Republic of the Philippines
Department of Finance
INSURANCE COMMISSION
1071 United Nations Avenue
Manila

Circular Letter (CL) No.:	2015-18
Date:	16 April 2015
Supersedes:	None

CIRCULAR LETTER

TO : **All Insurance/Reinsurance Companies, Insurance and Reinsurance Brokers, Mutual Benefit Associations, Trusts for Charitable Uses and Pre-Need Companies**

SUBJECT : **Dissemination of Financial Crimes Enforcement Network[1] (FinCEN) News Release dated 10 March 2015, Notice of Finding dated 06 March 2015, and Notice of Proposed Rulemaking (NPRM) dated 06 March 2015**

Pursuant to the request of the Anti-Money Laundering Council Secretariat, in its letter dated 26 March 2015, to disseminate copies of the above-mentioned subject matter to all covered institutions under the Insurance Commission's supervision, attached herewith are copies of FinCEN News Release dated 10 March 2015[2], Notice of Finding dated 06 March 2015[3], and NPRM dated 06 March 2015[4] for your information and guidance.

EMMANUEL F. DOOC
Insurance Commissioner

Encl.: A/S

---

[1] The FIU of the USA
[2] http://www.fincen.gov/news_room/nr/pdf/20150310.pdf
[3] http://www.fincen.gov/news_room/nr/files/BPA_NOF.pdf
[4] http://www.fincen.gov/news_room/nr/files/BPA_NPRM.pdf

UNITED STATES DEPARTMENT OF THE TREASURY
FinCEN
FINANCIAL CRIMES ENFORCEMENT NETWORK
P.O. Box 39 · Vienna, VA 22183-0039 · www.fincen.gov

FinCEN news releases are available on the internet and by e-mail subscription at **www.fincen.gov**.
For more information, please contact FinCEN's Office of Public Affairs at (703) 905-3770

FOR IMMEDIATE RELEASE
March 10, 2015

CONTACT: Steve Hudak
703-905-3770

FinCEN Names Banca Privada d'Andorra a Foreign Financial Institution of Primary Money Laundering Concern

WASHINGTON, DC – The U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) today named Banca Privada d'Andorra (BPA) as a foreign financial institution of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act (Section 311) and issued a related Notice of Proposed Rulemaking (NPRM). This finding and NPRM are based on information indicating that, for several years, high-level managers at BPA have knowingly facilitated transactions on behalf of third-party money launderers acting on behalf of transnational criminal organizations.

"BPA's corrupt high-level managers and weak anti-money laundering controls have made BPA an easy vehicle for third-party money launderers to funnel proceeds of organized crime, corruption, and human trafficking through the U.S. financial system," said FinCEN Director Jennifer Shasky Calvery. "Today's announcement is a critical step to address this compromised financial institution's egregious conduct and send a message that the United States will take strong measures to protect the integrity of its financial system from criminal actors."

Today's action also highlights the threat posed by third-party money launderers to financial institutions. Transnational criminal organizations often encounter obstacles in achieving direct access to financial institutions internationally and in the United States because of their illicit activities. To obtain access to financial institutions, some transnational criminal organizations use the services of third-party money launderers, including professional gatekeepers such as attorneys and accountants.

BPA's activity of primary money laundering concern occurred largely through its Andorra headquarters. BPA is one of five Andorran banks and is a subsidiary of the BPA Group, a privately-held entity. The activity involved the proceeds of organized criminals in Russia and China, foreign corruption, and other criminal activity. BPA accesses the U.S. financial system through direct correspondent accounts held at four U.S. banks, through which it has processed hundreds of millions of dollars. BPA's high-level managers established financial services tailored to its third-party money launderer clients to disguise the origins of funds. In exchange

for some of these services, BPA's high-level managers accepted payments and other benefits from their criminal clients.

FinCEN has delivered to the Federal Register a notice of its finding that explains the basis for this action. In addition, FinCEN has delivered to the Federal Register an NPRM that, if adopted as a final rule, would prohibit covered U.S. financial institutions from opening or maintaining correspondent or payable-through accounts for BPA, and for other foreign banks being used to process transactions involving BPA. The NPRM also proposes to require covered financial institutions to apply special due diligence to their correspondent accounts maintained on behalf of foreign banks to guard against processing any transactions involving BPA. These measures are subject to a 60-day comment period, beginning the day the NPRM is published in the Federal Register.

As part of the notice of its finding, FinCEN's action describes a high-level manager at BPA in Andorra who provided substantial assistance to Andrei Petrov, a third-party money launderer working for Russian criminal organizations engaged in corruption. In February 2013, Spanish law enforcement arrested Petrov for money laundering. Petrov is also suspected to have links to Semion Mogilevich, one of the FBI's "Ten Most Wanted" fugitives.

FinCEN's action also describes the activity of a second high-level manager at BPA in Andorra who accepted exorbitant commissions to process transactions related to Venezuelan third-party money launderers. This activity involved the development of shell companies and complex financial products to siphon off funds from Venezuela's public oil company Petroleos de Venezuela (PDVSA). BPA processed approximately $2 billion in transactions related to this money laundering scheme.

FinCEN's action also describes the activities of a third high-level manager at BPA in Andorra who accepted bribes in exchange for processing bulk cash transfers for another third-party money launderer, Gao Ping. Ping acted on behalf of a transnational criminal organization engaged in trade-based money laundering and human trafficking and established a relationship with BPA to launder money on behalf of this organization and numerous Spanish businesspersons. Through his associate, Ping paid exorbitant commissions to BPA bank officials to accept cash deposits into less scrutinized accounts and transfer the funds to suspected shell companies in China. Spanish law enforcement arrested Ping in September 2012 for his involvement in money laundering.

Director Calvery recognized the important coordination in this matter with the Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section, the U.S. Attorney's Office for the Eastern District of Texas; U.S. Immigration and Customs Enforcement's Homeland Security Investigations; and the Internal Revenue Service Criminal Investigation.

"We are seeing an increasing trend where businesses and business professionals are being recruited by transnational criminal organizations to facilitate corrupt practices, such as creating shell corporations and fronts for money laundering and other illegal activity," said HSI Executive Associate Director Peter Edge. "These corrupt individuals and institutions put profits at a premium and serve as connections between the licit and illicit worlds. Today's action addresses

the vulnerability created by BPA and helps protect the integrity of the international financial system "

"International financial institutions are welcome to provide a conduit for their customers to utilize American banks, as long as they abide by our laws that govern those transactions," said Richard Weber, Chief, IRS Criminal Investigation. "However, when senior managers of these institutions turn to corruption and bribery to enrich themselves, they should not be surprised when special agents from IRS CI come knocking at their door. IRS Criminal Investigation will continue to work with law enforcement and financial partners to investigate these institutions and senior officials who misuse their positions of trust to facilitate third-party money launderers acting on behalf of transnational criminal organizations."

Director Calvery praised the contributions of the Andorran authorities in this investigation and appreciates their commitment to investigating this activity fully.

Director Calvery also praised the contributions of the Mexican government to the joint efforts by the United States and Mexico to combat money laundering.

Third-party money launderers engage in the business of transferring funds on behalf of a third party, knowing that the funds are involved in illicit activity. Third-party money launderers use their relationships with financial institutions to provide criminal organizations access to the international financial system and lend an aura of legitimacy to the criminal actors who use their services Some third-party money launderers explicitly market their services as a method for criminal networks to reduce transparency and circumvent financial institutions' anti-money laundering (AML)/countering the financing of terrorism (CFT) controls. Financial institutions that facilitate third-party money laundering activity allow criminals to circumvent AML/CFT controls both in the United States and internationally and thus provide a gateway to undermining the integrity of the financial system.

To view the Notice of Finding against BPA, visit this link.

To view the Notice of Proposed Rulemaking, visit this link.

###

FinCEN's mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

(BILLINGCODE: 4810-02)

DEPARTMENT OF THE TREASURY

Notice of Finding That Banca Privada d'Andorra Is a Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice of Finding.

SUMMARY: This document provides notice that, pursuant to the authority contained in the USA PATRIOT Act, the Director of FinCEN found on March 6, 2015 that reasonable grounds exist for concluding that Banca Privada d'Andorra ("BPA") is a financial institution operating outside of the United States of primary money laundering concern.

DATES: The finding referred to in this notice was effective as March 6, 2015.

FOR FURTHER INFORMATION CONTACT: FinCEN, (800) 949-2732.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X.

Section 311 of the USA PATRIOT Act ("Section 311"), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury ("the Secretary") the authority, upon finding

that reasonable grounds exist for concluding that a foreign jurisdiction, financial institution, class of transaction, or type of account is of "primary money laundering concern," to require domestic financial institutions and financial agencies to take certain "special measures" to address the primary money laundering concern. The Secretary has delegated this authority under Section 311 to the Director of FinCEN.

On March 6, 2015, the Director of FinCEN found that reasonable grounds exist for concluding that Banca Privada d'Andorra ("BPA") is a financial institution operating outside of the United States of primary money laundering concern. The Director considered the factors listed below in making this determination.

II. The History of BPA and Jurisdictions of Operation

BPA is one of five Andorran banks and is a subsidiary of the BPA Group, a privately-held entity Founded in 1962, BPA is the fourth largest bank of the five banks in Andorra and has 1.79 billion euro in assets. The bank has seven domestic branches in Andorra and five foreign branches that operate in Spain, Switzerland, Luxembourg, Panama, and Uruguay. BPA has fewer domestic and foreign branches than the other major banking groups in Andorra. BPA's Panama branch ("BPA Panama") is licensed as an offshore bank by the Superintendecia de Bancos de Panama, which is the bank regulator for the Panamanian government BPA has correspondent banking relationships in the major North American, European, and Asian financial centers. At the time of this Finding, BPA has four U S. correspondent accounts.

III. The Extent to Which BPA Has Been Used to Facilitate or Promote Money Laundering

FinCEN has found that reasonable grounds exist for concluding that several officials of BPA's high-level management in Andorra have facilitated financial

transactions on behalf of Third-Party Money Launderers ("TPMLs") providing services for individuals and organizations involved in organized crime, corruption, smuggling, and fraud. Criminal organizations launder their proceeds through the international financial system. These organizations often encounter obstacles in achieving direct access to financial institutions internationally and in the United States because of their illicit activities. To obtain access to financial institutions, some criminal organizations use the services of TPMLs, including professional gatekeepers such as attorneys and accountants. TPMLs engage in the business of transferring funds on behalf of a third party, knowing that the funds are involved in illicit activity. These TPMLs provide access to financial institutions and lend an aura of legitimacy to criminal actors who use the TPMLs' services. Some TPMLs explicitly market their services as a method for criminal organizations to reduce transparency and circumvent financial institutions' anti-money laundering ("AML")/countering the financing of terrorism ("CFT") controls. TPMLs provide access to the international financial system for criminal organizations through the TPMLs' relationships with financial institutions.

Financial institutions that facilitate third-party money laundering activity allow criminals to circumvent AML/CFT controls both in the United States and internationally, and, thus, provide a gateway for undermining financial integrity. TPMLs use a wide variety of schemes and methods to infiltrate financial institutions These schemes and methods include using illicit shell and shelf corporations, layering financial transactions, creating and using false documentation, and exerting improper influence on employees in financial institutions or on government officials. A shell company is an entity that is formed for the purpose of holding property or funds and does not itself engage in any

significant business activity. A shelf corporation is an entity that is formed and then placed aside for years The length of time that a shelf corporation has been in existence adds legitimacy to the entity and makes it a prime vehicle for money laundering.

A. BPA Facilitated Financial Transactions for TPMLs Involving the Proceeds of Organized Crime, Corruption, Human Trafficking, and Fraud.

FinCEN has found that reasonable grounds exist to support the following points: Several of BPA's high-level management have facilitated financial transactions on behalf of TPMLs providing services for individuals and organizations involved in organized crime, corruption, human trafficking, trade-based money laundering, and fraud. High-level management at BPA maintained close relationships with these TPMLs. Based on those relationships, TPMLs promoted their services to other illicit actors and relied on BPA to provide access to the financial system for criminal organizations. TPMLs successfully used BPA to facilitate money laundering activity because the Bank's weak AML/CFT controls allowed TPMLs to conduct this high-risk banking activity without detection, and the TPMLs were able to establish close relationships with complicit bank personnel who facilitated illicit transactions.

From 2011 to February 2013, High-Level Manager A at BPA in Andorra provided substantial assistance to Andrey Petrov, a TPML ("TPML 1") working for Russian criminal organizations engaged in corruption. Petrov facilitated several projects on behalf of transnational criminal organizations. Petrov used the proceeds of transnational organized crime to bribe local officials in Spain. Petrov secured beneficial zoning rights and contracts from a local official. After Petrov's application for a line of credit at a Spanish bank was rejected, High-Level Manager A ensured that Petrov could obtain a line of credit from another Spanish bank and that the application would not be

perceived as suspicious. Petrov arranged for High-Level Manager A to fly to Russia to meet with transnational organized crime figures.

High-Level Manager A created accounts at BPA that facilitated false invoicing to disguise the origin of illicit funds. In addition, a Russian businessman known to be connected to transnational criminal organizations worked with BPA, including High-level Manager A, to establish front companies and foundations used to move funds believed to be affiliated with organized crime. Both Petrov and the Russian businessman relied on BPA to facilitate the laundering of the organized crime proceeds and maintained large bank accounts with BPA. In February 2013, Spanish law enforcement arrested Petrov and several associates for laundering approximately 56 million euro. Petrov is suspected to have links to Semion Mogilevich, one of the FBI's ten "most wanted" fugitives.

In addition to BPA's facilitation of illicit financial transactions by Petrov, in a separate scheme, a Venezuelan TPML ("TPML 2") and his network relied on BPA to deposit the proceeds of public corruption. This money laundering network worked closely with high-ranking government officials in Venezuela, resident agents in Panama, and an Andorran lawyer to establish Panamanian shell companies. The money laundering network owned hundreds of shell companies and engaged in a wide variety of business for illicit profit. This network was well connected to Venezuelan government officials and relied on various methods to move funds, including false contracts, mischaracterized loans, over- and under-invoicing, and other trade-based money laundering schemes.

TPML 2 had a relationship with High-Level Manager B at BPA. TPML 2 gave High-Level Manager B false contracts to support transactions purported to be on behalf

of Venezuelan public institutions including Petroleos de Venezuela S.A. ("PDVSA"), the public oil company of Venezuela. In some instances, these contracts did not list a customer for the services High-Level Manager B's reliance on these contracts demonstrated transaction monitoring and due diligence failures. Also, High-Level Manager B coordinated the opening of a shell company on behalf of the Venezuelan TPML. High-Level Manager B worked with High-Level Manager A on the illicit Venezuelan transactions BPA facilitated the movement of approximately $2 billion through these shell company accounts maintained at BPA. Between January 2011 and March 2013, BPA facilitated the movement of at least $50 million in send and receive transactions that were processed through the United States in support of this money laundering network. In 2014, BPA continued to facilitate the movement of funds related to this scheme through the U.S. financial system. Overall, BPA facilitated the movement of $4.2 billion in transfers related to Venezuelan money laundering.

In addition to BPA's facilitation of illicit financial transactions by Petrov and Venezuelan money launderers, from 2011 to October 2012, High-Level Manager C at BPA accepted bribes to process bulk cash transfers for TPML Gao Ping ("TPML 3"). Ping acted on behalf of a transnational criminal organization engaged in trade-based money laundering and human trafficking and established relationships with Andorran banks to launder money on behalf of his organization and numerous Spanish businesspersons Through his associate, Ping bribed Andorran bank officials to accept cash deposits into less scrutinized accounts and transfer the funds to suspected shell companies in China. One of Ping's key bank executives was High-Level Manager C. High-Level Manager C and another bank manager at BPA processed approximately 20

million euro in cash used to fund wire transfers sent to Ping's accounts in China. Spanish law enforcement arrested Ping in September 2012 for his involvement in money laundering.

B. BPA's Weak AML Controls Attract TPMLs and Allow Its Customers to Conduct Transactions Through the U.S. Financial System That Disguise the Origin and Ownership of the Funds.

BPA's failure to conduct adequate due diligence on customer accounts and its provision of high-risk services to shell companies make it highly attractive and well known to TPMLs. TPMLs worked on behalf of transnational criminal organizations to facilitate the criminal organizations' financial transactions through BPA. In addition, TPMLs reportedly coordinated multi-million dollar deals related to Venezuelan corruption and represented that connections with BPA would facilitate these transactions.

For example, a TPML ("TPML 4"), who has worked with the Sinaloa cartel, facilitated the transfer of bulk cash derived from narcotics trafficking in the United States and facilitated financial transactions involving the proceeds of other crimes. TPML 4 intentionally bolstered connections with BPA to attract money laundering clients and requested that clients send smaller transfers through accounts at other institutions and to only use accounts at BPA for large transactions. In communications with co-conspirators, TPML 4 advertised a relationship with BPA in attempts to attract potential money laundering deals. TPML 4 told clients that this relationship with BPA and other government officials would ensure that their transactions would not be scrutinized by the financial community. In addition, TPML 4 also marketed services to potential clients by providing specific wire transfer instructions for accounts at BPA.

TPML 4 used many methods to avoid detection by law enforcement, including planning to increase operations during the U.S. government shutdown in 2013. TPML 4 used many Panamanian, Spanish, and Swiss shelf corporations to attract clients Several of these shelf corporations had bank accounts, including at BPA.

BPA's failure to monitor transactions for apparent red flag activity attracts TPMLs. Many third-party money laundering transactions conducted through BPA lack an apparent business purpose and would be identified as high risk by a bank with sufficient AML/CFT controls. For example, BPA processed millions of U.S. dollar transactions that listed BPA's Andorran address for the originator's or beneficiary's address. Although there may be rare occasions when use of the bank's address as a bank customer's address of record is legitimate, the processing of a high percentage of transactions not containing accurate customer address information indicates failure to conduct sufficient due diligence on a customer, failure to adequately monitor transactions, or possible complicity in money laundering by disguising the origin of funds. BPA also attracts TPMLs by knowingly providing services to shell and shelf companies and unlicensed money transmitters. As noted above, TPMLs rely on shell and shelf companies to shield the identities of their clients engaged in criminal activity BPA's facilitation of this high-risk business allows TPMLs to obscure the beneficial ownership of these accounts

BPA accesses the U.S. financial system through direct correspondent accounts held at four U.S. banks. Between approximately 2009 through 2014, BPA processed hundreds of millions of dollars through its U.S. correspondents. These transactions contained numerous indicators of high-risk money laundering typologies, including

widespread shell company activity, unlicensed money transmitters, and other high-risk business customers. For example, BPA processed tens of millions of dollars on behalf of unlicensed money transmitters through one U.S. correspondent. The U S. correspondent requested that BPA sign an agreement to discontinue processing these transactions through its account. After these concerns arose, the U.S correspondent closed BPA's account.

In addition, 62 percent of BPA's outgoing transactions through one U.S. correspondent bank involved only four high-risk customers. These customers, deemed high-risk by the U.S. correspondent bank, included a shell company, an internet business, and two non-bank financial institutions. Between approximately 2007 and 2012, BPA also used its U.S. correspondents to send or receive wire transfers totaling more than $50 million for Panamanian shell companies that share directors, agents, and the same address. These transfers involved large, round dollar amounts and did not specify a purpose for the transactions. When U.S. correspondents requested additional information, BPA either failed to respond or provided extremely limited information.

IV. The Extent to Which BPA Is Used for Legitimate Business Purposes

It is difficult to assess on the information available the extent to which BPA is used for legitimate business purposes. BPA provides services in private banking, personal banking, and corporate banking These services include typical bank products such as savings accounts, corporate accounts, credit cards, and financing. BPA provides services to high-risk customers including international foreign operated shell companies, businesses likely engaged in unlicensed money transmission, and senior foreign political officials. Because of the demonstrated cooperation of high level management at BPA

with TPMLs, BPA's legitimate business activity is at high risk of being abused by money launderers.

V. The Extent to Which This Action Is Sufficient to Guard Against International Money Laundering and Other Financial Crimes

FinCEN's [INSERT DATE OF PUBLICATION OF NOTICE OF FINDING IN FEDERAL REGISTER] proposed imposition of the fifth special measure, pursuant to 31 U.S.C. 5318A(b)(5), would guard against the international money laundering and other financial crimes described above directly by restricting the ability of BPA to access the U.S. financial system to process transactions, and indirectly by public notification to the international financial community of the risks posed by dealing with BPA and TPMLs.

Dated: March 6, 2015

/s/

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network

(BILLINGCODE: 4810-02)

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB30

Imposition of Special Measure against Banca Privada d'Andorra as a Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding, notice of which is published elsewhere in this issue of the *Federal Register* ("Notice of Finding"), the Director of FinCEN found that Banca Privada d'Andorra ("BPA") is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking ("NPRM") to propose the imposition of a special measure against BPA.

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

ADDRESSES: You may submit comments, identified by 1506-AB30, by any of the following methods:

- *Federal E-rulemaking Portal:* http://www.regulations.gov. Follow the instructions for submitting comments. Include 1506-AB30 in the submission.

- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include 1506-AB30 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

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

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the "USA PATRIOT Act"), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, and 31 U.S.C 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at

31 CFR Chapter X. The authority of the Secretary of the Treasury (the "Secretary") to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

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

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

A. Special Measure

As noticed elsewhere in this issue of the *Federal Register*, on March 6, 2015, the Director of FinCEN found that BPA is a financial institution operating outside the United States that is of primary money laundering concern ("Finding"). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measure proposed in this NPRM, the Director of FinCEN proposes to impose the special measure authorized by section 5318A(b)(5) (the "fifth special measure"). In connection with this action, FinCEN consulted with representatives of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

B. Discussion of Section 311 Factors

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

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

Other countries or multilateral groups have not yet taken action similar to the action proposed in this rulemaking that would: (1) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of BPA; and (2) require certain covered financial institutions to screen their correspondent accounts in a manner that is reasonably designed to guard against processing transactions involving BPA. FinCEN encourages other countries to take similar action based on the information contained in this NPRM and the Notice of Finding.

2. Whether the Imposition of the Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated with Compliance, for Financial Institutions Organized or Licensed in the United States

The fifth special measure proposed by this rulemaking would prohibit covered financial institutions from opening or maintaining correspondent accounts for or on behalf of BPA after the effective date of the final rule implementing the fifth special measure. Currently, only four U.S. covered financial institutions maintain an account for BPA; therefore, FinCEN believes this action will not present an undue regulatory burden. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to BPA. For direct correspondent relationships, this would involve a minimal burden in transmitting a one-time notice to certain foreign correspondent account holders

concerning the prohibition on processing transactions involving BPA through the U.S. correspondent account. U.S financial institutions generally apply some level of screening and, when required, conduct some level of reporting of their transactions and accounts, often through the use of commercially-available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury and to detect potential suspicious activity. To ensure that U S. financial institutions are not being used unwittingly to process payments for or on behalf of BPA, directly or indirectly, some additional burden will be incurred by U S. financial institutions to be vigilant in their suspicious activity monitoring procedures. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect transactions involving BPA.

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

The requirements proposed in this NPRM would target BPA specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. BPA is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Additionally, it is difficult to assess on the information available the extent to which BPA is used for legitimate business purposes. BPA provides services in private banking, personal banking, and corporate banking These services include typical bank products such as savings accounts, corporate accounts, credit cards, and financing. BPA provides services to high-risk customers including international foreign operated shell

companies, businesses likely engaged in unlicensed money transmission, and senior foreign political officials. Because of the demonstrated cooperation of high level management at BPA with TPMLs, BPA's legitimate business activity is at high risk of being abused by money launderers Given this risk, FinCEN believes that any impact on the legitimate business activities of BPA is outweighed by the need to protect the US financial system. Moreover, the imposition of the fifth special measure against BPA would not have a significant adverse systemic impact on the international payment, clearance, and settlement system.

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

The exclusion of BPA from the U.S. financial system as proposed in this NPRM would enhance national security by making it more difficult for money launderers, transnational criminal organizations, human traffickers, and other criminals to access the U.S. financial system. More generally, the imposition of the fifth special measure would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering.

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

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

1010.662(a) – Definitions

1. Banca Privada d'Andorra

Section 1010 662(a)(1) of the proposed rule would define BPA to include all domestic and international branches, offices, and subsidiaries of BPA wherever located.

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

2. Correspondent Account

Section 1010.662(a)(2) of the proposed rule would define the term "correspondent account" by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii) Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, "payable through accounts" are a type of correspondent account.

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

[1] *See* 31 CFR 1010 605(c)(2)(i).

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

3. Covered Financial Institution

Section 1010.662(a)(3) of the proposed rule would define "covered financial institution" with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,[3] which in general includes the following:

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

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

- a mutual fund.

4. Subsidiary

Section 1010.662(a)(4) of the proposed rule would define "subsidiary" as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by BPA

B. 1010.662(b) – Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Opening or Maintaining Correspondent Accounts

Section 1010.662(b)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for or on behalf of BPA.

2. Special Due Diligence for Correspondent Accounts to Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts for or on behalf of BPA, section 1010.662(b)(2) of the proposed rule would require a covered financial institution to apply special due diligence to all of its foreign correspondent accounts that is reasonably designed to guard against processing transactions involving BPA As part of that special due diligence, covered financial institutions must notify those foreign correspondent account holders that the covered financial institutions know or have reason to know provide services to BPA that such correspondents may not provide BPA with access to the correspondent account maintained at the covered financial institution. Covered financial institutions should implement appropriate risk-based procedures to identify transactions involving BPA

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

> Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.662, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of Banca Privada d'Andorra The regulations also require us to notify you that you may not provide Banca Privada d'Andorra or any of its subsidiaries with access to the correspondent account you hold at our financial institution If we become aware that the correspondent account you hold at our financial institution has processed any transactions involving Banca Privada d'Andorra or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

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

The special due diligence would also include implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving BPA. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed BPA as the

financial institution of the originator or beneficiary, or otherwise referenced BPA in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

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

that covered financial institutions take reasonable steps to prevent any processing of transactions involving BPA.

3. Recordkeeping and Reporting

Section 1010.662(b)(3) of the proposed rule would clarify that paragraph (b) of the rule does not impose any reporting requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows, or has reason to know, provide services to BPA, that such correspondents may not process any transaction involving BPA through the correspondent account maintained at the covered financial institution.

IV. Request for Comments

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

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

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

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

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

V. Regulatory Flexibility Act

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

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

1. Estimate of the Number of Small Entities to Whom the Proposed Fifth Special Measure Will Apply:

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than $500,000,000 in assets.[4] Of the estimated 7,000 banks, 80 percent have less than $500,000,000 in assets and are considered small entities [5] Of the estimated 7,000 credit unions, 94 percent have less than $500,000,000 in assets.[6]

Broker-dealers are defined in 31 CFR 1010 100(h) as those broker-dealers required to register with the Securities and Exchange Commission ("SEC"). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the

---

[4] *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards (SBA Jan 22, 2014) [hereinafter *SBA Size Standards*]

[5] Federal Deposit Insurance Corporation, *Find an Institution*, http://www2.fdic.gov/idasp/main.asp; *select* Size or Performance: Total Assets, *type* Equal or less than $: "500000" and *select* Find

[6] National Credit Union Administration, *Credit Union Data*, http://webapps.ncua.gov/customquery/; *select* Search Fields Total Assets, *select* Operator: Less than or equal to, *type* Field Values: "500000000" and *select* Go.

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

Futures commission merchants ("FCMs") are defined in 31 CFR 1010.100(x) as those FCMs that are registered or required to be registered as a FCM with the Commodity Futures Trading Commission ("CFTC") under the Commodity Exchange Act ("CEA"), except persons who register pursuant to section 4f(a)(2) of the CEA, 7 U.S.C. 6f(a)(2). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC's definition of small business as previously submitted to the SBA. In the CFTC's "Policy Statement and Establishment of Definitions of 'Small Entities' for Purposes of the Regulatory Flexibility Act," the CFTC concluded that registered FCMs should not be considered to be small entities for

[7] 17 CFR 240.0—10(c).
[8] 76 FR 37572, 37602 (June 27, 2011) (the SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers)

purposes of the RFA.[9] The CFTC's determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC.

For purposes of the RFA, an introducing broker-commodities dealer is considered small if it has less than $35,500,000 in gross receipts annually.[10] Based on information provided by the National Futures Association ("NFA"), 95 percent of introducing brokers-commodities dealers have less than $35.5 million in Adjusted Net Capital and are considered to be small entities.

Mutual funds are defined in 31 CFR 1010 100(gg) as those investment companies that are open-end investment companies that are registered or are required to register with the SEC. Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC's definition of small business as previously submitted to the SBA. The SEC has defined the term "small entity" under the Investment Company Act to mean "an investment company that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year."[11] Based on SEC estimates, 7 percent of mutual funds are classified as "small entities" for purposes of the RFA under this definition.[12]

As noted above, 80 percent of banks, 94 percent of credit unions, 17 percent of broker-dealers, 95 percent of introducing brokers-commodities, zero FCMs, and 7 percent of mutual funds are small entities The limited number of foreign banking

[9] 47 FR 18618, 18619 (Apr. 30, 1982).
[10] SBA Size Standards at 28.
[11] 17 CFR 270.0-10.
[12] 78 FR 23637, 23658 (April 19, 2013).

institutions with which BPA maintains or will maintain accounts will likely limit the number of affected covered financial institutions to the largest U.S banks, which actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions that engage in transactions involving BPA under the fifth special measure would not impact a substantial number of small entities.

2. Description of the Projected Reporting and Recordkeeping Requirements of the Fifth Special Measure:

The proposed fifth special measure would require covered financial institutions to provide a notification intended to aid cooperation from foreign correspondent account holders in preventing transactions involving BPA from accessing the U.S. financial system. FinCEN estimates that the burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving BPA. All U.S persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banks that involve BPA. Thus, the special due diligence that would be required by the imposition of the fifth special measure – *i.e.*, the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect use of correspondent accounts – would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Certification:

For these reasons, FinCEN certifies that the proposals contained in this rulemaking would not 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 the fifth special measure regarding BPA.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, D.C. 20503 (or by e-mail to oira_submission@omb.eop.gov) with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with the requirements of the Paperwork Reduction Act and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.662 is presented to assist those persons wishing to comment on the information collection.

A. Proposed Information Collection Under the Fifth Special Measure

The notification requirement in section 1010.662(b)(2)(i) is intended to aid cooperation from correspondent account holders in denying BPA access to the U.S. financial system. The information required to be maintained by section 1010.662(b)(3)(i) would be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.662. The collection of information would be mandatory.

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

Estimated Number of Affected Financial Institutions: 5,000.

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

Estimated Total Annual Burden: 5,000 hours.

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

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

VII. Executive Order 12866

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

List of Subjects in 31 CFR Part 1010

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

Authority and Issuance

For the reasons set forth in the preamble, part 1010, chapter X of title 31 of the Code of Federal Regulations, is proposed to be amended as follows.

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

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

2. Add § 1010.662 to read as follows:

§ 1010.662 Special measures against Banca Privada d'Andorra

(a) Definitions For purposes of this section:

(1) Banca Privada d'Andorra means all branches, offices, and subsidiaries of Banca Privada d'Andorra wherever located

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

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

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

(b) Prohibition on accounts and due diligence requirements for covered financial institutions—(1) Prohibition on use of correspondent accounts. A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, Banca Privada d'Andorra.

(2) Special due diligence of correspondent accounts to prohibit use. (i) A covered financial institution shall apply special due diligence to its foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Banca Privada d'Andorra. At a minimum, that special due diligence must include:

(A) Notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Banca Privada d'Andorra that such correspondents may not provide Banca Privada d'Andorra 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 Banca Privada d'Andorra, 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 Banca Privada d'Andorra.

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

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

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

Dated: March 6, 2015

/s/

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network