

MEMO# 17920

August 25, 2004

TREASURY DESIGNATES TWO ENTITIES AS FINANCIAL INSTITUTIONS OF PRIMARY MONEY LAUNDERING CONCERN AND PROPOSES SANCTIONS AGAINST THEM

[17920] August 25, 2004 TO: MONEY LAUNDERING RULES WORKING GROUP No. 28-04 RE: TREASURY DESIGNATES TWO ENTITIES AS FINANCIAL INSTITUTIONS OF PRIMARY MONEY LAUNDERING CONCERN AND PROPOSES SANCTIONS AGAINST THEM The Treasury Department has designated two foreign banks – the First Merchant Bank of the “Turkish Republic of Northern Cyprus” and Infobank of Belarus – as financial institutions of primary money laundering concern, and has proposed rules that would impose one of five permitted “special measures” against each of those banks and their subsidiaries and branches.¹ 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 both First Merchant Bank and Infobank, 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.² More specifically, the special measures in both proposed rules 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 banks; and 2) apply “special due diligence” to correspondent accounts that is reasonably designed to guard against their indirect use by the targeted foreign banks. The special due diligence, at a minimum, must include notifying all correspondent account holders that they may not provide the targeted foreign banks with access to the correspondent account maintained at the covered financial institution and taking reasonable steps to identify any indirect use of its correspondent 1 The proposed rules, published in the August 24, 2004 Federal Register, can be accessed through the following links: First Merchant Bank and Infobank. 2 Treasury previously has imposed this special measure against financial institutions in the country of Nauru and proposed to impose it against the Commercial Bank of Syria. See Memorandum to Money Laundering Rules Working Group No. 25-03 [15901], dated April 16, 2003 (Nauru) and Memorandum to Money Laundering Rules Working Group No. 17-04 [17562], dated May 21, 2004 (CBS). 2 accounts by the targeted foreign banks by reviewing transactional records relating to those accounts. 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 September 23, 2004. If you have concerns over the impact of the proposed sanctions against First Merchant Bank or Infobank on U.S. mutual funds, contact me at 202-371-5430 or rcg@ici.org as soon as possible. Robert C. Grohowski Associate Counsel

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