

**BILLING CODE: 4810-02**

**DEPARTMENT OF THE TREASURY**

**Financial Crimes Enforcement Network**

**31 CFR Chapter X, Part 1010**

**RIN 1506-AB65**

**Imposition of Special Measure regarding Al-Huda Bank as a Financial Institution of Primary Money Laundering Concern**

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

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to prohibit covered U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of Al-Huda Bank, a foreign financial institution based in Iraq found to be of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act. The rule further requires covered U.S. financial institutions to take reasonable steps not to process transactions for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank. It also requires covered institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank.

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Support Section at 1-800-767-2825 or electronically at [frc@fincen.gov](mailto:frc@fincen.gov).

**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 amended the anti-money laundering (AML) provisions of the Bank Secrecy Act (BSA) to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.<sup>1</sup> Section 311 of the USA PATRIOT Act (section 311), codified at 31 U.S.C. 5318A, grants the Secretary of the Treasury (Secretary) authority, upon finding that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain “special measures.” The authority of the Secretary to administer the Bank Secrecy Act (BSA) and its implementing regulations has been delegated to FinCEN.<sup>2</sup>

The five special measures set out in section 311 are safeguards that may be employed to defend the U.S. financial system from money laundering and terrorist financing risks. The Secretary may impose one or more of these special measures in order to protect the U.S. financial system from such threats. Through special measures one through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered domestic financial institutions and domestic financial agencies — collectively, “covered financial institutions.”<sup>3</sup> Through special measure five, the Secretary may prohibit, or impose conditions on, the opening or maintaining in the United States of a correspondent account for or on behalf

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1 The BSA, as amended, is the popular name for a collection of statutory authorities that FinCEN administers that is codified at 12 U.S.C. 1829b, 1951-1960 and 31 U.S.C. 5311-5314, 5316-5336, and includes other authorities reflected in notes thereto. Regulations implementing the BSA appear at 31 CFR Chapter X.

2 Pursuant to Treasury Order 180-01 (Jan. 14, 2020), the authority of the Secretary to administer the BSA, including, but not limited to, 31 U.S.C. 5318A, has been delegated to the Director of FinCEN.

3 31 U.S.C. 5318A(b)(1)–(b)(4).

of a foreign banking institution, if such correspondent account involves the foreign financial institution found to be of primary money laundering concern.<sup>4</sup>

## **B. Al-Huda Bank**

Al-Huda Bank is a private commercial bank registered and headquartered in Baghdad, Iraq, with five branch locations in Baghdad, Karbala, and Nasiriyah, Iraq. Al-Huda Bank has no subsidiaries or branches outside of Iraq and is regulated by the Central Bank of Iraq (CBI).

Al-Huda Bank has no direct U.S. correspondent banking relationships but interacts with the U.S. financial system indirectly through U.S. dollar (USD) correspondent accounts at six foreign financial institutions. In other words, Al-Huda Bank interacts with foreign banks that themselves have correspondent accounts with U.S. banks.

## **II. FinCEN's Section 311 Rulemaking Regarding Al-Huda Bank**

### **A. Finding**

In a notice of proposed rulemaking (NPRM) published in the Federal Register on January 31, 2024, FinCEN found that reasonable grounds exist for concluding that Al-Huda Bank is a foreign financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A.<sup>5</sup>

As described in the NPRM, FinCEN assesses that Al-Huda Bank has exploited its access to USD to support designated foreign terrorist organizations (FTOs), including Iran's Islamic Revolutionary Guard Corps (IRGC) and IRGC-Quds Force (IRGC-QF), as well as Iran-aligned Iraqi militias Kata'ib Hizballah (KH) and Asa'ib Ahl al-Haq (AAH).<sup>6</sup> Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC and IRGC-QF. Moreover, the chairman of Al-Huda Bank is complicit in Al-Huda Bank's illicit financial activities, including

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<sup>4</sup> 31 U.S.C. 5318A(b)(5).

<sup>5</sup> 89 FR 6074 (Jan. 31, 2024).

<sup>6</sup> The U.S. Department of State has authority to designate organizations as FTOs. The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has also designated the IRGC, IRGC-QF, KH, and AAH pursuant to multiple sanctions authorities.

money laundering through front companies that conceal the true nature of and parties involved in illicit transactions, ultimately enabling the financing of terrorism.

Given the nature of Iraq's economy and trade relationships, Iraqi businesses that import goods into Iraq rely on wire transfers of USD from the CBI account at the Federal Reserve Bank of New York (FRBNY), a process known as the wire auction, or more generally the "CBI dollar auction."<sup>7</sup> Many Iraqi businesses and financial institutions use the CBI dollar auction for legitimate purposes. However, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on exploiting the CBI dollar auction to support designated FTOs, including the IRGC, IRGC-QF, KH, and AAH, with the support of the Iranian government. Al-Huda Bank has actively supported terrorist groups and abused the CBI dollar auction through numerous money laundering typologies, including use of fraudulent documentation to obscure the ultimate beneficiaries of the transactions. Given these facts, FinCEN assesses that there is a high risk of Al-Huda Bank exploiting USD correspondent relationships to support its money laundering and terrorist financing activity.

1. *Al-Huda Bank has exploited its access to USD through the wire auction*

Individual Iraqi businesses that import goods into Iraq rely on wire transfers of USD from CBI's account at the FRBNY. The wire auction, a part of what is known as the CBI dollar auction, is the mechanism by which the CBI provides USD to facilitate the purchase of imports. When Iraq sells oil in the international petroleum markets, the revenues are credited in USD to the CBI's account at the FRBNY. Iraqi companies with accounts at Iraqi banks can then access the CBI dollar auction to purchase USD with IQD to pay for imports. USD are transferred from

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7 The CBI dollar auction comprises both (1) the wire auction, and (2) bulk USD banknote shipments to Iraq which the CBI sells to exchange houses and banks in return for Iraqi dinar (IQD). The latter is known as the "cash auction" and is a separate process from the wire auction. Al-Huda Bank's known illicit finance activities described herein are related to the wire auction.

the CBI's FRBNY account to an Iraqi bank, and onward to a third-country bank on behalf of a third-country exporter.

Many Iraqi businesses and their banks use the CBI dollar auction for its intended, legitimate purpose of facilitating imports of goods. However, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on illegitimate exploitation of the CBI dollar auction to support designated FTOs, including the IRGC, IRGC-QF, KH, and AAH, with the support of the Iranian government.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank's abuse of the CBI dollar auction was obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which were used to purchase USD and support terrorist groups and militias. For years, Al-Huda Bank has been involved in these deceptive money laundering activities. Examples of three of these money laundering typologies are discussed below: (1) fraudulent documentation; (2) stolen identities; and (3) counterfeit IQD. Al-Huda Bank's use of these money laundering typologies also risks exposing covered financial institutions to Al-Huda Bank's exploitation of USD correspondent banking relationships to support its terrorist financing activities.

Since at least 2012, Al-Huda Bank has used fraudulent documentation to purchase foreign currency — including USD — from the CBI at CBI dollar auctions. Based on media reporting, between 2012 and 2014, Al-Huda Bank filed false documentation to justify international transfers of over \$6 billion to banks and companies.<sup>8</sup> On at least one occasion, government authorities detected Al-Huda Bank's filing of fraudulent documentation, which resulted in freezing of a

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<sup>8</sup> Al-Arabiya, "*Billions of Dollars*" Smuggled Out of Iraq During Maliki's Rule (Nov. 9, 2015), available at <https://english.alarabiya.net/News/middle-east/2015/11/09/Iraq-smuggled-billions-of-dollars-during-Maliki-s-rule>.

transfer of a significant amount of money. In another scheme, Al-Huda Bank would deposit fake checks to make the balance seem higher on the account Al-Huda Bank used in CBI dollar auctions. The fake check deposits would allow Al-Huda Bank to purchase USD using that false higher balance before the fake check bounced, which Al-Huda Bank would then write off.

Al-Huda Bank, with its chairman's knowledge, has also abused the CBI dollar auction by utilizing stolen identities. In one scheme, the Al-Huda Bank chairman and other Al-Huda Bank officials would use the identification documents of deceased individuals to purchase USD in CBI dollar auctions. Al-Huda Bank officials would also pay living people for use of their identification documents. The illicit use of identification documents allowed Al-Huda Bank to circumvent limits on currency purchases.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank has also been involved in funneling of counterfeit IQD through fake businesses in Iraq. The counterfeit IQD would be printed in Iran, funneled through Iraqi businesses, and then exchanged for USD. The use of counterfeit IQD greatly increases the amount of illicit profit gained from exchanging IQD for USD at the CBI dollar auction, and the funneling of counterfeit IQD through Iraqi businesses disguises the counterfeit IQD's source in Iran.

*2. Through the exploitation of the wire auction, Al-Huda Bank has provided support to designated FTOs*

Iran has exploited its relationship with Iraq-based, Iran-backed militias to influence Iraqi businesses and officials to generate illicit revenue for the militias' operations. As part of this effort, Iran has developed a network of commercial platforms, including financial institutions, to move funds and misrepresent trade-based financial transactions that obscure the ultimate beneficiaries, namely Iran-backed terrorist groups and militias.

Since its establishment, Al-Huda Bank has been controlled and operated by the IRGC

and IRGC-QF. In 2008, the chairman of Al-Huda Bank established the bank specifically for the benefit of KH and has met with and taken orders from IRGC-QF leadership in Tehran, Iran. After establishing the bank, the Al-Huda Bank chairman began money laundering operations on behalf of the IRGC-QF and KH.

Al-Huda Bank has funded Iran-aligned militias through a scheme in which Al-Huda Bank and other Iraqi banks have falsely claimed imports into Iraq that did not exist worth billions of dollars to justify the purchase of USD in the CBI dollar auction. Al-Huda Bank would purchase the USD with counterfeit IQD printed in Iran. Al-Huda Bank was not allowed to conduct financial transactions without the Iran-aligned militias' involvement and Al-Huda Bank would provide part of Al-Huda Bank's revenue from this scheme to those Iran-aligned militias.

This fraudulent scheme has been a substantial source of funding for Iran-aligned militias' operations. The Iran-aligned Iraqi militia AAH has used companies based across Iraq to generate revenue, launder illicit profits, and convert IQD to USD. AAH has used Al-Huda Bank to maintain accounts for some of these companies, as well as to access the currency auction. The use of false imports, counterfeit currency, and front companies are essential components of exploitation of the CBI dollar auction by obscuring the source of funds and the purpose and ultimate beneficiaries of the transactions that support Iran-aligned Iraqi militias. Overall, IRGC and IRGC-QF use of Al-Huda Bank and several other Iraqi banks to access the CBI dollar auction resulted in approximately \$70 billion USD in profit, from 2019 through 2020.

## **B. Proposed Special Measure**

In the NPRM, FinCEN proposed: (1) to prohibit covered financial institutions from opening or maintaining a correspondent account in the United States for, or on behalf of, Al-Huda Bank; (2) to prohibit covered financial institutions from processing a transaction

involving Al-Huda Bank through the United States correspondent account of a foreign banking institution; and (3) a requirement for covered financial institutions to apply special due diligence to their foreign correspondent accounts that is reasonably designed to guard against their use to process transactions involving Al-Huda Bank.<sup>9</sup> The comment period for the NPRM closed on March 1, 2024.

As further described below, FinCEN is adopting the proposal as a final rule. In so doing, FinCEN has considered public comments and the relevant statutory factors and has engaged in the required consultations prescribed by 31 U.S.C. 5318A.

### **C. Subsequent Developments**

Following the issuance of the NPRM, the CBI banned Al-Huda Bank from accessing the CBI dollar auction.<sup>10</sup> However, in light of Al-Huda Bank's consistent and longstanding ties to terrorist organizations since its inception and its history of obfuscating transactions and account holders in support of those organizations, it is reasonable to assess that Al-Huda Bank will seek ways to continue that support even without access to the CBI dollar auction, through its access to USD correspondent banking relationships in the region. Therefore, Al-Huda Bank remains of primary money laundering concern.

### **D. Consideration of Comments**

Concurrent with the issuance of the NPRM on January 31, 2024, FinCEN opened a comment period that closed on March 1, 2024. FinCEN received seven comments; they are described below, along with FinCEN's response. Neither Al-Huda Bank nor its officers submitted any comments.

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<sup>9</sup> 89 FR 6074 (Jan. 31, 2024).

<sup>10</sup> Reuters, *Iraq bans 8 local banks from US dollar transactions* (Feb. 4, 2024), available at <https://www.reuters.com/business/finance/iraq-bans-8-local-banks-us-dollar-transactions-2024-02-04/>.



*1. Comments attesting to Al-Huda Bank's or bank owner Hamad al-Moussawi's good reputation*

In response to the NPRM, FinCEN received four comments attesting to the good reputation of the owner and chairman of Al-Huda Bank, Hamad al-Moussawi (al-Moussawi). Commenters claimed that al-Moussawi is “pro-Western,” a “democracy supporter,” and holds “purely liberal ideas.” Several commenters also claimed that al-Moussawi “does not have any suspicious relationships”, or ties with “Iranian backed groups” or “extremist Islamic parties or other sectarian parties.” Two commenters commented on the reputation of Al-Huda Bank itself. One described the bank as “one of the disciplined banks with a good reputation.” The second claimed that “the bank has not faced any accusations of this kind previously.” These commenters have not provided any specific evidence or documentation to support their claims. Further, even if they could be substantiated, such general claims about Al-Huda Bank and its owner al-Moussawi would not allay FinCEN’s concerns regarding Al-Huda Bank’s specific illicit conduct.

*2. Comments disputing the feasibility of money laundering typologies outlined in the NPRM*

Two commenters claimed that it would be “impossible” or “unrealistic” for a bank to conduct the type of illicit activity described in the NPRM, given the CBI’s supervision and controls. Specifically, these commenters disputed the ability of any Iraqi bank to utilize forged checks and counterfeit IQD.

These comments do not allay FinCEN’s concerns regarding Al-Huda Bank, as the commenters have not provided specific evidence or documentation to support their claims.

*3. Comments questioning the sources cited in the NPRM*

Four comments claimed that FinCEN did not provide sufficient evidence, and/or relied upon inaccurate, biased public and non-public information. Four comments questioned the

veracity of media reporting as evidence in the NPRM. One commenter found that the NPRM “relied on information from media sources” and stated that “media in the Middle East, as a whole, is unprofessional, participates in corrupt practices, lacks neutrality, and is irresponsible.” Another commenter claimed that information FinCEN used, including media reporting, “is often not thoroughly researched, and if the reports received by [FinCEN] originated from Iraqi parties, [...] those reports were built on the basis of animosity towards individuals and a desire to harm their interests, rather than a desire to present facts.” These comments do not allay FinCEN’s concerns regarding Al-Huda Bank, as they cite no specific evidence that would call into question the reliability of the media reporting and sources upon which FinCEN has relied.

Moreover, FinCEN based its findings on corroborated evidence from both public and non-public sources, of which media reporting was only a small part. In making its finding of primary money laundering concern and adopting special measure five to address it, FinCEN has considered the totality of information available to it, including from media organizations, and has independently evaluated its sources for credibility, potential bias, and accuracy. One commenter claimed to have “found a document issued by the Central Bank of Iraq denying the accuracy” of an article cited in the NPRM. The article reported that, from 2012 to 2014, Al-Huda Bank used forged documents in transfers of over \$6 billion to banks and companies outside of Iraq.<sup>11</sup> The document stated that there were no such personal money transfers transferred out of Iraq to the account of Al-Huda Bank’s owner. Because the document focuses narrowly on the owner’s personal money transfers, it does not contradict the information reported in the article, which is also corroborated by other sources.

#### **E. Summary of FinCEN’s Ongoing Concerns Regarding Al-Huda Bank**

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<sup>11</sup> Al-Arabiya, “Billions of Dollars” Smuggled Out of Iraq During Maliki’s Rule (Nov. 9, 2015), available at <https://english.alarabiya.net/News/middle-east/2015/11/09/Iraq-smuggled-billions-of-dollars-during-Maliki-s-rule>.

After considering comments received from the public, as well as other information available to the agency, including both public and non-public information, FinCEN is issuing this final rule, imposing a prohibition on U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of, Al-Huda Bank. The information available to FinCEN provides reason to conclude that Al-Huda Bank continues to be a foreign financial institution of primary money laundering concern.

### **III. Imposition of a Special Measure regarding Al-Huda Bank as a Foreign Financial Institution of Primary Money Laundering Concern**

Based upon this finding, FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors discussed in the NPRM, FinCEN proposed a prohibition under the fifth special measure.<sup>12</sup>

After reviewing the comments and considering all potential special measures, FinCEN concludes that a prohibition under special measure five is warranted. Consistent with the finding that Al-Huda Bank is a foreign financial institution of primary money laundering concern, and in consideration of additional relevant factors, this final rule imposes a prohibition on the opening or maintaining of correspondent accounts by covered financial institutions for, or on behalf of, Al-Huda Bank. This prohibition will help guard against the money laundering and terrorist financing risks to the U.S. financial system posed by Al-Huda Bank, as identified in the NPRM and this final rule.

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<sup>12</sup> Prior to issuing the January 2024 NPRM and this final rule, FinCEN consulted with representatives and staff of the following Departments and agencies regarding this action: Department of Justice; the Department of State; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Securities and Exchange Commission; the Commodity Futures Trading Commission; the Office of the Comptroller of the Currency; and the National Credit Union Administration. During those consultations, FinCEN shared drafts and information for the purpose of obtaining interagency views on: (1) the finding that Al-Huda Bank is of primary money laundering concern; (2) the imposition of special measure five prohibiting covered U.S. financial institutions from opening or maintaining a correspondent account for, or on behalf of Al-Huda Bank and requiring covered U.S. financial institutions to take reasonable steps not to process transactions for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank; and (3) the effect such prohibition would have on the domestic and international financial system. Those views are reflected in FinCEN's explanation of the reasons for issuing this final rule.

**A. Whether similar action has been or is being taken by other nations or multilateral groups regarding Al-Huda Bank**

Following the issuance of the NPRM, the CBI banned Al-Huda Bank from accessing the CBI dollar auction.<sup>13</sup> Nevertheless, as indicated above, FinCEN remains concerned by Al-Huda Bank's continued potential to interact with the U.S. financial system indirectly through U.S. dollar (USD) correspondent accounts at six foreign financial institutions.

**B. 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**

While FinCEN assesses that the final rule will place some cost and burden on covered financial institutions, these burdens are neither undue nor inappropriate in view of the threat posed by the illicit activity facilitated by Al-Huda Bank. As described in the NPRM, Al-Huda Bank has had access to USD through the CBI dollar auction, which does not require Iraqi banks to have direct USD correspondent relationships. Further, as described above, Al-Huda Bank has no direct USD correspondent relationships with U.S. financial institutions. Rather, it accesses USD through its nested correspondent relationships, including, but not limited to, six USD accounts outside the United States. These accounts may be used for commercial payments, as well as foreign exchange and money markets. Covered financial institutions and transaction partners have ample opportunity to arrange for alternative payment mechanisms in the absence of correspondent banking relationships with Al-Huda Bank.

As such, a prohibition on correspondent banking with Al-Huda Bank will impose minimal additional compliance costs for covered financial institutions, which would most commonly involve merely adding Al-Huda Bank to existing sanctions and money laundering screening tools.

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<sup>13</sup> Reuters, *Iraq bans 8 local banks from US dollar transactions* (Feb. 4, 2024), available at <https://www.reuters.com/business/finance/iraq-bans-8-local-banks-us-dollar-transactions-2024-02-04/>.

FinCEN assesses that given the risks posed by Al-Huda Bank's facilitation of money laundering, the additional burden on covered financial institutions in preventing the opening of correspondent accounts with Al-Huda Bank, as well as conducting due diligence on foreign correspondent account holders and notifying them of the prohibition, will be minimal and not undue.

**C. 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 of Al-Huda Bank**

FinCEN assesses that imposing the final rule will have minimal impact upon the international payment, clearance, and settlement system. As a comparatively small bank, responsible for a nominal amount of transaction volume in the region, Al-Huda Bank is not a systemically important financial institution in Iraq, regionally, or globally. FinCEN views that prohibiting Al-Huda Bank's access to U.S.-Iraq correspondent banking channels should not affect overall cross-border transaction volumes.

Further, a prohibition under special measure five will not prevent Al-Huda Bank from conducting legitimate business activities in other foreign currencies. In addition to the six correspondent accounts used to access USD noted above, Al-Huda Bank currently holds two Euro accounts and two United Arab Emirates dirham accounts.<sup>14</sup> Provided that its legitimate activities do not involve a correspondent account maintained in the United States, and so long as Al-Huda Bank maintains non-USD correspondent relationships in the region, the bank could continue to engage in those activities.

**D. The effect of the action on United States national security and foreign policy**

As described in the NPRM, evidence available to FinCEN has demonstrated that Al-Huda Bank served as a significant conduit for the financing of FTOs in violation of U.S. and

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<sup>14</sup> BankCheck, *Al-Huda Bank – Iraq* (accessed May 28, 2024), available at <https://bankcheck.app>.

international sanctions. Imposing a prohibition under special measure five will: (1) limit Al-Huda Bank's ability to facilitate illicit finance within an international network of front companies and sanctions evasion infrastructure supporting these FTOs, by removing its access to correspondent accounts in the United States; and (2) raise awareness of the way illicit actors exploit weaknesses in vulnerable jurisdictions to circumvent sanctions and finance terrorism.

#### **E. Consideration of alternative special measures**

In assessing the appropriate special measure to impose, FinCEN considered alternatives to a prohibition on the opening or maintaining in the United States of correspondent accounts, including the imposition of one or more of the first four special measures, or imposing conditions on the opening or maintaining of correspondent accounts under special measure five. Having considered these alternatives and for the reasons set out below, FinCEN assesses that none of the other special measures available under section 311 would appropriately address the risks posed by Al-Huda Bank and the urgent need to prevent it from accessing USD through correspondent banking entirely.

With the knowledge of Al-Huda Bank's chairman, Al-Huda Bank's abuse of the dollar auction was obfuscated through the application of numerous money laundering typologies, including the use of fraudulent documentation, fake deposits, identity documents of the deceased, fake companies, and counterfeit IQD, which were used to purchase USD and support terrorist groups and militias. Taken as a whole, Al-Huda Bank's illicit activities present a heightened risk of obscured transaction counterparty identification that would be undetectable by covered financial institutions. Indeed, a key feature of the facilitation of funding for Iranian and Iran-aligned FTOs through Al-Huda Bank is the use of fake companies to obscure the true beneficial owners and ultimate destinations of funds involved in the transactions. Moreover, this behavior provides opportunities for obscuring the identities of transaction counterparties to correspondent banking relationship providers.

Because of the nature, extent, and purpose of the obfuscation engaged in by Al-Huda Bank, any special measure intended to mandate additional information collection would likely be ineffective and insufficient to determine the true identity of illicit finance actors. For example, the provision under special measure one, that “the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer” be collected in records and reports, could be circumvented by the operations of shell companies, wherein the reported identity of the originator serves to obscure the true beneficial owner or originator. This would accordingly be ineffective in preventing illicit transactions. Al-Huda Bank’s record of such circumvention suggests special measure one would not adequately protect the U.S. financial system from the threats posed by the bank.

Further, the requirements under special measures three and four, that domestic financial institutions obtain “with respect to each customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States”, are also likely to be ineffective. First, Al-Huda Bank’s use of nested correspondent account access through layers of payment systems would render these alternative measures ineffective. Only significant effort and expense by U.S. institutions could fill this gap, which would impose a disproportionate compliance burden and with no guarantee that the money laundering threat would be addressed through customer due diligence research.

FinCEN also considered special measure two, which may require domestic financial institutions to “obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person.” The agency determined this special measure to be largely irrelevant since the concerns involving Al-Huda Bank do not involve the opening or maintaining of accounts in the U.S. by foreign persons.

FinCEN similarly assesses that merely imposing conditions under special measure five would be inadequate to address the risks posed by Al-Huda Bank's activities. Special measure five also enables FinCEN to impose conditions as an alternative to a prohibition on the opening or maintaining of correspondent accounts. Given Al-Huda Bank's consistent and longstanding ties to terrorist organizations since its inception, and its track record of obfuscating transactions and account holders, FinCEN determined that imposing any condition would not be an effective measure to safeguard the U.S. financial system. FinCEN assesses that the billions of dollars supplied to terrorist groups through Al-Huda Bank's exploitation of its access to USD, and the exposure of U.S. financial institutions to Al-Huda Bank's illicit activity outweigh the value in providing conditioned access to the U.S. financial system for any purportedly legitimate business activity. Conditions on the opening or maintaining of correspondent accounts would likely be insufficient to prevent illicit financial flows through the U.S. financial system, given Al-Huda Bank's use of fraudulent documentation and front companies to obscure its financing of terrorist groups in order to access USD. Given Al-Huda Bank's deliberate use of these money laundering typologies, FinCEN cannot craft sufficient conditions to enable covered financial institutions to open or maintain correspondent accounts for Al-Huda Bank without introducing severe risk to those financial institutions in processing transactions that ultimately finance terrorism.

FinCEN, thus, assesses that any condition or additional recordkeeping or reporting requirement would be an ineffective measure to safeguard the U.S. financial system. Such measures would not prevent Al-Huda Bank from accessing the correspondent accounts of U.S. financial institutions, thus leaving the U.S. financial system vulnerable to processing illicit transfers that are likely to finance terrorist groups, posing a significant national security and money laundering risk. In addition, no recordkeeping or reporting requirements or conditions would be sufficient to guard against the risks posed by a bank that processes transactions that



are designed to obscure the transactions' true nature and are ultimately for the benefit of terrorist groups. For these reasons, and after thorough consideration of alternate measures, FinCEN has determined that a prohibition on opening or maintaining correspondent banking relationships is the only special measure out of the special measures available under section 311 that can adequately protect the U.S. financial system from the illicit finance risk posed by Al-Huda Bank.

#### **IV. Section-by-Section Analysis**

##### **A. 1010.663(a)—Definitions**

###### *1. Definition of Al-Huda Bank*

The final rule defines the term “Al-Huda Bank” to mean all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction. FinCEN is not currently aware of any subsidiary banks or branches outside of Iraq.

###### *2. Definition of Correspondent Account*

The final rule defines the term “correspondent account” to have the same meaning as the definition contained in 31 CFR 1010.605(c)(1)(ii). 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 final rule as is 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.<sup>15</sup> Under this definition, “payable-through accounts” are a type of correspondent account.

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<sup>15</sup> See 31 CFR 1010.605(c)(2)(i).

In the case of securities broker-dealers, futures commission merchants, introducing brokers in commodities, and investment companies that are open-end companies (mutual funds), FinCEN is also using the same definition of “account” for purposes of this final rule as was established for these entities in the final rule implementing the provisions of section 312 of the USA PATRIOT Act, requiring due diligence for correspondent accounts maintained for certain foreign banks.<sup>16</sup>

### *3. Definition of Covered Financial Institution*

In a change from the proposed rule,<sup>17</sup> and consistent with prior section 311 actions imposing special measure five, the final rule defines the term “covered financial institution” by reference to 31 CFR 1010.605(e)(1), the same definition used in the BSA rule (31 CFR 1010.610) requiring the establishment of due diligence programs for correspondent accounts for financial institutions. In general, this definition includes the following:

- a bank;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker in commodities; and
- a mutual fund.

### *4. Definition of Foreign Banking Institution*

The final rule defines the term “foreign banking institution” to mean a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law. This is consistent with the definition of “foreign bank” under 31 CFR 1010.100(u). This final rule interprets Al-Huda Bank to be a foreign banking institution.

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<sup>16</sup> See 31 CFR 1010.605(c)(2)(ii)-(iv).

<sup>17</sup> When defining a covered financial institution, the proposed regulatory text incorrectly referenced 31 CFR 1010.605(e)(2), instead of 31 CFR 1010.605(e)(1). In addition, although the regulatory impact analysis properly considered those financial institutions listed in 31 CFR 1010.605(e)(1), it incorrectly cited 31 CFR 1010.100(t) (as did the section-by-section analysis).

### *5. Definition of Subsidiary*

The final rule defines the term “subsidiary” to mean a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

### **B. 1010.663(b)—Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions**

#### *1. Prohibition on Opening or Maintaining Correspondent Accounts*

Section 1010.663(b)(1) of the final rule prohibits covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

#### *2. Prohibition on Use of Correspondent Accounts Involving Al-Huda Bank*

Section 1010.663(b)(2) of the final rule requires covered financial institutions to take reasonable steps to not process a transaction for the correspondent account of a foreign banking institution in the United States if such a transaction involves Al-Huda Bank. Such reasonable steps are described in 1010.663(b)(3), which sets forth the special due diligence requirements a covered financial institution is required to take when it knows or has reason to believe that a transaction involves Al-Huda Bank.

#### *3. Special Due Diligence for Correspondent Accounts*

As a corollary to the prohibition set forth in sections 1010.663(b)(1) and (b)(2), section 1010.663(b)(3) of the final rule requires covered financial institutions to apply special due diligence to all of their foreign correspondent accounts that is reasonably designed to guard against such accounts being used to process transactions involving Al-Huda Bank. As part of that special due diligence, covered financial institutions are required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to

believe provide services to Al-Huda Bank, that such correspondents may not provide Al-Huda Bank with access to the correspondent account maintained at the covered financial institution. A covered financial institution may satisfy this notification requirement using the following notice:

Notice: Pursuant to U.S. regulations issued under Section 311 of the USA PATRIOT Act, see 31 CFR 1010.663, we are prohibited from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank. The regulations also require us to notify you that you may not provide Al-Huda Bank, including any of its subsidiaries, branches, and offices 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 Al-Huda Bank, including any of its subsidiaries, branches, and offices, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to aid cooperation with correspondent account holders in preventing transactions involving Al-Huda Bank from accessing the U.S. financial system. FinCEN does 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 notice by mail, fax, or e-mail. The notice should be transmitted whenever a covered financial institution knows or has reason to believe that a foreign correspondent account holder provides services to Al-Huda Bank.

Special due diligence also includes implementing risk-based procedures designed to identify any use of correspondent accounts to process transactions involving Al-Huda Bank. A covered financial institution is expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face lists Al-Huda Bank as the financial institution of the originator or beneficiary, or otherwise references Al-Huda Bank in a manner detectable under

the financial institution's normal screening mechanisms. An appropriate screening mechanism could be one of the tools used by a covered financial institution to comply with various legal requirements, such as commercially available software programs used to comply with the economic sanctions programs administered by OFAC.

#### *4. Recordkeeping and Reporting*

Section 1010.663(b)(4) of the final rule clarifies that 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 notification requirement described above.

### **V. Regulatory Impact Analysis**

FinCEN has analyzed this final rule under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act,<sup>18</sup> the Unfunded Mandates Reform Act,<sup>19</sup> and the Paperwork Reduction Act.<sup>20</sup>

As discussed above, the intended effects of the imposition of special measure five to Al-Huda Bank are twofold. The rule is expected to: (1) combat and deter money laundering in facilitation of terrorist financing associated with Al-Huda Bank, and (2) prevent Al-Huda Bank from using the U.S. financial system to enable its illicit finance behavior. In the analysis below, FinCEN discusses the economic effects that are expected to accompany adoption of the final rule and assess such expectations in more granular detail. This discussion includes a detailed explanation of certain ways FinCEN's conclusions may be sensitive to methodological choices and underlying assumptions made in drawing inferences from available data.

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<sup>18</sup> 5 U.S.C. 603.

<sup>19</sup> 2 U.S.C. 1532, Public Law 104-4 (Mar. 22, 1995).

<sup>20</sup> 44 U.S.C. 3507(a)(1)(D).

## **A. Executive Orders**

Executive Orders 12866, 13563, and 14094 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 this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, a regulatory impact analysis is not required.

## **B. Regulatory Flexibility Act**

When an agency issues a final rule, the Regulatory Flexibility Act (RFA) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” (IRFA) that will “describe the impact of the proposed rule on small entities.”<sup>21</sup> However, Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the final rule is not expected to have a significant economic impact on a substantial number of small entities. This final rule applies to all covered financial institutions and affects a substantial number of small entities. However, for the reasons described below, FinCEN assesses that these changes do not have a significant economic impact on such entities.

In addition to prohibiting covered financial institutions from opening or maintaining in the United States a correspondent account for, or on behalf of, Al-Huda Bank, this final rule requires that covered financial institutions take reasonable measures to detect use of their correspondent accounts to process transactions involving Al-Huda Bank. All U.S. persons,

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<sup>21</sup> 5 U.S.C. 603(a).

including U.S. financial institutions, currently must comply with OFAC sanctions, and U.S. financial institutions generally have suspicious activity reporting requirements and systems in place to screen transactions to comply with OFAC sanctions and section 311 special measures administered by FinCEN. The systems that U.S. financial institutions have in place to comply with these requirements can easily be modified to adapt to this final rule. Thus, the special due diligence that is required under the final rule—*i.e.*, preventing the processing of transactions involving Al-Huda Bank and the transmittal of notification to certain correspondent account holders—does not impose a significant additional economic burden upon small U.S. financial institutions. For these reasons, FinCEN certifies that the requirements contained in this rulemaking do not have a significant economic impact on a substantial number of small entities.

### **C. Unfunded Mandates Reform Act**

Section 202 of the Unfunded Mandates Reform Act of 1995<sup>22</sup> (Unfunded Mandates Reform Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, adjusted for inflation.<sup>23</sup> If a budgetary impact statement is required, section 202 of the Unfunded Mandates Reform Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.<sup>24</sup>

FinCEN has determined that this final rule will not result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of an annual \$100 million

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<sup>22</sup> 2 U.S.C. 1532, Public Law 104–4 (Mar. 22, 1995).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

or more, adjusted for inflation (\$184.7 million).<sup>25</sup> Accordingly, FinCEN has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

#### **D. Paperwork Reduction Act**

The recordkeeping and reporting requirements, referred to by the Office of Management and Budget (OMB) as a collection of information, contained in this final rule were submitted by FinCEN to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA) and were assigned OMB Control Number 1506-0079.<sup>26</sup> Under the PRA, 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 control number assigned by the OMB.

The notification requirement in section 1010.663(b)(3)(i)(A) is intended to aid cooperation from foreign correspondent account holders in preventing transactions involving Al-Huda Bank from being processed by the U.S. financial system. The information required to be maintained by section 1010.663(b)(4)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the notification requirements of section 663(b)(3)(i)(A). The collection of information is mandatory.

*Frequency:* As required.

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

*Estimated Number of Affected Financial Institutions:* Approximately 15,000.<sup>27</sup>

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25 The Unfunded Mandates Reform Act requires an assessment of mandates that will result in an annual expenditure of \$100 million or more, adjusted for inflation. The U.S. Bureau of Economic Analysis reports the annual value of the gross domestic product (GDP) deflator in the first quarter of 1995, the year of the Unfunded Mandates Reform Act, as 66.452, and as 122.762 in the third quarter of 2023, the most recent available. See U.S. Bureau of Economic Analysis, “Table 1.1.9. Implicit Price Deflators for Gross Domestic Product” (accessed Dec. 14, 2023) available at <https://www.bea.gov/itable/>. Thus, the inflation adjusted estimate for \$100 million is  $122.762/66.452 \times 100 = \$184.7$  million.

26 44 U.S.C. 3507(a)(1)(D).

27 This estimate is informed by public and non-public data sources regarding both an expected maximum number of entities that may be affected and the number of active, or currently reporting, registered financial institutions.



**Table 1. Estimates of Affected Financial Institutions by Type**

<b>FINANCIAL INSTITUTION TYPE</b>	<b>NUMBER OF ENTITIES</b>
Banks <sup>28</sup>	9,209 <sup>29</sup>
Broker-Dealers in securities <sup>30</sup>	3,477 <sup>31</sup>
Mutual Funds <sup>32</sup>	1,495 <sup>33</sup>
Futures Commission Merchants <sup>34</sup>	62 <sup>35</sup>
Introducing Brokers in Commodities <sup>36</sup>	937 <sup>37</sup>

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

*Estimated Total Annual Burden:* Approximately 15,000 hours.

## **VI. Regulatory Text**

### **List of Subjects in 31 C.F.R. Part 1010**

Administrative practice and procedure, Banks, Banking, Brokers, Crime, Foreign banking, Terrorism.

28 See 31 CFR 1010.605(e)(1)(i).

29 Bank data is as of December 14, 2023, from Federal Deposit Insurance Corporation BankFind. See Federal Deposit Insurance Corporation, *BankFind*, available at <https://banks.data.fdic.gov/bankfind-suite/bankfind>. Credit union data is as of December 31, 2023, from the National Credit Union Administration Quarterly Data Summary Reports. See National Credit Union Administration, *Quarterly Data Summary Reports*, available at <https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports>.

30 31 CFR 1010.605(e)(1)(ii).

31 According to the Securities and Exchange Commission (SEC), there are 3,477 broker-dealers in securities as of December 2023. See SEC, *Company Information About Active Broker-Dealers*, available at <https://www.sec.gov/help/foiadocsbdfboa>.

32 31 CFR 1010.605(e)(1)(iv).

33 According to the SEC, as of the third quarter of 2023, there are 1,495 open-end registered investment companies that report on Form N-CEN. See SEC, *Form N-CEN Data Sets*, available at <https://www.sec.gov/dera/data/form-ncen-data-sets>.

34 31 CFR 1010.605(e)(1)(iii).

35 According to the Commodity Futures Trading Commission (CFTC), there are 62 futures commission merchants as of October 31, 2023. See CFTC, *Financial Data for FCMs*, available at <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>.

36 31 CFR 1010.605(e)(1)(iii).

37 According to National Futures Association, there are 937 introducing brokers in commodities as of November 30, 2023.

## **Authority and Issuance**

For the reasons set forth in the preamble, 31 C.F.R. Part 1010 is amended as follows:

### **Part 1010--GENERAL PROVISIONS**

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

“Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5336; title III, sec. 314, Pub. L. 107-56, 115 Stat. 307; sec. 2006, Pub. L. 114-41, 129 Stat. 458-459; sec. 701 Pub. L. 114-74, 129 Stat. 599; sec. 6403, Pub. L. 116-283, 134 Stat. 3388.”

2. Add § 1010.663 to read as follows:

#### **§ 1010.663 Special measures regarding Al-Huda Bank.**

- (a) *Definitions.* For purposes of this section, the following terms have the following meanings.

- (1) *Al-Huda Bank.* The term “Al-Huda Bank” means all subsidiaries, branches, and offices of Al-Huda Bank operating as a bank in any jurisdiction.

- (2) *Correspondent account.* The term “correspondent account” has the same meaning as provided in § 1010.605(c)(1)(ii).

- (3) *Covered financial institution.* The term “covered financial institution” has the same meaning as provided in § 1010.605(e)(1).

- (4) *Foreign banking institution.* The term “foreign banking institution” means a bank organized under foreign law, or an agency, branch, or office located outside the United States of a bank. The term does not include an agent, agency, branch, or office within the United States of a bank organized under foreign law.

- (5) *Subsidiary.* The term “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 opening or maintaining correspondent accounts for Al-Huda Bank.*

A covered financial institution shall not open or maintain in the United States a correspondent account for, or on behalf of, Al-Huda Bank.

(2) *Prohibition on processing transactions involving Al-Huda Bank.* A covered financial institution shall take reasonable steps not to process a transaction for the correspondent account in the United States of a foreign banking institution if such a transaction involves Al-Huda Bank.

(3) *Special due diligence of correspondent accounts to prohibit transactions.*

(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 Al-Huda Bank. 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 believe provide services to Al-Huda Bank that such correspondents may not provide Al-Huda Bank 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 Al-Huda Bank, 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 Al-Huda Bank.

(iii) A covered financial institution that knows or has reason to believe that a foreign bank's correspondent account has been or is being used to process transactions involving Al-Huda Bank shall take all appropriate steps to further investigate and prevent such access,

including the notification of its correspondent account holder under paragraph (b)(3)(i)(A) of this section and, where necessary, termination of the correspondent account.

*(4) Recordkeeping and reporting.*

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

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

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