

(3) *Positive adjustments*—(i) *In general.* The items described in this paragraph (d)(3) are dividend distributions for the taxable year and any items that decrease net worth for the taxable year but that generally do not affect income or loss or earnings and profits (or a deficit in earnings and profits). Such items include a transfer to the home office of a QBU branch and a return of capital.

(ii) *Translation.* Except as provided by ruling or administrative pronouncement, items described in paragraph (d)(3)(i) of this section shall be translated into dollars as follows:

(A) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the last translation period of the taxable year if it were shown on the QBU's year-end balance sheet, such item shall be translated at the exchange rate on the date the item is transferred.

(B) If the item giving rise to the adjustment would be translated under paragraph (d)(5) of this section at the exchange rate for the translation period in which the cost of the item was incurred if it were shown on the QBU's year-end balance sheet, such item shall be translated at the same historical rate.

(iii) *Effective date.* Paragraph (d)(3)(ii) of this section is applicable for any transfer, dividend, or distribution that is a return of capital that is made after March 8, 2005, and that gives rise to an adjustment under this paragraph (d)(3).

\* \* \* \* \*

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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**DEPARTMENT OF THE TREASURY**

**31 CFR Part 103**

**RIN 1506-AA81**

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

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

**ACTION:** Withdrawal of the notice of proposed rulemaking.

**SUMMARY:** This document withdraws our April 26, 2005 finding that joint stock company Multibanka (“Multibanka” or the “bank”) is a financial institution of primary money laundering concern and

our notice of proposed rulemaking recommending the imposition of a 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**DATES:** The notice of proposed rulemaking is withdrawn as of July 13, 2006.

**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 (the “Director”).<sup>1</sup> The Bank Secrecy Act authorizes the Director to issue regulations requiring all financial institutions defined as such in the Bank Secrecy Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>2</sup>

Section 311 of the USA PATRIOT Act added section 5318A to the Bank Secrecy Act, granting the Secretary the authority, after 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. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before he may find that reasonable grounds exist for concluding that a jurisdiction, financial institution, class of transactions, or type of account is of primary money laundering concern. The statute also provides similar procedures, including factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 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.

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required by the Bank Secrecy Act to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, when finding that a foreign financial institution is of primary money laundering concern, the Secretary is required by section 311 to consider “such information as the Secretary determines to be relevant, including the following potentially relevant factors:”

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to

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

<sup>2</sup> Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the USA PATRIOT Act.

transactions involving the institution operating in the jurisdiction, that the purposes of the Bank Secrecy Act continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If we determine that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, we must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed, individually or jointly, in any combination, and in any sequence.<sup>3</sup> In the imposition of special measures, we follow procedures similar to those for finding a foreign financial institution to be of primary money laundering concern, but we also engage in additional consultations and consider additional factors. Section 311 requires us to consult with other appropriate Federal agencies and parties<sup>4</sup> and to consider the following specific 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 institution; and

<sup>3</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>4</sup> Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the U.S. Securities and Exchange Commission, the Commodity Futures Trading Commission, the National Credit Union Administration, and, in our sole discretion, “such other agencies and interested parties as the Secretary may find to be appropriate.” The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions upon the opening or maintaining of a correspondent account by any domestic financial institution or domestic financial agency for the foreign financial institution of primary money laundering concern.

- The effect of the action on U.S. national security and foreign policy.<sup>5</sup>

#### B. *Multibanka*

Multibanka is headquartered in Riga, the capital of the Republic of Latvia (“Latvia”). Multibanka is the oldest commercial bank in Latvia and is among the smallest of Latvia’s 23 banks. It has: Four foreign offices, which are located in Russia, Ukraine, and Belarus; five domestic branches; and one leasing subsidiary, Multilizings. Multibanka provides a full range of banking services in the Latvian market and is a member of the Riga Stock Exchange, the Central Depository, and the Association of Commercial Banks of Latvia. Multibanka currently has direct ties to the U.S. financial system through one of its correspondent relationships.

### II. The 2005 Finding and Subsequent Developments

#### A. *The 2005 Finding*

Based upon review and analysis of relevant information, consultations with relevant Federal agencies and parties, and after consideration of the factors enumerated in section 311, in April 2005 the Secretary, through his delegate, the Director of the Financial Crimes Enforcement Network, found that reasonable grounds exist for concluding that Multibanka is a financial institution of primary money laundering concern. This finding was published 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 Multibanka or any of its branches, offices, or subsidiaries, pursuant to the authority under 31 U.S.C. 5318A.<sup>6</sup>

The notice of proposed rulemaking outlined the various factors supporting the finding and proposed prohibition. In finding Multibanka to be of primary money laundering concern, we determined that:

- Multibanka was used by criminals to facilitate or promote money laundering. In particular, we determined Multibanka was an important banking resource for illicit shell companies and financial fraud rings, allowing criminals to pursue illegal financial activities.

<sup>5</sup> Classified information used in support of a section 311 finding of primary money laundering concern and imposition of special measure(s) may be submitted by the Department of the Treasury to a reviewing court *ex parte* and *in camera*. See section 376 of the Intelligence Authorization Act for Fiscal Year 2004, Public Law 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

<sup>6</sup> See 70 FR 21362 (April 26, 2005).

- Any legitimate business use of Multibanka appeared to be significantly outweighed by its use to promote or facilitate money laundering and other financial crimes.

- A finding that Multibanka was a financial institution of primary money laundering concern and prohibiting the maintenance of correspondent accounts for that financial institution would prevent suspect accountholders at Multibanka from accessing the U.S. financial system to facilitate money laundering and would bring criminal conduct occurring at or through Multibanka to the attention of the international financial community, thus serving the purposes of the Bank Secrecy Act and guarding against international money laundering and other financial crimes.

We determined, based on a variety of sources, that Multibanka had been used to facilitate or promote money laundering based in part on its lax identification and verification of accountholders and on its weak internal controls. In addition, the proceeds of alleged illicit activity had been transferred to or through accounts held by Multibanka at U.S. financial institutions.

#### B. *Jurisdictional Developments*

Latvia’s geographical position, situated by the Baltic Sea and bordering Russia, Estonia, Belarus, and Lithuania, makes it an attractive transit country for both legitimate and illegitimate trade. Sources of illegitimate trade include counterfeiting, arms trafficking, contraband smuggling, and other crimes. It is believed that most of Latvia’s narcotics trafficking is conducted by organized crime groups that began with cigarette and alcohol smuggling and then progressed to narcotics. Latvian authorities recently have sought tighter legislative controls designed to fight money laundering and other financial crime. However, Latvia’s role as a regional financial center, the number of commercial banks (23), and those banks’ sizeable non-resident deposit base continue to make it vulnerable to money laundering.

Latvia has taken a number of significant steps to address the reported money laundering risks and corruption highlighted in the notice of proposed rulemaking. The Parliament of Latvia recently passed a new law, *On the Declaration of Cash on the State Border*, which will go into effect on July 1, 2006.<sup>7</sup> The law is aimed at preventing

<sup>7</sup> The law requires that individuals crossing the Latvian border with the equivalent of 10,000 Euros

money laundering consistent with the United Nations Convention Against Transnational Organized Crime and the European Union draft regulation on the control of cash leaving and entering the European Community. In 2005, Latvian law was amended to broaden supervisory authority to revoke banking licenses and to allow enforcement agencies greater access to bank account information. The amendments: Provide for fines of between 5,000 and 100,000 LATS (equivalent to over \$8,687.50 and over \$173,750.00, respectively) against banks in violation of the anti-money laundering laws; include a definition of and procedures for determining who qualifies as a "true beneficiary"; and introduce criminal liability for providing false information to banks. Additionally, Latvia has: Banned the establishment of shell banks; clarified the authority of Latvian financial institutions to demand customer disclosure regarding the source of funds; and allowed for the sharing of information between financial institutions on suspicious activities.

In terms of implementation, the Latvian authorities have made strides in strengthening their anti-money laundering regulation and supervision and in developing more robust anti-money laundering examination procedures. To ensure proper protection of Latvia's financial sector, authorities will need to continue their efforts to effectively implement and enforce their strengthened anti-money laundering regime.

### *C. Multibanka's Subsequent Developments*

Multibanka has informed us that it has taken significant steps to address deficiencies in its anti-money laundering programs and controls. Although some of these efforts were initiated prior to the finding that Multibanka was a financial institution of primary money laundering concern, the bank is continuing to improve its anti-money laundering procedures and is working to ensure that these are translated effectively into practice. First, the bank revised its policies, procedures, and internal controls, and established an Anti-Money Laundering Manual to address previously identified weaknesses, which included lax practices in the identification and verification of accountholders and insufficient internal controls. Second, it

(€10,000) in coins, cash, and/or certain monetary instruments to complete a form stating the origin of the currency or monetary instruments, the purpose or use of the currency or monetary instruments, and the receiver of the currency or monetary instruments.

committed to review, and has since reviewed, its entire portfolio of accounts with the aim of verifying the identities of all accountholders. We understand that, in connection with this review process, the bank terminated relationships with more than 2,600 customers that were unwilling or unable to comply with Multibanka's enhanced information collection and verification standards. As a result, 98 percent of the bank's non-resident accounts and more than 50 percent of the bank's resident accounts have been closed. Third, Multibanka retained the services of an independent, international accounting firm to identify weaknesses in its anti-money laundering program and to assist the bank in its goal of reaching a best international practices standard for its anti-money laundering program and internal controls. Together, the bank and the international accounting firm have created an action plan to address deficiencies and have targeted compliance dates, and the bank has evinced implementation of the plan. Fourth, the bank has made organizational changes to coordinate and lead anti-money laundering activities, including the creation of a Compliance Committee, a Finance Monitoring Department, a Corporate Customer Department, and a Customer Management Division. In addition to hiring additional employees to assist with compliance, the bank has enhanced training opportunities for bank personnel with key anti-money laundering responsibilities. Fifth, in an effort to improve internal controls, the bank has enhanced and continues to enhance information technology systems that assist in the automated screening of accountholders, beneficial owners, and other persons and transactions that need to be flagged for enhanced scrutiny or possible reporting.

We believe that Multibanka has been forthcoming in addressing the concerns that we identified in the notice of proposed rulemaking and has instituted measures to guard against money laundering abuses. The bank, through its counsel, initiated meetings with us in May and October 2005, with the intent to demonstrate the remedial measures taken. We permitted the bank to submit additional documentation to demonstrate its continued efforts and the bank has provided copies of its revised policies, procedures, and internal controls.

Multibanka has significantly improved its anti-money laundering policies, procedures, and internal controls, has enhanced its organizational structure, and has strengthened its accountholder

identification and verification requirements. We believe that the bank's cumulative efforts demonstrate its continuing commitment to fighting money laundering and other financial crimes.

If a financial institution that is the object of a proposed section 311 special measure is determined to no longer be of primary money laundering concern, we have authority to withdraw the finding and to withdraw any related proposal to impose a special measure. In light of Multibanka's significant remedial measures, described above, to address deficiencies in its anti-money laundering program and internal controls, particularly the bank's attempts to review its accounts to focus on legitimate business customers, we believe that the risk of criminals using Multibanka to facilitate or promote money laundering has decreased.

### **III. Notice of Proposed Rulemaking and Comments**

In the April 26, 2005 notice of proposed rulemaking, we proposed to impose the fifth special measure authorized by 31 U.S.C. 5318A(b)(5) against Multibanka, which would prohibit U.S. financial institutions from opening or maintaining correspondent or payable-through accounts for Multibanka in the United States.

We received six comments on the notice of proposed rulemaking. Three comments, one each from an industry association, a firm providing search software to financial institutions, and a private individual, addressed the finding and rulemaking under Section 311 generally, but did not provide specifics with respect to Multibanka. The Latvian financial intelligence unit and a Latvian financial services supervisory authority jointly filed a comment regarding Latvian anti-money laundering requirements, but similarly provided no specifics with respect to Multibanka. Legal counsel to Multibanka submitted two comment letters, and representatives of Multibanka met with us to discuss the anti-money laundering efforts described in their comments.

### **IV. Withdrawal of the Finding of Multibanka as a Financial Institution of Primary Laundering Concern**

For the reasons set forth above, we hereby withdraw our finding that Multibanka is a financial institution of primary money laundering concern as of July 13, 2006.

## V. 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 Multibanka for purposes of section 5318A as published in the **Federal Register** on April 26, 2005 (70 FR 21362).

Dated: May 12, 2006.

**Robert W. Werner,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E6-10941 Filed 7-12-06; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-06-066]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish permanent special local regulations during the “Sunset Lake Hydrofest”, a marine event to be held annually on the last weekend in September or the first weekend in October on the waters of Sunset Lake, Wildwood Crest, New Jersey. For 2006 this marine event will be held on September 30 and October 1, 2006. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of Sunset Lake during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before August 14, 2006.

**ADDRESSES:** You may mail comments and related material to Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, hand-deliver them to Room 415 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398-6203. The Inspections and Investigations Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents

indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398-6204.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05-06-066), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

Annually, the Sunset Lake Hydrofest Association sponsors the “Sunset Lake Hydrofest”, on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event consists of approximately 100 inboard hydroplanes, Jersey speed skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of approximately 100 spectator vessels is anticipated to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

##### Discussion of Proposed Rule

The Coast Guard proposes to establish this permanent special local regulation on specified waters of Sunset Lake. This rule would be enforced annually from 8:30 a.m. to 5:30 p.m. on the last

weekend in September or the first weekend in October, and will restrict general navigation in the regulated area during the event. Determination of the weekend schedule for this event is dependent on tide cycles that will provide safe race conditions. The Coast Guard will publish a Notice of Enforcement in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners that announces the dates and times this rule is in effect. For 2006, the enforcement period of the regulation would be on September 30 and October 1, 2006. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of participants, spectators and transiting vessels.

##### Regulatory Evaluation

This proposed rule is not a “significant regulatory action” under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this proposed permanent rule will prevent traffic from transiting a portion of Sunset Lake during the event, the effect of this regulation would not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the proposed regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit Sunset Lake by navigating around the regulated area.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities.