

Supporting Statement
OMB Control Number 1506-0045

Imposition of Special Measure Concerning Banco Delta Asia, as a Financial Institution of Primary Money Laundering Concern 31 CFR Chapter X

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

On March 14, 2007, the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury issued a final rule under the authority of section 5318A of Title 31, United States Code, to impose a special measure with respect to Banco Delta Asia. Specifically, FinCEN imposed special measure five prohibiting U.S. financial institutions from opening or maintaining accounts for, or on behalf of, Banco Delta Asia and requiring U.S. financial institution to apply due diligence to its correspondent accounts to ensure they are not used to provide Banco Delta Asia with indirect access to the U.S. financial system.

2. Use of the information:

The collection of information in the rule relates to both disclosure and recordkeeping. The information required to be disclosed by domestic financial institutions to a third-party—i.e., a one-time notice to correspondent account holders—is intended to ensure cooperation from correspondent account holders in denying access to the U.S. financial system, as well as to increase awareness within the international financial community of the risks and anti-money laundering (AML) deficiencies of Banco Delta Asia. The information required to be maintained by domestic financial institutions will be used by federal agencies and certain self-regulatory organizations to verify compliance with the requirement that a domestic financial institution notify its correspondent account holders that they may not provide Banco Delta Asia with access to the correspondent account maintained at the institution.

3. Use of improved information technology to reduce burden:

Under the rule, satisfactory notice could be given by including a one-time notice by mail, fax, e-mail, or including the notice in the next regularly occurring transmittal from the covered financial institution to its correspondent account holders. Financial institutions may use any method of improved information technology to document their compliance with the notice requirement in the rule, including keeping an electronic copy of the actual notice that is sent to their correspondent account holders.

4. Efforts to identify duplication:

The rule is unique in that it is the only federal rule prohibiting domestic financial institutions from maintaining correspondent accounts for Banco Delta Asia.

5. Methods used to minimize burden on small businesses or other small entities:

The information requirements in the rule will not have a significant impact on a substantial number of small entities. Thus, the one-time notice to correspondent account holders and the requirement to document compliance with that notice requirement are not expected to impose a significant additional economic burden upon small entities.

6. Consequences to Federal program or policy activities if collection is not conducted or is conducted less frequently:

Under the rule, a financial institution must notify its correspondent account holders that they may not provide Banco Delta Asia with access to the correspondent account maintained at the financial institution. The failure to transmit such notice will make it more difficult for the special measure to achieve its goal of denying Banco Delta Asia access to the U.S. financial system. A financial institution further must document its compliance with the requirement that it notify its correspondent account holders that they may not provide Banco Delta Asia with access to the correspondent account maintained at the covered financial institution. The failure to maintain such documentation will make it impossible to verify compliance with this notice requirement, and by extension, to guard against the use of the U.S. financial market by a financial institution found to be of primary money laundering concern.

7. Special circumstances requiring data collection inconsistent with the guidelines in 5 CFR 1320.5(d)(2):

There are no special circumstances that will cause the information collection to be inconsistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency.

On March 19, 2007, FinCEN published the final rule in the Federal Register (See 72 FR 12730). Previously, on September 20, 2005, FinCEN published a notice of proposed rulemaking (NPRM) in the Federal Register (See 70 FR 55217) proposing to impose the fifth special measure on Banco Delta Asia. In so doing, FinCEN considered public comments and the relevant statutory factors, and engaged in the required consultations prescribed by 31 U.S.C. 5318A.

On October 8, 2019, FinCEN published in the Federal Register a notice of intent to renew without change information collection requirements (ICRs) in connection with the imposition of a special measure with respect to Banco Delta Asia as a financial

institution of primary money laundering concern. (See 84 FR 53829) The comment period for that notice closed on December 9, 2019, and no comments were received.

9. Payment or gift to respondents.

No payment or gift will be provided to respondents.

10. Assurance of confidentiality provided to respondents and basis for the assurance in statute, regulation, or agency policy:

The information collected would be available to Treasury or its designee to verify compliance with the notice requirement; all such information collections under the BSA must further a criminal, tax, regulatory, or intelligence purpose, in accordance with 31 U.S.C. 5311.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature in the collection of information. Any personally identifiable information collected under the Bank Secrecy Act is strictly controlled as outlined in FinCEN's Systems of Records Notice http://www.fincen.gov/foia/files/FinCEN_79_FR_20969.pdf.

12. Burden estimate:

The rule requires a financial institution to provide notice to its correspondent account holders and to document its compliance with that notice requirement.

Estimated number of affected financial institutions: 23,615.¹

Estimated average annual burden per affected financial institution: 1 hour.

Estimated annual hour burden: 23,615 hours.

13. Estimated total annual cost burden:

¹ The above Estimated Number of Affected Financial Institutions is based on sum of the following numbers:

- 5,358 banks [Federal Deposit Insurance Corporation, *Key Statistics* webpage, April 25, 2019];
- 5,375 federally-insured credit unions [National Credit Union Administration, *Quarterly Credit Union Data Summary*, December 31, 2018];
- 125 privately-insured credit unions [General Accountability Office, *PRIVATE DEPOSIT INSURANCE: Credit Unions Largely Complied with Disclosure Rules, but Rules Should Be Clarified*, March 2017];
- 1,130 introducing brokers [National Futures Association website, March 31, 2019];
- 64 futures commission merchants [National Futures Association website, March 31, 2019];
- 3,607 securities firms [Financial Industry Regulatory Authority website, December 31, 2018]; and,
- 7,956 U.S. mutual funds [Investment Company Institute, *2018 Factbook*, 2018].

23,615 hours X 49.52² per hour = \$1,169,415

14. Estimated annualized cost to the Federal government:

There is no estimated annualized cost to the Federal Government.

15. Change in burden:

When the final rule was published in March 2007, the number of financial institutions affected by the rule was estimated at 5,000. FinCEN has since revised the estimated number of affected financial institutions upward to account for all domestic financial institutions that could potentially maintain correspondent accounts for foreign banks, and recognizing that, under the final rule, all U.S. financial institutions are required to conduct special due diligence with respect to, and are prohibited from processing transactions involving, financial institutions named in the final rule.

There are approximately 23,615 such financial institutions doing business in the United States. As noted, this revision should not have a significant impact on a substantial number of small entities.

16. Plans for tabulation or publication:

There are no plans for tabulation or publication.

17. Reason why display of expiration date for OMB approval is not appropriate:

Treasury requests that it not be required to display the expiration date, in order to avoid amending the regulation every three years.

18. Exception to the certification statement in OMB Form 83-I:

This collection will not have a significant impact on a substantial number of small entities, for the reasons discussed above in item 5. The collection also does not employ statistical survey methodology.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

² The above Average Hourly Wage Rate is calculated from the May 2017 Bureau of Labor Statistics average hourly wage for “13-1041 Compliance Officer” of \$34.39, plus an additional 44% for benefits to produce a fully-loaded rate of \$49.52.