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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB21

Imposition of Special Measures against Halawi Exchange Co. as a Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding, notice of which is published elsewhere in this issue of the *Federal Register*, the Director of FinCEN found that Halawi Exchange Co. (“Halawi Exchange”) is a financial institution operating outside of the United States that is of primary money laundering concern. FinCEN is issuing this notice of proposed rulemaking (“NPRM”) to propose the imposition of two special measures against Halawi Exchange.

DATES: Written comments on this NPRM must be submitted on or before [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN 1506-AB21, by any of the following methods:

- *Federal E-rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. Include RIN 1506-AB21 in the submission.

- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506-AB21 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on <http://www.regulations.gov>.

Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FUTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. 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 (the “USA PATRIOT Act”), Public Law 107-56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (“BSA”), codified at 12 U.S.C. 1829b, 12 U.S.C 1951-1959, and 31 U.S.C. 5311-5314, 5316-5332, to promote the prevention, detection, and prosecution of international money

laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR Chapter X. The authority of the Secretary of the Treasury (the “Secretary”) to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN.

Section 311 of the USA PATRIOT Act (“section 311”), codified at 31 U.S.C. 5318A, grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of “primary money laundering concern,” to require domestic financial institutions and financial agencies to take certain “special measures” to address the primary money laundering concern.

II. Imposition of Special Measures Against Halawi Exchange as a Financial Institution of Primary Money Laundering Concern

A. Special Measures

As noticed elsewhere in this issue of the *Federal Register*, on April 22, 2013, the Director of FinCEN found that Halawi Exchange is a financial institution operating outside the United States that is of primary money laundering concern (the “Finding”). Based upon that Finding, the Director of FinCEN is authorized to impose one or more special measures. Following the consideration of all factors relevant to the Finding and to selecting the special measures proposed in this NPRM, the Director of FinCEN proposes to impose the special measures authorized by section 5318A(b)(1) and (5), (respectively, the “first special measure” and the “fifth special measure”). In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

On April 23, 2013, FinCEN imposed the first special measure by temporary order (the “Order”) to immediately address the threat to the U.S. financial system that the activities of Halawi Exchange represent.

B. Discussion of Section 311 Factors

In determining which special measures to implement to address the primary money laundering concern, FinCEN considered the following factors.

1. Whether Similar Action Has Been or Will Be Taken by Other Nations or Multilateral Groups against Halawi Exchange

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: 1) require domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Halawi Exchange; 2) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange; and (3) to require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against processing transactions involving Halawi Exchange. FinCEN encourages other countries to take similar action based on the information contained in this notice and the Finding.

2. Whether the Imposition of the First or Fifth 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 first special measure imposed by order and sought to be finalized through notice and comment rulemaking requires domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Halawi Exchange. Given the general recordkeeping and reporting obligations already in place,

FinCEN does not expect any increase in the burden associated with these requirements to be significant. Likewise, U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control (“OFAC”) of the Department of the Treasury and to detect potential suspicious activity. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage these current screening and reporting procedures to detect attempted transactions involving Halawi Exchange. As appropriate, the proposal would deem reports filed as Bank Secrecy Act- Suspicious Activity Reports (“BSA-SARs”) to comply with this reporting requirement if filed according to the specifications listed in the regulatory text and discussed in the section-by-section analysis. Moreover, the number of transactions to which the recordkeeping and reporting obligations apply is expected to be relatively limited because, according to available public information, Halawi Exchange has account relationships with only a limited number of financial institutions and claims to have an agency or sub-agency relationship with only two U.S. money transmitters. Thus, the additional reporting and recordkeeping requirements that would be required by this rulemaking are not expected to create a significant competitive disadvantage for U.S. financial institutions.

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange after the effective date of the final rule

implementing the fifth special measure. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used to provide services to Halawi Exchange. There is a minimal burden involved in transmitting a one-time notice to all foreign correspondent account holders concerning the prohibition on processing transactions involving Halawi Exchange through the U.S. correspondent account. As noted above, U.S. financial institutions generally apply some level of automated transaction and account screening, often through the use of commercially available software. As explained in more detail in the section-by-section analysis below, financial institutions should be able to leverage their current screening procedures to include Halawi Exchange and support compliance with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or 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 Halawi Exchange

The requirements proposed in this NPRM would target Halawi Exchange specifically; they would not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Halawi Exchange is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the first and fifth special measures against Halawi Exchange would not have a significant adverse systemic impact on the international payment, clearance, and settlement system.

In light of its Finding that Halawi Exchange is of primary money laundering concern and in particular that it poses a risk of terrorism finance, FinCEN believes that any impact on the legitimate business activities of Halawi Exchange is outweighed by the need to protect the U.S. financial system. The presence of 365 active money exchanges currently registered in Lebanon will alleviate any burden on legitimate business activities within that jurisdiction.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The additional recordkeeping and reporting requirements required by the first special measure will provide FinCEN and law enforcement with greater insight into transactions related to Halawi Exchange. This knowledge, in turn, is expected to help FinCEN and law enforcement identify other participants in the money laundering schemes in which Halawi Exchange participates or other unidentified money laundering schemes, which would be utilized in efforts to detect and deter these and other financial crimes. Such efforts would enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system.

The exclusion of Halawi Exchange from the U.S. financial system as required by the fifth special measure would similarly enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system. More generally, the imposition of the first and fifth special measures would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering and terrorism financing.

Therefore, pursuant to the finding that Halawi Exchange is a financial institution operating outside of the United States of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN proposes to impose the first and fifth special measures.

III. Section-by-Section Analysis for Imposition of First and Fifth Special Measures

A. 1010.659(a) – Definitions

1. Halawi Exchange Co.

Section 1010.659(a)(1) of the proposed rule would define Halawi Exchange Co. to include all branches, offices, and subsidiaries of Halawi Exchange Co. operating in Lebanon or in any other jurisdiction.

Covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Halawi Exchange Co.

2. Correspondent Account

Section 1010.659(a)(2) of the proposed rule would define the term “correspondent account” by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or to handle other financial transactions related to the foreign bank. Under this definition, “payable through accounts” are a type of correspondent account.

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 rule as was 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.¹

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (“mutual funds”), FinCEN is also using the same definition of “account” for purposes of this rule as was established for these entities 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.²

3. Covered Financial Institution

Section 1010.659(a)(3) of the proposed rule would define “covered financial institution” with the same definition used in the final rule implementing the provisions of section 312 of the USA PATRIOT Act,³ which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- a commercial bank;
- an agency or branch of a foreign bank in the United States;
- a Federally insured credit union;
- a savings association;

¹ See 31 CFR 1010.605(c)(2)(i).

² See 31 CFR 1010.605(c)(2)(ii)-(iv).

³ See 31 CFR 1010.605(e)(1).

- a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- a trust bank or trust company;
- a broker or dealer in securities;
- a futures commission merchant or an introducing broker-commodities; and
- a mutual fund.

4. Principal Money Transmitter

Section 1010.659(a)(4) of the proposed rule would define principal money transmitters as money transmitters required to register under 31 CFR 1022.380.⁴ A person that is a money transmitter solely because that person serves as an agent of another money transmitter and does not process transactions on its own behalf will not be covered by the proposed rule.

5. Subsidiary

Section 1010.659(a)(5) of the proposed rule would define “subsidiary” as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by Halawi Exchange.

B. 1010.659(b) – Reporting Requirements for Covered Financial Institutions and Principal Money Transmitters

The proposed rule imposing the first special measure would require covered financial institutions and principal money transmitters to take reasonable steps to collect

⁴ 31 CFR 1010.100(ff)(5) defines a money transmitter as (A) A person that provides money transmission services. The term “money transmission services” means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means. “Any means” includes, but is not limited to, through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system; or (B) Any other person engaged in the transfer of funds.

and report to FinCEN specified information regarding any transaction involving Halawi Exchange in which the covered financial institution or principal money transmitter is requested to engage, directly or indirectly, after the imposition of the first special measure. This proposed rule would not alter or otherwise impact other regulatory obligations of covered financial institutions or principal money transmitters under the BSA except if the financial institution fulfilled its reporting obligations under the first special measure by submitting a suspicious activity report.

1. Reporting

- (i) Identity of the Participants in a Transaction or Attempted Transaction

Section 1010.659(b)(1)(i) of the proposed rule would require covered financial institutions and principal money transmitters to report the identity and address of the participants in any transaction involving Halawi Exchange, including the identity of the transmitter and recipient of any transmittal of funds. This information would include any identifying information the covered financial institution or principal money transmitter obtained in the ordinary course of business, including the information required under 31 CFR 1010.410(f) (generally known as the “travel rule”), such as name, account number if used, address, the identity of the beneficiary’s financial institution, or any other specific identifier of the recipient received with the transmittal order. In addition, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that it collects in the ordinary course of business relevant to the identity of the participants in a transaction or attempted transaction.

“Transactions involving Halawi Exchange” include, at a minimum, any transactions for which the documentation, such as the transmittal order, payment

instruction, or SWIFT message, includes the following as a party in any capacity: the name of Halawi Exchange; the name of any branches, offices, or subsidiaries of Halawi Exchange; or the names of any of the principals of Halawi Exchange identified in the finding that appear as acting on behalf of Halawi Exchange. Financial institutions should be able to put these names into their existing screening programs to be easily identified and reported.

While inquiries made to the sender of an instruction to obtain additional information not originally included in a received instruction may take extra time and resources, FinCEN believes that these concerns do not outweigh the need to obtain full and accurate information concerning Halawi Exchange as quickly as possible. Note, however, that there is no expectation that a covered financial institution or principal money transmitter seek additional information from financial institutions in a chain of intermediaries beyond the immediate counter party from which the covered financial institution or principal money transmitter received the instruction. Some requests for additional information may not yield every item of additional information sought. To supplement the information received from the immediate counter party, the proposed rule would require covered financial institutions and principal money transmitters to provide any additional information that they collect in the ordinary course of business relevant to the identity of the parties involved in the transaction or attempted transaction.

(ii) Legal Capacity

Section 1010.659(b)(1)(ii) of the proposed rule would require covered financial institutions and principal money transmitters to report the legal capacity in which Halawi Exchange and any customer of Halawi Exchange is acting with respect to the transaction.

This would include any identifying information collected by the covered financial institution or principal money transmitter in the ordinary course of business and must include the roles of Halawi Exchange or any of its customers in the transaction as set out in the transmittal order, such as transmittor or recipient of a transmittal order or as an intermediary financial institution involved in the payment chain associated with a transaction. The proposed rule would not require the covered financial institution or principal money transmitter to seek additional information regarding the legal capacity of the parties involved in the transaction beyond what it already has in its possession in the ordinary course of business.

(iii) Description of the Transaction or Attempted Transaction and its Purpose

Section 1010.659(b)(1)(iii) of the proposed rule would require covered financial institutions and principal money transmitters to report a description of the transaction and its purpose. The description would include additional details of the transaction, including amounts, and in particular, a general description of any underlying reason for the transaction or obligation which the financial transaction supports, such as the purchase of specific goods or services, initiation or repayment of a loan or other debt, settlement of a trade, transaction in foreign exchange, or other type of financial obligation, or other relevant information the covered financial institution or principal money transmitter may have available. To the extent a covered financial institution or principal money transmitter finds that it does not have sufficient information to enable it to report a description of the transaction and its purpose, it would be reasonable for the covered financial institution or principal money transmitter to inquire further (for example, with any applicable customer, respondent bank, or correspondent bank) to obtain additional

information. In so doing, a covered financial institution or principal money transmitter should consider analogizing to procedures it would follow in fulfilling its obligation to determine whether a transaction should be reported as suspicious, in particular to aid it in examining the available facts, including the background and possible purpose of the transaction to determine whether it is consistent with the type of transaction in which a particular person would normally be expected to engage.

2. When to File

Section 1010.659(b)(2) of the proposed rule would require covered financial institutions and principal money transmitters to make the reports required by Section 1010.659(b)(1) within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in or a decision was made not to engage in the transaction. By ensuring that FinCEN receives information shortly after a transaction is executed or refused to be executed, the contemplated time period will enable FinCEN and law enforcement to more effectively monitor the ongoing activities of Halawi Exchange. Based on other time limits contained in the BSA, FinCEN believes the fifteen days allowed by this proposed rule should be sufficient to make the required reports, but acknowledges that in some cases where requests must be made of foreign financial institutions additional time may be required. In such a case, the reports should be filed within fifteen days with whatever information the covered financial institution or principal money transmitter has at that time, and any additional information discovered must be submitted as a supplemental or corrected report. FinCEN requests comment on whether fifteen days is sufficient time for a covered financial institution or principal

money transmitter to obtain the required information or whether some other period of time is more appropriate.

Covered financial institutions and principal money transmitters would additionally be required to take reasonable steps to identify any reportable transaction, involving Halawi Exchange, to the extent that such use can be determined from transactional records maintained in the ordinary course of business. For example, a covered financial institution or principal money transmitter would be expected to apply an appropriate screening mechanism to be able to identify a transmittal order that on its face listed Halawi Exchange as the originator's or beneficiary's financial institution, or otherwise referenced Halawi Exchange in a manner detectable under the financial institution's normal screening mechanism. An appropriate screening mechanism could be the mechanism used by a covered financial institution or principal money transmitter to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of these requirements subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions and principal money transmitters take reasonable steps to screen their transactions to identify any transaction or attempted transaction involving Halawi Exchange.

3. How to File

The proposed rule would require covered financial institutions and principal money transmitters to report in a CSV file such information as determined by the

Director of FinCEN as relevant to the identity of the participants, their legal capacity, and description of the transaction. This information could include the following requested information contained in the Order: Transaction Reference Number, Payment Date, Instruction Date, Payment Amount, Transmittor's Account Number, Transmitters's Full Name, Transmitters's Address, Transmittor's Financial Institution's Identifier, Transmittor's Financial Institution's Name, Transmittor's Financial Institution's Address, Incoming Correspondent Financial Institution's Identifier, Incoming Correspondent Financial Institution's Name, Incoming Correspondent Financial Institution's Address, Outgoing Correspondent Financial Institution's Identifier, Outgoing Correspondent Financial Institution's Name, Outgoing Correspondent Financial Institution's Address, Recipient's Financial Institution's Identifier, Recipient's Financial Institution's Name, Recipient's Financial Institution's Address, Recipient's Account Number, Recipient's Full Name, Recipient's Address, Payment Instructions. Covered financial institutions and principal money transmitters would be required to submit the CSV file in a manner specified by the Director of FinCEN. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA-SARs to comply with this reporting requirement if filed within 15 days with all required information included in an attached CSV file and containing, both in the narrative and field 35z, "Halawi Exchange SM1 Report". FinCEN specifically solicits comments on the requirements for reporting under the proposed rule.

C. 1010.659(c) – Prohibition on Accounts and Due Diligence Requirements for Covered Financial Institutions

1. Prohibition on Use of Correspondent Accounts

Section 1010.659(c)(1) of the proposed rule imposing the fifth special measure would prohibit covered financial institutions from establishing, maintaining, or managing in the United States any correspondent account for or on behalf of a foreign banking institution if such correspondent account is used to process a transaction involving Halawi Exchange, including any of its branches, offices or subsidiaries.

2. Special Due Diligence for Correspondent Accounts to Prohibit Use

As a corollary to the prohibition on maintaining correspondent accounts that processed transactions involving Halawi Exchange, section 1010.659(c)(2) of the proposed rule would require a covered financial institution to apply special due diligence to its correspondent accounts that is reasonably designed to guard against processing transactions involving Halawi Exchange. That special due diligence must include notifying those foreign correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange that such correspondents may not provide Halawi Exchange with access to the correspondent account maintained at the covered financial institution and implementing appropriate risk-based procedures to identify transactions involving Halawi Exchange.

A covered financial institution may satisfy the notification requirement by transmitting the following notice to its foreign correspondent account holders that it knows or has reason to know provide services to Halawi Exchange:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 1010.659, we are prohibited from establishing, maintaining, administering, or managing a correspondent account for or on behalf of a foreign banking institution if such correspondent account processes any transaction involving Halawi Exchange Co. or any of its subsidiaries. The regulations also require us to notify you that you may not provide Halawi Exchange Co. or any of its subsidiaries with 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 Halawi Exchange Co. or any of its subsidiaries, we will be required to take appropriate steps to prevent such access, including terminating your account.

A covered financial institution would, for example, have knowledge through transaction screening software that the correspondents provide Halawi Exchange access to the U.S. correspondent account. The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. However, FinCEN would 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 one-time notice by mail, fax, or e-mail. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

The special due diligence would also include implementing risk-based procedures designed to identify any use of its correspondent accounts to process transactions involving Halawi Exchange. A covered financial institution would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Halawi Exchange as the financial institution of the originator or beneficiary, or otherwise referenced Halawi Exchange in a manner detectable under the financial

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

A covered financial institution would also be required to implement risk-based procedures to identify disguised use of its correspondent accounts including through methods used to hide the beneficial owner of a transaction. Specifically, FinCEN is concerned that Halawi Exchange may attempt to disguise its transactions by relying on types of payments and accounts that would not explicitly identify Halawi Exchange as an involved party. A financial institution may develop a suspicion of such misuse based on other information in its possession, patterns of transactions, or any other method available to it based on its existing systems. Under the proposed rule, a covered financial institution that suspects or has reason to suspect use of a correspondent account to process transactions involving Halawi Exchange must take all appropriate steps to attempt to verify and prevent such use, including a notification to its correspondent account holder per section 1010.659(c)(2)(i)(A) requesting further information regarding a transaction, requesting corrective action to address the perceived risk and, where necessary, terminating the correspondent account. A covered financial institution may reestablish an account closed under the rule if it determines that the account will not be used to process transactions involving Halawi Exchange. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to prevent any processing of transactions involving Halawi Exchange.

3. Recordkeeping and Reporting

Section 1010.659(c)(3) of the proposed rule would clarify that subsection (c) of 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 requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange that such correspondents may not process any transaction involving Halawi Exchange through the correspondent account maintained at the covered financial institution.

IV. Request for Comments

FinCEN invites comments on all aspects of the proposal to impose the first and fifth special measures against Halawi Exchange and specifically invites comments on the following matters:

1. The impact of the proposed special measures upon legitimate transactions with Halawi Exchange involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons or entities operating in Lebanon.

First Special Measure

2. The form and scope of the reports to FinCEN required under the proposed rule to impose the first special measure;

3. The appropriate time within which a financial institution would be required to report to FinCEN;

4. The requirements for reporting under the proposed rule.
5. The appropriate scope of the proposed requirement for a financial institution to take reasonable steps to identify any reportable transactions by Halawi Exchange; and
6. The appropriate steps a financial institution should take once it identifies a transaction related to Halawi Exchange.

Fifth Special Measure

7. The form and scope of the notice to certain correspondent account holders that would be required under the rule;
8. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any use of its correspondent accounts to process transactions involving Halawi Exchange; and
9. The appropriate steps a covered financial institution should take once it identifies use of one of its correspondent accounts to process transactions involving Halawi Exchange.

V. Regulatory Flexibility Act

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (“RFA”) requires the agency to “prepare and make available for public comment an initial regulatory flexibility analysis” that will “describe the impact of the proposed rule on small entities.” (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

A. Proposal to Require a Report of a Transaction or Attempted Transaction under the First Special Measure

1. Estimate of the number of small entities to whom the proposed rule will apply:

The reporting requirement proposed under the first special measure, requires certain covered financial institutions and principal money transmitters to report to FinCEN information associated with transactions or attempted transactions involving Halawi Exchange.

For purposes of the RFA, both banks and credit unions are considered small entities if they have less than \$175 million in assets.⁵ Of the estimated 8,000 banks, 80% have less than \$175 million in assets and are considered small entities.⁶ Of the estimated 7,000 credit unions, 90% have less than \$175 million in assets.⁷ FinCEN estimates that this rule will impact a limited number of banks and credit unions. On the basis of publicly available information, FinCEN understands that Halawi Exchange currently maintains no accounts in the United States. Moreover, to the extent that a transaction involving Halawi Exchange was to be processed through a U.S. financial institution, this would most likely involve a small subset of the largest financial institutions that actively engage in international transactions. Therefore, FinCEN estimates that this reporting requirement will only impact less than 1% of all small banks and credit unions.

⁵ *Table of Small Business Size Standards Matched to North American Industry Classification System Codes*, Small Business Administration Size Standards at 27 (SBA Oct. 1, 2012) [hereinafter *SBA Size Standards*].

⁶ Federal Deposit Insurance Corporation, *Find an Institution*, <http://www2.fdic.gov/idasp/main.asp>; select Size or Performance: Total Assets, type Equal or less than \$: "175000", select Find.

⁷ National Credit Union Administration, *Credit Union Data*, <http://webapps.ncua.gov/customquery/>; select Search Fields: Total Assets, select Operator: Less than or equal to, type Field Values: "175000000", select Go.

Broker-dealers are defined in 31 CFR 1010.100(h) as certain broker/dealers required to register with the Securities and Exchange Commission (“SEC”). Because FinCEN and the SEC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the SEC’s definition of small business as previously submitted to the Small Business Administration (“SBA”). The SEC has defined the term “small entity” to mean a broker or dealer that: (1) had total capital (net worth plus subordinated liabilities of less than \$500,000 on the date in the prior fiscal year as of which its audited financial statements, were prepared pursuant to Rule 17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated debt) of less than \$500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business if shorter); and (2) is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this release.”⁸ Currently, based on SEC estimates, there 18% of broker-dealers are classified as “small” entities for purposes of the RFA.⁹ Because of the limited number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small broker-dealers.

Futures commission merchants (“FCMs”) are defined in 31 CFR 1010.100(x) as those FCMs required to register with the Commodity Futures Trading Commission (“CFTC”). Because FinCEN and the CFTC regulate substantially the same population, for the purposes of the RFA, FinCEN relies on the CFTC’s definition of small business as previously submitted to the SBA. In the CFTC’s “Policy Statement and Establishment

⁸ 17 CFR 240.0—10(c).

⁹ 76 FR 37572, 37602 (June 27, 2011) (The SEC estimates 871 small broker-dealers of the 5,063 total registered broker-dealers).

of Definitions of ‘Small Entities’ for Purposes of the Regulatory Flexibility Act,’’ the CFTC concluded that registered FCMs should not be considered to be small entities for purposes of the RFA.¹⁰ The CFTC’s determination in this regard was based, in part, upon the obligation of registered FCMs to meet the capital requirements established by the CFTC. Therefore, the reporting requirements of the first special measure will not impact small FCMs.

For purposes of the RFA, an introducing broker-commodities is considered small if it has less than seven million dollars in gross receipts annually.¹¹ Based on NAICS code classification and information maintained by the CFTC, FinCEN estimates that there are 1,800 introducing brokers-commodities,¹² 80% of which are small entities.¹³ Because of the limited number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small introducing brokers-commodities.

For purposes of the RFA, a mutual fund is considered small if it has less than seven million dollars in gross receipts annually.¹⁴ Based on NAICS code classification and information maintained by the Investment Company Institute, FinCEN estimates that there are 8,700 mutual funds,¹⁵ 90% of which are small entities.¹⁶ Because of the limited

¹⁰ 47 FR 18618, 18619 (Apr. 30, 1982).

¹¹ SBA Size Standards at 28.

¹² 77 FR 20128, 20197 (Apr. 3, 2012).

¹³ 2007 Economic Census, *Finance and Insurance: Subject Series - Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007* (Introducing brokers-commodities are classified within NAICS code 523140 of which 80% are small).

¹⁴ SBA Size Standards at 28.

¹⁵ Investment Company Institute (ICI) 2012 *Investment Company Fact Book*, at 18 (2012), available at: http://www.icifactbook.org/pdf/2012_factbook.pdf (Number of mutual funds in the United States in 2011).

¹⁶ 2007 Economic Census, *Finance and Insurance: Subject Series - Estab and Firm Size: Summary Statistics by Revenue Size of Establishments for the United States: 2007* (Mutual funds are classified within NAICS code 523120 of which 90% are small).

number of relationships that Halawi Exchange has with these institutions, the reporting requirements of the first special measure will impact less than 1% of small mutual funds.

For the purposes of the RFA, a money transmitter is considered small if it has less than seven million dollars in gross receipts annually. Of the estimated 17,000 principal money transmitters, FinCEN estimates 95% have less than seven million in gross receipts annually.¹⁷ As indicated above, the reporting required by the first special measure will impact a small subset of the largest money transmitters. FinCEN estimates that the reporting required by the first special measure will impact less than 1% of small money transmitters. Therefore, FinCEN has determined that neither a substantial number of small banks nor money transmitters will be significantly impacted by the proposal to require reporting under the first special measure.

2. Description of the projected reporting and recordkeeping requirements of the first special measure:

Covered financial institutions and principal money transmitters at which a transaction is conducted or attempted by Halawi Exchange will be required to report information to FinCEN in a CSV file. Covered financial institutions and principal money transmitters would be able to rely on processes already developed to comply with suspicious activity reporting and commercially available software used to comply with the economic sanctions programs administered by OFAC, which can be leveraged to monitor for and report transactions involving Halawi Exchange. To ease regulatory burden and as appropriate, the proposal would deem reports filed as BSA-SARs to comply with this reporting requirement if filed within 15 days with all required

¹⁷ See FinCEN *MSB Registration List* (3/08/2012), http://www.fincen.gov/financial_institutions/msb/msbstateselector.html (Sort list by entities that engage in money transmission and remove repeat registrations).

information included in an attached CSV file and containing both in the narrative and field 35z “Halawi Exchange SM1 Report”. Because Halawi Exchange has been found to be a primary money laundering concern with links to terrorist financing, there will be significant overlap between the information that will be reported to satisfy the first special measure and the long standing requirement to file a BSA-SAR. Therefore, as the form of the reporting is structured to allow covered financial institutions and principal money transmitters to satisfy pre-existing regulatory obligations, any increase in the reporting burden that would be required by the imposition of the first special measure – *i.e.*, reporting of all transactions involving Halawi Exchange on a timelier basis – would not impose a significant additional economic burden upon small U.S. financial institutions.

B. Proposal to Prohibit Covered Financial Institutions from Opening or Maintaining Correspondent Accounts with Certain Foreign Banks under the Fifth Special Measure

1. Estimate of the number of small entities to whom the proposed fifth special measure will apply:

As noted above, 80% of banks, 90% of credit unions, 18% of broker-dealers, 80% of introducing brokers-commodities, zero FCMs, and 90% of mutual funds are small entities. FinCEN understands that Halawi Exchange currently maintains no accounts in the United States. The limited number of foreign banking institutions with which Halawi Exchange maintains or will maintain accounts will likely limit the number of covered financial institutions to the largest U.S. banks who actively engage in international transactions. Thus, the prohibition on maintaining correspondent accounts for foreign banking institutions which engage in transactions involving Halawi Exchange under the fifth special measure would not impact a substantial number of small entities.

2. Description of the projected reporting and recordkeeping requirements of the fifth special measure:

The proposed fifth special measure will require covered financial institutions to provide a notification intended to ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. FinCEN estimates that burden on institutions providing this notice is one hour. Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to directly or indirectly process transactions involving Halawi Exchange. All U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence to comply with OFAC sanctions and suspicious activity reporting. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to identify correspondent accounts with foreign banking institutions involving Halawi Exchange. Thus, the special due diligence that would be required by the imposition of the fifth special measure – *i.e.*, the one-time transmittal of notice to certain correspondent account holders, the screening of transactions to identify any use of correspondent accounts, and the implementation of risk-based measures to detect indirect use of correspondent accounts – would not impose a significant additional economic burden upon small U.S. financial institutions.

C. Certification:

When viewed as a whole, FinCEN does not anticipate that the proposals contained in this rulemaking will have a significant impact on a substantial number of small businesses. Accordingly, FinCEN certifies that this rule will not have a significant economic impact on a substantial number of small entities.

FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities from the imposition of the first and fifth special measures regarding Halawi Exchange.

VI. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, D.C. 20503 (or by e-mail to oir_submission@omb.eop.gov) with a copy to FinCEN by mail or e-mail at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by [INSERT DATE THAT IS 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.659 is presented to assist those persons wishing to comment on the information collection.

A. Proposed Information Collection under the First Special Measure

The provisions in this proposed rule pertaining to the collection of information can be found in sections 1010.659(b)(1). The information required to be reported section 1010.659(b)(1) will be used by the U.S. Government to monitor the activities of the institution of primary money laundering concern. The proposed collection of information

will be collected as a separate information collection under previously approved OMB Control Number 1506-0065. The collection of information is mandatory. FinCEN estimates the total annual burden of this collection to be 500 hours.

B. Proposed Information Collection under the Fifth Special Measure

The notification requirement in section 1010.659(c)(2)(i) is intended to ensure cooperation from correspondent account holders in denying Halawi Exchange access to the U.S. financial system. The information required to be maintained by section 1010.659(c)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.659. The class of financial institutions affected by the notification requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

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

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden in Hours Per Affected Financial Institution:

The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's

estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

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 OMB control number.

VII. Executive Order 12866

Executive Orders 12866 and 13563 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 the proposed rule is not a “significant regulatory action” for purposes of Executive Order 12866.

List of Subjects in 31 CFR Part 1010

Administrative practice and procedure, banks and banking, brokers, counter-money laundering, counter-terrorism, foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, part 1010 of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

PART 1010—GENERAL PROVISIONS

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

Authority: 12 U.S.C. 1829b and 1951-1959; 31 U.S.C. 5311-5314, 5316-5332 Title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107-56, 115 Stat. 307.

2. Add § 1010.659 to subpart F to read as follows:

§ 1010.659 Special measures against Halawi Exchange Co.

- (a) Definitions. For purposes of this section:

- (1) Halawi Exchange Co. means all branches, offices, and subsidiaries of Halawi Exchange Co. operating in any jurisdiction.

- (2) Correspondent account has the same meaning as provided in § 1010.605(c)(1)(ii).

- (3) Covered financial institution has the same meaning as provided in § 1010.605(e)(1).

- (4) Principal Money Transmitter means a money transmitter required to register under § 1022.380 of this Chapter.

- (5) Subsidiary means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

- (b) Reporting requirements for covered financial institutions and principal money transmitters. (1) Reporting. A covered financial institution or principal money transmitter is required to take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction involving Halawi Exchange Co.:

- (i) The identity and address of the participants in the transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;
- (ii) The legal capacity in which Halawi Exchange Co. is acting with respect to the transaction or attempted transaction and, to the extent Halawi Exchange Co. is not acting on its own behalf, the customer or other person on whose behalf Halawi Exchange Co. or is acting; and
- (iii) A description of the transaction or attempted transaction and its purpose.

(2) When to file. A report required by this paragraph (b) shall be filed by the reporting financial institution within fifteen business days following the day when the covered financial institution or principal money transmitter engaged in the transaction or became aware of an attempted transaction.

(3) How to file. A report required by this paragraph (b) shall be filed electronically in a comma separate value format in a manner determined by the Director of FinCEN. However, if a covered financial institution or principal money transmitter determines the reportable transaction to be suspicious, filing FinCEN Form 111 within 15 days with all required information included in an attached comma separated value file and containing both in the narrative and field 35z the text “Halawi Exchange SM1 Report” will be deemed to comply with this requirement.

- (c) Prohibition on accounts and due diligence requirements for covered financial institutions. (1) Prohibition on use of correspondent accounts.

A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, a foreign banking institution if such correspondent account is being used to process a transaction that involves Halawi Exchange Co.

(2) Special due diligence of correspondent accounts to prohibit use. (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their use to process transactions involving Halawi Exchange Co. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to Halawi Exchange Co., that such correspondents may not provide Halawi Exchange Co. with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any use of its correspondent accounts by Halawi Exchange Co., 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 correspondent accounts to process transactions involving Halawi Exchange Co.

(iii) A covered financial institution that obtains knowledge that a correspondent account may be being used to process transactions involving Halawi Exchange Co., shall take all appropriate steps to further investigate and prevent such access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) of this section and, where necessary, terminating the correspondent account.

(3) Recordkeeping and reporting. (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

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

Dated: April 20, 2013

Jennifer Shasky Calvery
Director
Financial Crimes Enforcement Network

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