

BILLING CODE: 4810-02

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB30

Financial Crimes Enforcement Network; Withdrawal of Finding and Notice of Proposed Rulemaking regarding Banca Privada d'Andorra

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

ACTION: Withdrawal of finding and notice of proposed rulemaking.

SUMMARY: This document withdraws FinCEN’s finding that Banca Privada d’Andorra (“BPA”) is a financial institution of primary money laundering concern and the related notice of proposed rulemaking seeking to impose the fifth special measure regarding BPA, pursuant to Section 311 of the USA PATRIOT Act (“Section 311”), codified at 31 U.S.C. 5318A. Because of material subsequent developments that have mitigated the money laundering risks associated with BPA, FinCEN has determined that BPA is no longer a primary money laundering concern that warrants the implementation of a special measure under Section 311.

DATES: The finding and notice of proposed rulemaking are withdrawn as of [INSERT DATE PUBLISHED IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center at (800) 767-2825.

SUPPLEMENTARY INFORMATION:

I. Background

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 (“the USA PATRIOT Act”). 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 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”) grants the Director of FinCEN the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, foreign financial institution, class of transactions, 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. The special measures enumerated under Section 311 are prophylactic safeguards that defend the U.S. financial system from money laundering and terrorist financing. FinCEN may impose one or more of these special measures in order to protect the U.S. financial system from these threats. To that end, special measures one through four, codified at 31 U.S.C. 5318A(b)(1)–(b)(4), impose additional recordkeeping, information collection, and information reporting requirements on covered U.S. financial institutions. The fifth special measure, codified at 31 U.S.C. 5318A(b)(5), allows the

Director to prohibit or impose conditions on the opening or maintaining of correspondent or payable-through accounts by covered U.S. financial institutions.

II. The Finding and Notice of Proposed Rulemaking

On March 13, 2015, FinCEN provided notice in the Federal Register that it had found Banca Privada d'Andorra ("BPA"), a bank headquartered in Andorra, to be of primary money laundering concern.¹ Based on the finding, FinCEN also published on March 13, 2015 a notice of proposed rulemaking ("NPRM") proposing the imposition of the fifth special measure with respect to BPA, and invited public comment.² Specifically, FinCEN proposed to prohibit covered financial institutions from establishing, maintaining, administering, or managing in the United States any correspondent account for, or on behalf of, BPA. FinCEN also proposed to require a covered financial institution to apply special due diligence to all of its foreign correspondent accounts that is reasonably designed to guard against processing transactions involving BPA. Among other things, covered financial institutions would have been required to notify those foreign correspondent account holders that the covered financial institutions know or have reason to know provide services to BPA that such correspondents may not provide BPA with access to the correspondent account maintained at the covered financial institution.

III. Subsequent Developments

Significant developments regarding BPA have occurred since FinCEN announced its finding and related NPRM regarding BPA, as described below. As a result, BPA is no

¹ 80 FR 13,464 (Mar. 13, 2015).

² 80 FR 13,304 (Mar. 13, 2015) (RIN 1506-AB30). FinCEN publicly announced the finding and NPRM on March 10, 2015.

longer operating as a financial institution that poses a money laundering threat to the U.S. financial system.

On March 11, 2015, the Institut Nacional Andorrà de Finances (“INAF”), the Andorran regulator and supervisor of financial institutions, appointed two INAF representatives to oversee BPA’s operations. On March 12, 2015, the INAF suspended the authority of BPA’s board of directors, the chief executive officer and two other senior managers and appointed special administrators to assume full control of BPA. On March 13, 2015, Andorran law enforcement arrested BPA’s chief executive officer in Andorra on suspicion of money laundering.

The next month, in April 2015, the Andorran parliament enacted a law regarding the restructuring and resolution of banks, which created a new government agency, Agència Estatal de Resolució d’Entitats Bancàries (“AREB”), for that purpose. On April 27, 2015, AREB took over control of BPA.³ In June 2015, AREB approved a resolution plan for BPA, under which the bank’s “good” and “bad” assets, liabilities, and clients would be separated. Under the resolution plan, the “good” assets, liabilities, and clients are to be transferred to a bridge bank, and the bridge bank sold.⁴ In July 2015, AREB announced the creation of the bridge bank, named Vall Banc, to receive the transfer of BPA’s legitimate assets, liabilities, and clients. Vall Banc is wholly-owned by AREB, is registered with the INAF, and is supervised by Andorran banking supervisory authorities. Vall Banc will not employ the high-level BPA managers described in FinCEN’s Notice

³ Press Release, AREB, *AREB Assumes the Tutelage of BPA*, April 27, 2015, (http://areb.ad/images/areb/comunicats/27042015_AREB_ENG.pdf)

⁴ Press Release, AREB, *AREB Will Create a ‘Good Bank’ with Legitimate Assets and Liabilities Segregated from BPA*, June 15, 2015, (http://areb.ad/images/areb/comunicats/15062015_AREB_ENG.pdf)

of Finding. In addition, any other person who has been or may be identified as related to the issues described in the Notice of Finding will not be employed at Vall Banc.

After the good assets, liabilities, and clients are transferred from BPA to Vall Banc, BPA will remain under the control of AREB. FinCEN understands that BPA will not be reactivated as an operational financial institution at any point except to facilitate the finalization of the resolution process. AREB, in coordination with other authorities in Andorra, ultimately intends to liquidate BPA following the resolution of judicial proceedings in Andorra and other jurisdictions.

IV. Withdrawal of the Finding and NPRM

Because of these subsequent developments, BPA no longer operates in a manner that poses a money laundering threat to the U.S. financial system. FinCEN has determined that the steps taken by the authorities in Andorra sufficiently protect the U.S. financial system from the money laundering risks previously associated with BPA. FinCEN therefore has determined that BPA no longer is a primary money laundering concern and will not impose any special measures under Section 311 with respect to BPA.

For these reasons, FinCEN hereby withdraws its finding that BPA is of primary money laundering concern and the related NPRM published on March 13, 2015, and announced on March 10, 2015, seeking to impose the fifth special measure regarding BPA.

Dated: 2/18/16

/s/
Jamal El-Hindi
Deputy Director,
Financial Crimes Enforcement Network