

**MEMO# 19198**

September 27, 2005

# **TREASURY DESIGNATES BANCO DELTA ASIA SARL AS A FINANCIAL INSTITUTION OF PRIMARY MONEY LAUNDERING CONCERN AND PROPOSES SANCTIONS AGAINST IT**

©2005 Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice. [19198] September 27, 2005 TO: AML COMPLIANCE WORKING GROUP No. 8-05 RE: TREASURY DESIGNATES BANCO DELTA ASIA SARL AS A FINANCIAL INSTITUTION OF PRIMARY MONEY LAUNDERING CONCERN AND PROPOSES SANCTIONS AGAINST IT The Treasury Department has designated Banco Delta Asia SARL as a “financial institution of primary money laundering concern” and proposed a rule that would impose one of five permitted “special measures” against the bank and its subsidiaries and branches.<sup>1</sup> The imposition of special measures against financial institutions designated as being of primary money laundering concern is authorized by 31 U.S.C. 5318A, a section of the Bank Secrecy Act that was added by Section 311 of the USA PATRIOT Act. With respect to Banco Delta Asia SARL, Treasury intends to impose the special measure described in Section 5318A(b)(5) of the BSA, which allows Treasury to prohibit a domestic financial institution or agency from opening or maintaining in the United States a correspondent account or a payable-through account for or on behalf of a foreign financial institution. This special measure can be imposed only by promulgation of a rule. The proposed rule are identical in all substantive respects with Treasury’s proposed sanctions against other banks designated as being of primary money laundering concern.<sup>2</sup> More specifically, the proposed rule would require covered financial institutions to: 1) terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, the targeted foreign bank; and 2) apply “special due diligence” to correspondent accounts that is reasonably designed to guard against their indirect use by the targeted foreign bank. The special due diligence, at a minimum, must include notifying all correspondent account holders that they may not provide the targeted foreign bank with access to the correspondent account maintained at the covered financial institution and taking reasonable steps to identify any indirect use of its correspondent accounts by the targeted foreign bank by reviewing transactional records relating to those accounts. <sup>1</sup> See 70 Fed. Reg. 55214 (the designation of Banco Delta Asia SARL as a primary money laundering concern) and 70 Fed. Reg. 55217 (the proposed rule), both dated September 20, 2005. <sup>2</sup> Special measures have been proposed in August, 2004 against First Merchant Bank and Infobank (see Memorandum Nos. 17920 and 18037) and in April, 2005

against Multibanka and VEF Banka (see Memorandum No. 18810). None of the special measures have been adopted yet. 2 As you know, the term “correspondent account” has not previously been used in the mutual fund context. For purposes of the proposed sanctions, FinCEN proposes expanding the definition of “correspondent account” used in the final rule implementing sections 313 and 319(b) of the USA Patriot Act (which applies only to depository institutions and broker-dealers) to expressly cover accounts maintained by mutual funds, futures commission merchants, and introducing brokers. As a result, for mutual funds, a correspondent account would include any account that permits the foreign bank to engage in (1) trading in securities and commodity futures or options, (2) funds transfers, or (3) other types of financial transactions. Comments on the proposed rule imposing the special measure must be submitted to Treasury on or before October 20, 2005. If you have concerns over the impact of the proposed sanctions against Banco Delta Asia SARL on U.S. mutual funds, contact me at 202-371-5430 or [rcg@ici.org](mailto:rcg@ici.org) as soon as possible. Robert C. Grohowski Senior Counsel - International Affairs

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