which they maintain a correspondent account concerning the foreign bank’s status as “shell” bank, whether the foreign bank provides banking services to foreign shell banks, certain owners of the foreign bank, and the identity of a person in the United States to accept service of legal process.

DATES: This final rule is effective December 24, 2002.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Counsel (FinCEN), (703) 905–3590; Office of the Assistant General Counsel for Banking & Finance (Treasury), (202) 622–0480, or Office of the Assistant General Counsel for Enforcement (Treasury), (202) 622–1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On September 26, 2002, FinCEN published a final rule (67 FR 60562) implementing sections 313(a) and 319(b) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act) Act of 2001 (the Act). Section 313(a) of the Act added subsection (j) to 31 U.S.C. 5318, which prohibits a “covered financial institution” from providing “correspondent accounts” in the United States to foreign banks that do not have a physical presence in any country (foreign shell banks). Section 313(a) also requires those financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. Section 319(b) of the Act added subsection (k) to 31 U.S.C. 5318, which requires any covered financial institution that provides a correspondent account to a foreign bank to maintain records of the foreign bank’s owners and to maintain the name and address of an agent in the United States designated to accept service of legal process for the foreign bank for records regarding the correspondent account.

The September 26, 2002, final rule provided that a covered financial institution could satisfy the requirements of section 313(a) and 319(b) by obtaining from a foreign bank a certification that contained the necessary information, or by otherwise obtaining documentation of the required information. With respect to correspondent accounts that existed on October 28, 2002, the final rule required a covered financial institution to close a correspondent account, within a commercially reasonable time, if the covered financial institution did not receive the certification from the foreign bank, or otherwise obtain documentation of the required information, on or before December 26, 2002.

A significant number of covered financial institutions, principally in the securities industry, have noted that the December 26, 2002, deadline to obtain the required information is proving to be inadequate. Many securities firms indicated that providing an effective explanation of their duties under the Act to a wide variety of foreign banks, which may speak different languages and operate in different ways than their U.S. counterparts, has, in some cases, lengthened the process. Moreover, the broad definition of a correspondent account found in the final rule has increased the number of accounts subject to these requirements and, consequently, has increased the burden on U.S. banks and broker-dealers to secure the required information. Finally, because the Act has generally increased the overall level of regulatory requirements for securities firms and depository institutions, they have been managing an increased overall workload as a result of additional regulations, within a finite set of resources. For these reasons, the process of gathering the necessary information to comply with sections 313(a) and 319(b) of the Act is taking longer than the time provided in the September 28 final rule.

II. The Current Rulemaking

This rule extends the time by which a covered financial institution must obtain the information required to satisfy the requirements of sections 313(a) and 319(b) from December 26, 2002, to March 31, 2003. Treasury and FinCEN do not anticipate granting a further extension beyond March 31 and expect that covered financial institutions will comply with the September 26, 2002, final rule with respect to correspondent accounts established for foreign banks that have not provided the required information by that date.

III. Procedural Requirements

Because this rule extends the time by which a covered financial institution must obtain the information necessary to satisfy the requirements of section 313(a) and 319(b) of the Act before taking actions to terminate a correspondent account, it has been determined that notice and public procedure are unnecessary pursuant to 5 U.S.C. 553(b)(B) and that a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(1).

It has been determined that this rule is not a significant regulatory action for
purposes of Executive Order 12866.
Because no notice of proposed
rulemaking is required, the provisions
of the Regulatory Flexibility Act (5

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter
money laundering, Counter-terrorism,
Currency, Foreign banking, Reporting
and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the
preamble, 31 CFR part 103 is amended
as follows:

PART 103—FINANCIAL
RECORDKEEPING AND REPORTING
OF CURRENCY AND FOREIGN
TRANSACTIONS

1. The authority citation for part 103
is revised to read as follows:

31 U.S.C. 5311–5314 and 5316–5332; title III,
secs. 312, 313, 314, 319, 352, Pub. L. 107–

2. Section 103.177 is amended by
revising paragraph (d)(1) to read as
follows:

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

(d) Closure of correspondent
accounts.

(1) Accounts existing on
October 28, 2002. In the case of any
correspondent account that was in
existence on October 28, 2002, if the
covered financial institution has not
obtained a certification (or
recertification) from the foreign bank, or
has not otherwise obtained
documentation of the information
required by such certification (or
recertification), on or before March 31,
2003, and at least once every three years
thereafter, the covered financial
institution shall close all correspondent
accounts with such foreign bank within
a commercially reasonable time, and
shall not permit the foreign bank to
establish any new positions or execute
any transaction through any such
account, other than transactions
necessary to close the account.

Dated: December 18, 2002.

James F. Sloan,
Director, Financial Crimes Enforcement
Network.

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