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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB65

Proposal of Special Measure regarding Al-Huda Bank, as a Foreign Financial Institution of Primary Money Laundering Concern

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FinCEN is issuing a notice of proposed rulemaking (NPRM), pursuant to section 311 of the USA PATRIOT Act, that proposes prohibiting the opening or maintaining of a correspondent account in the United States for, or on behalf of, Al-Huda Bank, a foreign financial institution based in Iraq found to be of primary money laundering concern.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before [30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments must be submitted by one of the following methods:

- *Federal E-rulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments. Refer to Docket Number FINCEN–2024–0001 in the submission.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN–2024–0001 in the submission.

Please submit comments by one method only and note that comments submitted in response to this NPRM will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

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.”¹ The authority of the Secretary to administer the Bank Secrecy Act (BSA) and its implementing regulations has been delegated to FinCEN.²

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.”³ Through special measure five, the Secretary may prohibit, or impose conditions on, the opening or maintaining in the United States of correspondent or payable-through accounts for or on

¹ 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. 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). For definition of “covered financial institutions,” see 31 C.F.R. 1010.100(t) and section V.A.3 of this notice.

behalf of a foreign banking institution, if such correspondent account or payable-through account involves the foreign financial institution found to be of primary money laundering concern.⁴

Before making a finding that reasonable grounds exist for concluding that a foreign financial institution is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.⁵ The Secretary is also required to consider such information as the Secretary determines to be relevant, including the following potentially relevant factors:

- The extent to which such a financial institution is used to facilitate or promote money laundering in or through a jurisdiction outside the United States, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles;
- The extent to which such a foreign financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure that the purposes of section 311 are fulfilled and to guard against international money laundering and other financial crimes.⁶

Upon finding that a foreign financial institution is of primary money laundering concern, the Secretary may require covered financial institutions to take one or more special measures. In selecting one or more special measures, the Secretary “shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Secretary of State, the Securities and Exchange Commission, the

⁴ 31 U.S.C. 5318A(b)(5).

⁵ 31 U.S.C. 5318A(c)(1).

⁶ 31 U.S.C. 5318A(c)(2)(B).

Commodity Futures Trading Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find appropriate.”⁷ When imposing special measure five, the Secretary must do so “in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System.”⁸

In addition, the Secretary is required to consider the following factors when selecting special measures:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, class of transactions, or type of account; and
- The effect of the action on United States national security and foreign policy.⁹

II. Summary of NPRM

For years, Al-Huda Bank has exploited its access to U.S. dollars (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).¹⁰ Since its establishment,

⁷ 31 U.S.C. 5318A(a)(4)(A).

⁸ 31 U.S.C. 5318A(b)(5).

⁹ 31 U.S.C. 5318A(a)(4)(B).

¹⁰ The 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.

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 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 account of the Central Bank of Iraq (CBI) at the Federal Reserve Bank of New York (FRBNY), a process known as the wire auction, or more generally the "CBI dollar auction."¹¹ 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.

This NPRM (1) sets forth FinCEN's finding that Al-Huda Bank is a foreign financial institution of primary money laundering concern; and (2) proposes that, under special measure five, covered financial institutions be prohibited from opening or maintaining a correspondent account for, or on behalf of, Al-Huda Bank.

¹¹ 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 IQD. The latter is known as the "cash auction" and is a separate process from the wire auction. Al-Huda Bank's illicit finance activities described herein are related to the wire auction. *See* Section III.A.2.

III. Finding that Al-Huda Bank is a Foreign Financial Institution of Primary Money Laundering Concern

Pursuant to 31 U.S.C. 5318A(a)(1), FinCEN finds that reasonable grounds exist for concluding that Al-Huda Bank is a foreign financial institution of primary money laundering concern. Below is a discussion of the relevant statutory factors FinCEN considered in making this finding related to this Iraq-based financial institution.

A. The extent to which Al-Huda Bank is used to facilitate or promote money laundering outside the United States, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of WMD or missiles

FinCEN assesses that Al-Huda Bank is used to facilitate or promote money laundering outside the United States, particularly money laundering activity to support designated FTOs. FinCEN based this assessment on information available through both public and non-public reporting, and after thorough consideration of each of the following factors: (1) that Al-Huda Bank is a foreign financial institution; and (2) that Al-Huda Bank exploits its access to USD through the dollar auction; and (3) that through the exploitation of the dollar auction, Al-Huda Bank provides support to designated FTOs, in particular the IRGC and IRGC-QF, as well as Iran-aligned Iraqi militias KH and AAH.

1. Al-Huda Bank is a foreign financial institution

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

Al-Huda Bank has no direct U.S. correspondent banking relationships but interacts with the U.S. financial system indirectly through 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. Al-Huda Bank also accesses USD through the CBI dollar auction.

2. *Al-Huda Bank exploits its access to USD through the CBI dollar auction*

Individual Iraqi businesses that import goods into Iraq rely on wire transfers of USD from CBI's account at the FRBNY. The CBI wire 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 Iraqi dinar (IQD) to pay for imports. USD are transferred from 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, as discussed in section III.A.3, FinCEN assesses that Al-Huda Bank has deliberately embarked on a strategy that relies on illegitimate exploitation of the 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 dollar auction is 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 are 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, discussed in section III.A.3.

Since at least 2012, Al-Huda Bank has used fraudulent documentation to purchase foreign currency — including USD — from the CBI at dollar auctions. Based on media reporting, during 2012 to 2014, Al-Huda Bank filed false documentation to justify international transfers of over \$6 billion to banks and companies.¹² On at least one occasion, government authorities detected Al-Huda Bank's filing of fraudulent documentation, which resulted in freezing of a 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 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 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 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.

¹² Al-Arabiya, "*Billions of Dollars*" Smuggled Out of Iraq During Maliki's Rule, November 9, 2015, available at <https://english.alarabiya.net/News/middle-east/2015/11/09/Iraq-smuggled-billions-of-dollars-during-Maliki-s-rule>.

3. *Through the exploitation of the CBI dollar auction, Al-Huda Bank provides 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 beneficiary, 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 that did not exist into Iraq 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 dollar auction resulted in approximately \$70 billion USD in profit from 2019 through 2020.

B. *The extent to which Al-Huda Bank is used for legitimate business purposes*

Al-Huda Bank is the 30th largest bank in Iraq and approximately the 11,000th largest in the world, with 416 billion IQD (\$285 million USD) in total assets in 2020, which is approximately 0.2 percent of total Iraqi banking system assets.¹³ Records collected by FinCEN show Al-Huda Bank engaged in approximately \$4.7 billion USD in USD-cleared international transactions through U.S. correspondent bank accounts between July 2017 and December 2022, the vast majority being CBI dollar auction-related transactions.

In 2020, Al-Huda Bank's self-reported total revenues were 8,937,678,000 IQD (\$6,115,456 USD) with a gross profit of 2,753,653,000 IQD (\$1,884,140 USD). As of December 31, 2020, Al-Huda Bank held 55,057,239,000 IQD (\$37,671,991 USD) in customer account deposits, approximately 1,110,270,000 IQD (\$760,000 USD) of which were current accounts belonging to private individuals.¹⁴

The assets noted above, based on Al-Huda Bank financial statements, are indicative of at least a portion of legitimate business transiting the financial institution. However, FinCEN assesses that Al-Huda Bank's legitimate business activities do not outweigh the money laundering risks posed by the bank, as the variety and type of the illicit finance risks presented by Al-Huda Bank are such that even a higher volume of legitimate activity would not allay FinCEN's significant money laundering concern.¹⁵ As

¹³ Al-Huda Bank, *Consolidated Financial Statements*, December 31, 2020, available at www.alhudabank.iq.

¹⁴ *Id.*

¹⁵ Relatedly, there is limited publicly available information about Al-Huda Bank's existing AML policies and procedures to enable a current, fulsome assessment. Al-Huda Bank's 2020 End-of-Year report stated that its internal compliance monitor reviewed Al-Huda Bank's procedures when opening checking accounts for customers and found that Al-Huda Bank met the instructions and directives of Iraqi AML, terrorist

demonstrated above, Al-Huda Bank facilitates the financing of a wide variety of terrorists and terrorist groups, many of whom have attacked citizens and partners of the United States. Further, there is significant information indicating that the owner and chairman of Al-Huda Bank is a witting and active participant in the illicit finance involving and perpetrated by Al-Huda Bank.

C. The extent to which action proposed by FinCEN would guard against international money laundering and other financial crimes

As noted by the U.S. Department of State in 2023, corruption is a significant impediment to conducting business in Iraq, and Iran-aligned militias threaten U.S. citizens and companies throughout Iraq.¹⁶ Al-Huda Bank has engaged in transactions that facilitate the financing of FTOs, including the IRGC, IRGC-QF, and Iran-aligned militias KH and AAH, with the support of the Iranian government. A finding that Al-Huda Bank is of primary money laundering concern would make clear to foreign correspondents Al-Huda Bank's illicit finance risk, and this awareness may cause those financial institutions or their regulators to take their own action to address the risk. Moreover, such a finding and subsequent imposition of one or more special measures would guard against money laundering and other financial crimes by severing Al-Huda Bank's access to the U.S. financial system.

IV. Proposed Special Measure

Having found that Al-Huda Bank is a financial institution of primary money laundering concern, particularly with regard to its misuse of the dollar auction to finance designated terrorist organizations, FinCEN proposes imposing a prohibition on covered financial institutions under special measure five. Special measure five authorizes the Secretary to impose conditions upon the opening or maintaining in the United States of a

financing, and risk management law, and it confirmed that current account holders were not included in banned lists, domestically or internationally. *Id.* at 11-12. Given the totality of the circumstances, however, this self-assessment lacks credibility and does not alter FinCEN's overall assessment of concern.

¹⁶ U.S. Department of State, *2021 Investment Climate Statements: Iraq*, 2021, available at <https://www.state.gov/reports/2021-investment-climate-statements/iraq/>.

correspondent account or payable-through account, if such account “involves” a financial institution of primary money laundering concern. Although Al-Huda Bank does not have correspondent accounts with U.S. financial institutions, it has accounts with foreign financial institutions that maintain U.S. correspondent accounts. Those U.S. correspondent accounts involve Al-Huda Bank when transactions involving the bank are processed through those accounts. Thus, FinCEN has determined that special measure five will most effectively mitigate the risks posed by Al-Huda Bank.

FinCEN considered the other special measures available under section 311. As discussed further in Section IV.E. below, it determined that none of them would appropriately address the risks posed by Al-Huda Bank.

In proposing this special measure, FinCEN consulted with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Secretary of State, the staff of the Securities and Exchange Commission, the Commodity Futures Trading Commission, staff of the National Credit Union Administration, the Federal Deposit Insurance Corporation, and the Attorney General. These consultations involved obtaining interagency views on the imposition of special measure five and the effects that such a prohibition would have on the U.S. domestic and international financial systems.

Below is a discussion of the relevant statutory factors FinCEN considered in proposing the prohibition under special measure five.

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

FinCEN is not aware of any other nation or multilateral group that has imposed, or is currently imposing, similar action against Al-Huda Bank.

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 prohibition proposed in this NPRM would 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 above, 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. Also 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 would impose minimal additional compliance costs for covered financial institutions, which would most commonly involve merely involve adding Al-Huda Bank to existing sanctions and money laundering screening tools. 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 proposed special measure would 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 would not affect overall cross-border transaction volumes.

Further, a prohibition under special measure five would 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 (UAE) dirham (AED) accounts as well.¹⁷ Provided that its legitimate activities do not involve a correspondent account maintained in the United States, the bank could continue to engage in them.

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

As described above, 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 international sanctions. Imposing special measure five will: (1) close Al-Huda Bank's access to USD; (2) remove Al-Huda Bank as an illicit finance facilitator within an international network of front companies and sanctions evasion infrastructure supporting these FTOs; and (3) raise awareness of the way illicit actors exploit weaknesses in vulnerable jurisdictions to circumvent sanctions and finance terrorism.

¹⁷ BankCheck, *Al-Huda Bank – Iraq*, accessed December 13, 2023, available at <https://bankcheck.app>.

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 or payable-through 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 is 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 are 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 financing 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 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. Therefore, 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. For these reasons, and after thorough consideration of alternate measures, FinCEN assesses that no measures short of full prohibition on correspondent or payable-through banking access would be sufficient to address the money laundering risks posed by Al-Huda Bank.

V. Section-by-Section Analysis

The goal of this proposed rule is to combat and deter money laundering in facilitation of terrorist financing associated with Al-Huda Bank and prevent Al-Huda Bank from using the U.S. financial system to enable its illicit finance behavior.

A. 1010.663(a)—Definitions

1. *Definition of 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. FinCEN is not currently aware of any subsidiary banks or branches outside of Iraq.

2. *Definition of Correspondent Account*

The term “correspondent account” has 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 proposed 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.¹⁸ Under this definition, “payable-through accounts” are a type of correspondent account.

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 proposed 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.¹⁹

3. Definition of Covered Financial Institution

The term “covered financial institution” is defined 31 CFR 1010.100(t), which in general includes the following:

- A bank (except bank credit card systems);
- A broker or dealer in securities;
- A money services business, as defined in 31 CFR 1010.100(ff);
- A telegraph company;
- A casino;
- A card club;
- A person subject to supervision by any state or Federal bank supervisory authority;
- A futures commission merchant or an introducing broker-commodities; and
- A mutual fund.

4. Definition of 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

¹⁸ See 31 CFR 1010.605(c)(2)(i).

¹⁹ See 31 CFR 1010.605(c)(2)(ii)-(iv).

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. This proposed rule interprets Al-Huda Bank to be a foreign banking institution.

5. Definition of 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. 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 proposed rule would prohibit 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 proposed rule would require 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 would be 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 section 1010.663(b)(1) and (2), section 1010.663(b)(3) of the proposed rule would require 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 would be 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 would be expected to apply an appropriate screening mechanism to identify a funds transfer order that on its face listed Al-Huda Bank as the financial institution of the originator or beneficiary, or otherwise referenced Al-Huda Bank in a manner detectable under the financial institution's normal screening mechanisms. An appropriate screening mechanism could be the mechanisms 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 the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC).

4. Recordkeeping and Reporting

Section 1010.663(b)(4) of the proposed rule would clarify that the proposed 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 in section 1010.663(b)(3).

VI. Request for Comments

FinCEN is requesting comments for 30 days after the publication of this NPRM. Given Al-Huda Bank's consistent and longstanding ties to terrorist financing and its track record of obfuscating transactions, FinCEN assesses that a 30-day comment period for this NPRM strikes an appropriate balance between ensuring sufficient time for notice to the public and opportunity for comment on the proposed rule, while minimizing undue risk posed to the U.S. financial system in processing illicit transfers that are likely to finance terrorist groups. FinCEN invites comments on all aspects of the proposed rule, including the following specific matters:

1. FinCEN's proposal of a prohibition under the fifth special measure under 31 U.S.C. 5318A(b), as opposed to imposing special measures one through four or imposing conditions under the fifth special measure;
2. The form and scope of the notice to certain correspondent account holders that would be required under the rule; and
3. The appropriate scope of the due diligence requirements in this proposed rule.

VII. Regulatory Impact Analysis

FinCEN has analyzed this proposed rule under Executive Orders 12866, 13563, and 14094, the Regulatory Flexibility Act,²⁰ the Unfunded Mandates Reform Act,²¹ and the Paperwork Reduction Act.²²

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 rule as proposed and assess such expectations in more granular detail. This discussion includes detailed explanation of certain ways FinCEN's conclusions may be sensitive to methodological choices and underlying assumptions made in drawing inferences from available data. Throughout, these have been outlined so that the public may review and provide comment.²³

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 proposed 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.

²⁰ 5 U.S.C. 603.

²¹ 12 U.S.C. 1532, Public Law 104-4 (Mar. 22, 1995).

²² 44 U.S.C. 3507(a)(1)(D).

²³ See Section VII.

B. *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” (IRFA) that will “describe the impact of the proposed rule on small entities.”²⁴ However, 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. This proposed rule would apply to all covered financial institutions and would affect a substantial number of small entities. However, for the reasons described below, FinCEN assesses that these changes would be unlikely to have a significant economic impact on such entities.

Covered financial institutions would also be required to take reasonable measures to detect use of their correspondent accounts to process transactions involving Al-Huda Bank. All U.S. persons, 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 proposed rule. Thus, the special due diligence that would be required under the proposed rule — *i.e.*, preventing the processing of transactions involving Al-Huda Bank and the transmittal of notification to certain correspondent account holders — would not impose a significant additional economic burden upon small U.S. financial institutions. For these reasons, FinCEN certifies that the proposals contained in this rulemaking would not have a significant impact on a substantial number of small businesses.

FinCEN invites comments from members of the public who believe there would

²⁴ 5 U.S.C. 603(a).

be a significant economic impact on small entities from the imposition of a prohibition under the fifth special measure regarding Al-Huda Bank.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995²⁵ (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.²⁶ 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.²⁷

FinCEN has determined that this proposed 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 or more, adjusted for inflation (\$184.7 million).²⁸ 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 proposed rule will be submitted by FinCEN to the OMB for review in accordance with the Paperwork Reduction Act of 1995 (PRA).²⁹ Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information

²⁵ 12 U.S.C. 1532, Public Law 104-4 (Mar. 22, 1995).

²⁶ *Id.*

²⁷ *Id.*

²⁸ 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 December 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.

²⁹ 44 U.S.C. 3507(a)(1)(D).

unless it displays a valid control number assigned by the OMB. Written comments and recommendations for the proposed prohibition can be submitted by visiting www.reginfo.gov/public/do/PRAMain. Find this particular document by selecting “Currently under Review—Open for Public Comments” or by using the search function. Comments are welcome and must be received by [30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. In accordance with requirements of the PRA and its implementing regulations, 5 CFR part 1320, the following information concerning the collection of information as required by 31 CFR 1010.663 is presented to assist those persons wishing to comment on the information collections.

The provisions in this proposed rule pertaining to the collection of information can be found in section 1010.663(b)(4). The information required to be maintained by that section will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the notification requirements in 31 CFR 1010.663(b)(3)(i)(A), which are intended to aid cooperation from correspondent account holders in denying the Al Huda Bank access to the U.S. financial system. The collection of information would be mandatory.

Frequency: As required.

Description of Affected Financial Institutions: Only those covered financial institutions defined in section 1010.663(a)(3) engaged in correspondent banking with, or processing transactions potentially involving, Al-Huda Bank as defined in section 1010.663(b)(1) and (2) would be affected.

Estimated Number of Affected Financial Institutions: Approximately 15,000.³⁰

³⁰ 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	
FINANCIAL INSTITUTION TYPE	NUMBER OF ENTITIES
Banks ³¹	9,250 ³²
Broker-Dealers in securities ³³	3,477 ³⁴
Mutual Funds ³⁵	1,495 ³⁶
Futures Commission Merchants ³⁷	62 ³⁸
Introducing Brokers in Commodities ³⁹	937 ⁴⁰

Estimated Average Annual Burden in Hours per Affected Financial Institution:

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

Estimated Total Annual Burden: Approximately 15,000 hours.

FinCEN specifically invites comments on: (a) whether the proposed collection of information found in section 1010.663(b)(4) is necessary for the proper performance of the mission of FinCEN, including whether the information would 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.

³¹ See 31 CFR 1010.100(t)(1); *see also* 31 CFR 1010.100(d).

³² Bank data is as of December 14, 2023, from Federal Deposit Insurance Corporation BankFind (<https://banks.data.fdic.gov/bankfind-suite/bankfind>). Credit union data is as of September 30, 2023 from the National Credit Union Administration Quarterly Data Summary Reports (<https://ncua.gov/analysis/credit-union-corporate-call-report-data/quarterly-data-summary-reports>).

³³ 31 CFR 1010.100(t)(2).

³⁴ According to the Securities and Exchange Commission (SEC), there are 3,477 broker-dealers in securities as of December 2023 from website “Company Information About Active Broker-Dealers” (<https://www.sec.gov/help/foiadocsbdfoia>).

³⁵ 31 CFR 1010.100(t)(10).

³⁶ 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. (<https://www.sec.gov/dera/data/form-ncen-data-sets>).

³⁷ 31 CFR 1010.100(t)(8).

³⁸ According to the Commodity Futures Trading Commission (CFTC), there are 62 futures commission merchants as of October 31, 2023. See *Financial Data for FCMs*, available at <https://www.cftc.gov/MarketReports/financialfcmdata/index.htm>.

³⁹ 31 CFR 1010.100(t)(9).

⁴⁰ According to National Futures Association, there are 937 introducing brokers in commodities as of November 30, 2023.

VIII. Regulatory Text

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

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

Authority and Issuance

For the reasons set forth in the preamble, FinCEN proposes amending 31 C.F.R. part 1010 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)(2).

(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 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.

Dated: January 29, 2024.

Andrea M. Gacki
Director
Financial Crimes Enforcement Network

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