

Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—FinCEN finalizes rule to cut FBME Bank off from U.S. financial system, (Mar. 28, 2016)

By [Lisa M. Goolik, J.D.](#)

The Financial Crimes Enforcement Network has issued a final rule imposing the “fifth special measure” against FBME Bank Ltd., prohibiting U.S. financial institutions from opening or maintaining correspondent accounts for or on behalf of the bank. After considering public comments and alternatives to the special measure, FinCEN [concluded](#) that a prohibition under the fifth special measure was still the appropriate choice. The [final rule](#) takes effect 120 days after publication in the *Federal Register*.

“Banks with weak [anti-money laundering (AML)] controls, like FBME, can become a magnet for illicit actors seeking to hide their identity and the illicit nature of their activities,” said FinCEN. “Indeed, the illicit activity at FBME, including holding an account for an alleged Hezbollah associate and the Tanzanian company he managed, illustrates this vulnerability. Protecting the United States from such illicit financial activity requires FinCEN to ensure that banks with severely deficient AML controls, like FBME, do not have access to the U.S. financial system.”

Contested finding. FBME was established in 1982 in Cyprus as the Federal Bank of the Middle East, Ltd., a subsidiary of the private Lebanese bank, the Federal Bank of Lebanon. In 1986, FBME changed its country of incorporation to the Cayman Islands, and its banking presence in Cyprus was re-registered as a branch of the Cayman Islands entity. In 2003, FBME left the Cayman Islands and incorporated and established its headquarters in Tanzania.

On July 17, 2014, FinCEN issued a notice that it had found FBME to be a “foreign financial institution of primary money laundering concern” under Section 311 of the USA PATRIOT Act and proposed the imposition of “special measure five” against the bank. FinCEN found that FBME sought to evade AML regulations and ignored the directives issued by the Central Bank of Cyprus (CBC). FinCEN [finalized the rule](#) less than one week later, on July 23, 2014, after it determined that finalizing the proposed rule and imposing special measure five was warranted and necessary to protect the U.S. financial system.

In response, FBME filed suit seeking a preliminary injunction, claiming that FinCEN violated the notice requirements of the Administrative Procedures Act because FinCEN never divulged all of the documents or facts on which its rulemaking was premised.

In August 2015, the U.S. District Court for the District of Columbia [granted](#) FBME’s motion for a preliminary injunction, temporarily enjoining FinCEN from enforcing the rule. With the court’s

permission, in November 2015, FinCEN [reopened](#) the final rule and made available for comment the unclassified, non-protected material that FinCEN relied upon during the rulemaking proceeding that were at issue. Comments were due Jan. 26, 2016.

“Serious and systemic” deficiencies. According to the notice, following an examination of the bank’s Cyprus branch in 2014, the CBC identified “serious and systemic” AML deficiencies at FBME following an examination of the bank’s Cyprus branch in 2014.

Since the preliminary injunction was issued last year, the CBC found, among other things, that FBME: (1) failed to apply enhanced due diligence to high-risk customers; (2) allowed customers to use FBME’s physical address in wire transfers in lieu of the customers’ true addresses, thus obscuring key transactional details that U.S. and other financial institutions need to conduct appropriate AML screening; (3) failed to adequately assess its own money laundering and terrorist financing risk, hindering the bank’s ability to mitigate those risks; (4) accepted false beneficial ownership information for high-risk customers; and (5) maintained incomplete customer due diligence information and failed to update and review customer files.

After a “thorough point-by-point review” of the deficiencies identified by the CBC and FBME’s responses, FinCEN found FBME’s responses to be “neither persuasive nor sufficient” to allay FinCEN’s concerns about FBME’s AML deficiencies. As an example, FinCEN noted that although FBME disputed the CBC’s findings that the bank failed to maintain sufficiently comprehensive and up-to-date files on its customers, FBME conceded in some cases that the CBC’s findings were correct.

FBME also accepted false identifying information regarding beneficial ownership of FBME customers who it should have known were high-risk. FBME contended that valid confidentiality concerns existed and that accepting the false information did not impede the application of enhanced due diligence measures. FinCEN, however, agreed with the CBC’s assessment that excluding certain relevant information on customer forms prevented FBME from adequately identifying and mitigating money laundering risks.

Alternative measures. As an alternative to special measure five, FBME suggested that FinCEN consider requiring FBME to pay a monetary fine for any historical shortcoming in its AML compliance. However, FinCEN noted that a fine would not protect the U.S. financial system against risks posed by foreign financial institutions found to be of primary money laundering concern and would not address concerns that FinCEN has regarding FBME’s deficient AML controls.

FBME also suggested that FinCEN require FBME to refrain from transactions that FinCEN deems most “worrisome.” FinCEN responded that, given the lack of transparency surrounding many of FBME’s transactions, it was not confident that it would be able to identify all of the potentially “worrisome” transactions in which FBME might engage.

Companies: FBME Bank Ltd.

RegulatoryActivity: BankingOperations BankSecrecyAct CrimesOffenses EnforcementActions

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