

§ 103.175

31 CFR Ch. I (7-1-05 Edition)

- (xi) Commodity trading advisor; or
- (xii) Investment company.

(2) Subject to the provisions of paragraphs (c) and (d) of this section, a bank (as defined in §103.11(c)) that is not subject to regulation by a Federal functional regulator (as defined in §103.120(a)(2)) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(3) Subject to the provisions of paragraphs (c) and (d) of this section, a person described in §103.11(n)(7) is exempt from the requirement in 31 U.S.C. 5318(h)(1) concerning the establishment of anti-money laundering programs.

(c) *Limitation on exemption.* The exemptions described in paragraphs (a)(2) and (b) of this section shall not apply to any financial institution that is otherwise required to establish an anti-money laundering program by this subpart I.

(d) *Compliance obligations of deferred financial institutions.* Nothing in this section shall be deemed to relieve an exempt financial institution from its responsibility to comply with any other applicable requirement of law or regulation, including title 31 of the U.S.C. and this part.

[67 FR 21113, Apr. 29, 2002, as amended at 67 FR 67549, Nov. 6, 2002; 67 FR 68935, Nov. 14, 2002]

SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS

SOURCE: 67 FR 48351, July 23, 2002, unless otherwise noted.

§ 103.175 Definitions.

Except as otherwise provided, the following definitions apply for purposes of §§ 103.176 through 103.190:

- (a) *Attorney General* means the Attorney General of the United States.
- (b) [Reserved]
- (c) *Certification* and *Recertification* mean the certification and recertification forms described in Appendices A and B, respectively, to this subpart.
- (d) *Correspondent account.* (1) The term *correspondent account* means:
  - (i) [Reserved]
  - (ii) For purposes of §§ 103.177 and 103.185, a correspondent account is an

account established by a covered financial institution for a foreign bank to receive deposits from, to make payments or other disbursements on behalf of a foreign bank, or to handle other financial transactions related to the foreign bank.

(2) For purposes of this definition, the term *account*:

- (i) Means any formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and
- (ii) Includes a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.
- (e) *Correspondent relationship* has the same meaning as correspondent account for purposes of §§ 103.177 and 103.185.

(f) *Covered financial institution* means:

- (1) [Reserved]
- (2) For purposes of §§ 103.177 and 103.185:
  - (i) An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
  - (ii) A commercial bank or trust company;
  - (iii) A private banker;
  - (iv) An agency or branch of a foreign bank in the United States;
  - (v) A credit union;
  - (vi) A thrift institution;
  - (vii) A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); and
  - (viii) A broker or dealer registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

(g) *Foreign bank.* The term *foreign bank* shall have the meaning provided in § 103.11(o).

- (h) [Reserved]
- (i) *Foreign shell bank* means a foreign bank without a physical presence in any country.
- (j) [Reserved]
- (k) [Reserved]
- (l) *Owner.* (1) The term *owner* means any person who, directly or indirectly:
  - (i) Owns, controls, or has power to vote 25 percent or more of any class of voting securities or other voting interests of a foreign bank; or

(ii) Controls in any manner the election of a majority of the directors (or individuals exercising similar functions) of a foreign bank.

(2) For purposes of this definition:

(i) Members of the same family shall be considered to be one person.

(ii) The term *same family* means parents, spouses, children, siblings, uncles, aunts, grandparents, grandchildren, first cousins, stepchildren, stepsiblings, and parents-in-law, and spouses of any of the foregoing.

(iii) Each member of the same family who has an ownership interest in a foreign bank must be identified if the family is an owner as a result of aggregating the ownership interests of the members of the family. In determining the ownership interests of the same family, any voting interest of any family member shall be taken into account.

(iv) *Voting securities or other voting interests* means securities or other interests that entitle the holder to vote for or select directors (or individuals exercising similar functions).

(m) *Person* has the same meaning as provided in §103.11(z).

(n) *Physical presence* means a place of business that:

(1) Is maintained by a foreign bank;

(2) Is located at a fixed address (other than solely an electronic address or a post-office box) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank:

(i) Employs 1 or more individuals on a full-time basis; and

(ii) Maintains operating records related to its banking activities; and

(3) Is subject to inspection by the banking authority that licensed the foreign bank to conduct banking activities.

(o) [Reserved]

(p) *Regulated affiliate*. (1) The term *regulated affiliate* means a foreign shell bank that:

(i) Is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(ii) Is subject to supervision by a banking authority in the country regu-

lating such affiliated depository institution, credit union, or foreign bank.

(2) For purposes of this definition:

(i) *Affiliate* means a foreign bank that is controlled by, or is under common control with, a depository institution, credit union, or foreign bank.

(ii) *Control* means:

(A) Ownership, control, or power to vote 50 percent or more of any class of voting securities or other voting interests of another company; or

(B) Control in any manner the election of a majority of the directors (or individuals exercising similar functions) of another company.

(q) *Secretary* means the Secretary of the Treasury.

(r) [Reserved]

(s) *Territories and Insular Possessions* has the meaning provided in §103.11(tt).

(t) *United States* has the meaning provided in §103.11(nn).

[67 FR 60570, Sept. 26, 2002]

**§ 103.177 Prohibition on correspondent accounts for foreign shell banks; records concerning owners of foreign banks and agents for service of legal process.**

(a) *Requirements for covered financial institutions—(1) Prohibition on correspondent accounts for foreign shell banks.* (i) A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign shell bank.

(ii) A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to a foreign shell bank.

(iii) Nothing in paragraph (a)(1) of this section prohibits a covered financial institution from providing a correspondent account or banking services to a regulated affiliate.

(2) *Records of owners and agents.* (i) Except as provided in paragraph (a)(2)(ii) of this section, a covered financial institution that maintains a correspondent account in the United