Deposit Insurance Corporation-insured institutions. Using this source of data, FinCEN determines that as of Q3 2024, approximately 60 banks (as defined by FinCEN regulations, *see* 31 CFR 1010.100(d)) would be affected by the rules covered in this notice in any given year. Specifically, as of Q3 2024, there were approximately 60 banks that reported non-zero values for deposit liabilities of banks in foreign countries. Deposit liabilities in a foreign country is an indication that a bank maintains correspondent accounts with a foreign financial institution.

[b] The Board of Governors of the Federal Reserve System Master Account and Services Database contains data on financial institutions that utilize Reserve Bank financial services, including those with no federal regulator. FinCEN used this data to identify an additional 17 international banking entities with no federal regulator and that do not file Call Reports, but that are also likely to maintain correspondent accounts with a foreign financial institution.

[c] Broker-dealers, unless they are publicly traded, are not required to make reports indicating whether they have foreign correspondent accounts or hold foreign deposits. FinCEN reviewed financial statement data from 10-Q and 6-K filings with the SEC and identified nine publicly traded broker-dealers with U.S. operations that reported foreign deposits. FinCEN also examined SARs filed by broker-dealers in 2024 to identify another two non-publicly traded broker-dealers who appeared likely to be maintaining foreign deposits. However, because many broker-dealers are not publicly traded and did not file SARs, FinCEN conservatively estimates that the proportion of broker-dealers with foreign correspondent accounts will be similar to the proportion for banks (approximately 0.8%). 0.8% of 3,320 active broker-dealers is approximately 26 broker-dealers assumed to have foreign correspondent accounts.

[d] Mutual funds, futures commission merchants, and introducing brokers in commodities generally use intermediary U.S. banks to move and maintain client deposits and funds for investment. Therefore, it is unlikely that many of these institutions will maintain direct correspondent accounts with foreign financial institutions outside of their existing upstream banking relationships. However, because these institutions may in some cases receive deposits from, make payments or other disbursements, or otherwise transact directly with foreign financial institutions, FinCEN conservatively estimates that the proportion of mutual funds with foreign correspondent accounts will be similar to the proportion for banks (approximately 0.8%). 0.8% of 2,036 active mutual funds is approximately 16 mutual funds assumed to have foreign correspondent accounts.

[e] 0.8% of 65 active futures commission merchants is approximately one futures commission merchant assumed to have foreign correspondent accounts.

[f] 0.8% of 899 active introducing brokers in commodities is approximately seven introducing brokers in commodities assumed to have foreign correspondent accounts.

[76] While this regulation applies to all covered institutions described in Table 1, in practice the burden would only be imposed on select institutions that maintain correspondent accounts for foreign banks. Table 2 below presents an estimate of this subpopulation of banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities based on data from the most recent calendar year end.

*Estimated Average Annual Burden in Hours per Affected Financial Institution:*

Imposing special measure five requirements as described in this proposed rule is expected to result in a new, incremental recordkeeping burden on certain covered financial institutions as described above. Each anticipated component of this is outlined below.

Each affected covered financial institution is expected to incur a recordkeeping burden associated with preparing and retaining the materials necessary to demonstrate compliance with the proposed requirements. This is expected to include records related to:

A. Documenting the reasonable steps the financial institution undertakes to ensure no transactions involving MBaer are processed for a foreign correspondent account, including:
    1. Any investigative activities undertaken when the financial institution knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving MBaer.
    2. Any subsequent activities undertaken to prevent such access, including, where necessary, termination of the correspondent account.
B. Notifying, and documenting that the financial institution has provided notice to, foreign correspondent account holders that the financial institution knows or has reason to believe provide services to MBaer, informing such correspondents that they may not provide MBaer with access to the correspondent account maintained at the financial institution.
C. Documenting the reasonable steps it took with respect to special due diligence requirements, including but not limited to, the reasoning that informed decisions to adopt

(or not adopt) new measures adding to its existing risk-based approach, and those new measures, if adopted.

The estimated average annual burden associated with the collection of information in this proposed rule is, in total, one business day, or eight hours per affected financial institution.

*Estimated Total Annual Burden in Year One:* Approximately 1,016 hours.[77]

*Estimated Total Annual Cost in Year One:* Approximately $121,920.[78]

In subsequent years, FinCEN estimates that the average annual burden associated with the collection of information would be significantly reduced.[79] FinCEN expects that the ongoing burden of compliance with FinCEN special measures would primarily accrue in connection with the opening of new foreign correspondent accounts, at which point a covered financial institution would need to ensure that new account holders receive information on entities subject to special measures and agree not to conduct transactions on their behalf. FinCEN has previously estimated that financial institutions that maintain foreign correspondent accounts will open an average of 10 new accounts per year.[80] FinCEN expects the time burden of special measure

[77] 127 expected respondents multiplied by eight hours per respondent equals 1,016 total annual burden hours.
[78] The wage rate applied here is a general composite hourly wage ($84.55), scaled by a private-sector benefits factor of 1.42 ($120.07 = $84.55 × 1.42), that incorporates the mean wage data (available for download at https://www.bls.gov/oes/tables.htm, "May 2023 - National industry-specific and by ownership") associated with the six occupational codes (11-1010: Chief Executives; 11-3021: Computer and Information Systems Managers; 11-3031: Financial Managers; 13-1041: Compliance Officers; 23-1010: Lawyers and Judicial Law Clerks; 43-3099: Financial Clerks, All Other) for each of the nine groupings of NAICS industry codes that FinCEN determined are most directly comparable to its eleven categories of covered financial institutions as delineated in 31 CFR parts 1020 to 1030. The benefit factor is 1 plus the benefit/wages ratio, where as of June 2023, Total Benefits = 29.4 and Wages and salaries = 70.6 (29.4/70.6= 0.42) based on the private industry workers series data downloaded from https://www.bls.gov/news.release/archives/ecec_09122023.pdf (accessed Dec. 22, 2024). Given that many occupations provide benefits beyond cash wages (e.g., insurance, paid leave), the private sector benefit is applied to reflect the total cost to the employer. 1,016 total annual burden hours multiplied by $120 per hour equals a total annual cost of $121,920.
[79] *See* discussion of how compliance with the proposed rule is expected to be integrated into covered financial institutions' broader OFAC sanctions and 311 special measures compliance activities at Section IX.B.
[80] *See* FinCEN, *Renewal Without Change of Prohibition on Correspondent Accounts for Foreign Shell Banks; Records Concerning Owners of Foreign Banks and Agents for Service of Legal Process*, 90 FR 21987, 21994 (May 22, 2025), https://www.federalregister.gov/d/2025-09162/p-134.

compliance associated with these new accounts would not exceed 15 minutes (0.25 hours) per affected financial institution.

Table 3 presents a summary of FinCEN's estimates of PRA Burden as expected to accrue during the first three years in which the rule is effective and provides a basis for the expected average annual costs as estimated over the same time horizon.

**Table 3. PRA Three-Year Pro Forma Burden Estimates**

| Year | Number of respondents | Hours per respondent | Total burden hours |
|---|---|---|---|
| 1 | 127 | 8.00 | 1,016.00 |
| 2 | 127 | 0.25 | 31.75 |
| 3 | 127 | 0.25 | 31.75 |
| Average | 127 | 2.83 | 359.83 |

*Estimated Three-Year Average Aggregate Annual Burden:* Approximately 360 hours on average, per year.[81]

*Estimated Three-Year Average Aggregate Annual Cost:* Approximately $43,225.20.[82]

*FinCEN invites comments on*: (1) whether the proposed collection of information found in section 1010.666(b)(4) is necessary for the proper performance of the mission of FinCEN, including whether the information would have practical utility; (2) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information required to be maintained; (4) ways to minimize the burden

[81] This estimate is the average of 1,016 expected burden hours in year one of implementation and 31.75 hours in years two and three, respectively, rounded to the nearest whole hour.
[82] An average annual burden over years one through three of 360 hours multiplied by $120.07 per hour equals an average annual cost of $43,225.20.

of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

## X. Regulatory Text

### List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, Banks, Banking, Brokers, Crime, Foreign banking, Terrorism.

### Authority and Issuance

For the reasons set forth in the preamble, FinCEN proposes amending 31 CFR part 1010 as follows:

### Part 1010-GENERAL PROVISIONS

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

   "Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5336; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 2006, Pub. L. 114-41, 129 Stat. 458-459; sec. 701 Pub. L. 114-74, 129 Stat. 599; sec. 6403, Pub. L. 116-283, 134 Stat. 3388."

2. Add 1010.666 to read as follows:

**1010.666 Special measures regarding MBaer.**

(a) *Definitions*. For purposes of this section, the following terms have the following meanings.

(1) *MBaer*. The term "MBaer" means all subsidiaries, branches, and offices of MBaer Merchant Bank AG, a financial institution operating outside of the United States.

(2) *Correspondent account*. The term "correspondent account" has the same meaning as provided in 1010.605(c)(l)(ii).

(3) *Covered financial institution*. The term "covered financial institution" has the same meaning as provided in 1010.605(e)(1).

(4) *Financial institution operating outside of the United States.* The term "financial institution operating outside of the United States" means any business or agency operating, in whole or in part, outside of the United States that engages in any activity which is similar to, related to, or a substitute for any activity in which any financial institution, as defined in 31 U.S.C. 5312(a)(2), engages.

(5) *Foreign banking institution*. The term "foreign banking institution" means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

(6) *Subsidiary*. The term "subsidiary" means a company of which more than 50 percent of the voting stock or an otherwise controlling interest is owned by another company.

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

(1) *Prohibition on opening or maintaining correspondent accounts for MBaer*. A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, MBaer.

(2) *Prohibition on processing transactions involving MBaer*. A covered financial institution shall take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves MBaer.

(3) *Special due diligence of correspondent accounts to prohibit transactions*.

(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 MBaer. 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 believe provide services to MBaer that such correspondents

may not provide MBaer 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 MBaer, 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 MBaer.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving MBaer shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

(4) *Recordkeeping and reporting.*

(i) A covered financial institution is required to document its compliance with the notification requirement set forth in this section.

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

Dated: February 26, 2026

Andrea M. Gacki,
Director,
Financial Crimes Enforcement Network.