

## DEPARTMENT OF THE TREASURY

## 31 CFR Part 103

RIN 1506-AA89

**Financial Crimes Enforcement Network; Withdrawal of the Finding of Primary Money Laundering Concern and the Notice of Proposed Rulemaking Against First Merchant Bank**

**AGENCY:** Financial Crimes Enforcement Network, Department of the Treasury.

**ACTION:** Withdrawal of the finding of primary money laundering concern and notice of proposed rulemaking.

**SUMMARY:** This document withdraws our August 24, 2004 finding that First Merchant Bank is a financial institution of primary money laundering concern and our notice of proposed rulemaking recommending the imposition of the fifth special measure, pursuant to the authority contained in 31 U.S.C. 5318A of the Bank Secrecy Act.

**DATES:** The notice of proposed rulemaking is withdrawn as of April 10, 2008.

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

**SUPPLEMENTARY INFORMATION:****I. Background***A. Statutory Provisions*

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 ("USA PATRIOT Act"). Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C. 5311-5314 and 5316-5332, to promote the prevention, detection, and prosecution of money laundering and the financing of terrorism. Regulations implementing the Bank Secrecy Act appear at 31 CFR part 103. The authority of the Secretary of the Treasury ("the Secretary") to administer the Bank Secrecy Act and its implementing regulations has been delegated to the Director of the Financial Crimes Enforcement Network.<sup>1</sup>

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the

<sup>1</sup> Therefore, references to the authority of the Secretary under section 311 of the USA PATRIOT Act apply equally to the Director of the Financial Crimes Enforcement Network.

authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of international transactions, or type of account is of "primary money laundering concern," to require domestic financial institutions and domestic financial agencies to take certain "special measures" against the primary money laundering concern.<sup>2</sup>

Taken as a whole, section 5318A provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options provide the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money-laundering threats and the ability to take steps to protect the U.S. financial system. Through the imposition of various special measures, we can: Gain more information about the concerned jurisdictions, financial institutions, transactions, and accounts; monitor more effectively the respective jurisdictions, financial institutions, transactions, and accounts; and ultimately protect U.S. financial institutions from involvement with jurisdictions, financial institutions, transactions, or accounts that pose a money laundering concern.

*B. First Merchant Bank*

First Merchant Bank OSH Ltd. ("First Merchant Bank") was licensed in the "Turkish Republic of Northern Cyprus"<sup>3</sup> in 1993 as an offshore bank. It had 21 employees and was a privately owned commercial bank specializing in the provision of commercial and investment banking services to individual and corporate offshore

<sup>2</sup> Available special measures include requiring: (1) *Recordkeeping* and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(1)-(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing to impose special measures against Nauru).

<sup>3</sup> The "Turkish Republic of Northern Cyprus" was described at length in the August 24, 2004 notice of proposed rulemaking, 69 FR 51979, Aug. 24, 2004 (RIN 1506-AA65). Today's withdrawal of that proposed rulemaking does not provide updates on jurisdictional developments. Further discussion of jurisdictional developments can be found in FinCEN's advisory *Guidance to Financial Institutions on the Money Laundering Threat Involving the Turkish Cypriot Administered Area of Cyprus*, published on March 20, 2008 at <http://www.fincen.gov/fin-2008-a003.html>. The advisory, however, has no bearing on today's withdrawal, nor does this withdrawal have any bearing on the advisory.

customers. First Merchant Bank was owned by Standard Finance Ltd. (Ireland) and private shareholders (98% and 2%, respectively).<sup>4</sup> Standard Finance Ltd., in turn, was owned by Provincial & Allied Funding Corp. (Bahamas) and Millvale Holdings Inc. (British Virgin Islands). First Merchant Bank's website stated that it had four wholly owned subsidiaries: FMB Finance Ltd. (British Virgin Islands), First Merchant International Inc. (Bahamas), First Merchant Finance Ltd. (Ireland), and First Merchant Trust Ltd. (Ireland).<sup>5</sup> For the purposes of this document, unless the context dictates otherwise, references to First Merchant Bank include FMB Finance Ltd., First Merchant International Inc., First Merchant Finance Ltd., and First Merchant Trust Ltd., and any other branch, office, or subsidiary of First Merchant Bank operating in the "Turkish Republic of Northern Cyprus" or in any other jurisdiction.

**II. The 2004 Finding, Proposed Rulemaking, and Subsequent Developments**

*A. The 2004 Finding and Proposed Rulemaking*

Based upon review and analysis of relevant information, consultations with relevant Federal agencies and departments, and after consideration of the factors enumerated in section 311, the Secretary, through his delegate, the Director of the Financial Crimes Enforcement Network, found that reasonable grounds existed for concluding that First Merchant Bank was a financial institution of primary money laundering concern. This finding was published on August 24, 2004,<sup>6</sup> in a notice of proposed rulemaking which proposed prohibiting covered financial institutions from, directly or indirectly, opening or maintaining correspondent accounts in the United States for First Merchant Bank or any of its branches, offices, or subsidiaries, pursuant to the authority under 31 U.S.C. 5318A. The notice of proposed rulemaking outlined the various factors supporting the finding and proposed prohibition.

<sup>4</sup> See *The Bankers' Almanac*, Reed Business Information Ltd (2005).

<sup>5</sup> First Merchant Finance, Ltd. and First Merchant Trust, Ltd. both listed their address as Kildress House Pembroke Row, LWR Baggot St., Dublin, BUE 2, Ireland. First Merchant International Inc. and FMB Finance, Ltd. were listed on First Merchant Bank's *Web site* at [http://www.firstmerchantbank.com/home\\_main.htm](http://www.firstmerchantbank.com/home_main.htm) (no longer accessible).

<sup>6</sup> See 69 FR 51979 (Aug. 24, 2004, RIN 1506-AA65).

During an extended comment period,<sup>7</sup> we received two comment letters on the notice of proposed rulemaking: one comment letter from First Merchant Bank through its U.S. legal counsel and one comment letter from a securities industry trade association.

#### *B. First Merchant Bank's Subsequent Developments*

The United States government has recent information indicating that First Merchant Bank is no longer conducting transactions as a financial institution. The Ministry of Finance of the "Turkish Republic of Northern Cyprus" ceased First Merchant Bank's operations on December 4, 2006.<sup>8</sup> After this date, no Cypriot banks have reported conducting any transactions with First Merchant Bank. On February 21, 2007, the Ministry of Finance cancelled First Merchant Bank's license, withdrawing First Merchant Bank's authority to

<sup>7</sup> See 69 FR 58374 (September 30, 2004) (extension of original comment period from September 23, 2004, to November 1, 2004.).

<sup>8</sup> *Off-Shore Bank, Operations of which have been ceased by the Ministry of Finance of TRNC with an announcement published in the Official Gazette No: 201 on December 04, 2006* at <http://www.kktcmb.trnc.net/ENGLISH/banks/offshore-banks-eng.html>.

operate as a financial institution in the "Turkish Republic of Northern Cyprus."<sup>9</sup> On June 26, 2007, the Turkish Cypriot Money Laundering Board ordered First Merchant Bank's website be taken down and its offices closed. Furthermore, we confirmed the dissolution of First Merchant Bank's parent, Standard Finance Ltd. (Ireland), and two of First Merchant Bank's subsidiaries, First Merchant Finance Ltd. (Ireland) and First Merchant Trust Ltd. (Ireland). As for First Merchant Bank's two other subsidiaries, our research indicates FMB Finance Limited (British Virgin Islands) is no longer registered and First Merchant International Inc. (Bahamas) is not in existence and is not known to have operated there.

#### **III. Withdrawal of the Finding of First Merchant Bank as a Financial Institution of Primary Laundering Concern**

For the reasons set forth above, we hereby withdraw our finding that First

<sup>9</sup> *Off-Shore Banks, Licences of which have been cancelled by the Ministry of Finance of TRNC with an announcement published in the Official Gazette No: 32 on February 21, 2007* at <http://www.kktcmb.trnc.net/ENGLISH/banks/offshore-banks-eng.html>.

Merchant Bank is a financial institution of primary money laundering concern as of April 10, 2008. Our withdrawal of the finding of First Merchant Bank as a financial institution of primary money laundering concern does not acknowledge any remedial measure taken by First Merchant Bank, but is the result of First Merchant Bank no longer operating as a financial institution because it no longer exists.

#### **IV. Withdrawal of Notice of Proposed Rulemaking**

For the reasons set forth above, we hereby withdraw the notice of proposed rulemaking imposing the fifth special measure authorized by 31 U.S.C. 5318A(B)(5) against First Merchant Bank as published in the **Federal Register** on August 24, 2004 (69 FR 51979).

Dated: April 4, 2008.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

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