

MEMO# 20185

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FinCEN Adopts Rule Imposing "Special Measure" Against VEF Banka and Withdraws Designation of Primary Money Laundering Concern and Proposed Rule Against Multibanka

©2006 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. [20185] July 17, 2006 TO: AML COMPLIANCE WORKING GROUP No. 18-06 RE: FINCEN ADOPTS RULE IMPOSING "SPECIAL MEASURE" AGAINST VEF BANKA AND WITHDRAWS DESIGNATION OF PRIMARY MONEY LAUNDERING CONCERN AND PROPOSED RULE AGAINST MULTIBANKA Pursuant to Section 311 of the USA PATRIOT Act, the Financial Crimes Enforcement Network (FinCEN) took action last week with respect to VEF Banka and Multibanka, two Latvian banks. Both VEF and Multibanka had been designated as financial institutions of primary money laundering concern last year.¹ First, FinCEN adopted a final rule imposing a special measure against VEF Banka as an institution of primary money laundering concern.² As a result of the new rule, US financial institutions including mutual funds will be prohibited from opening or maintaining correspondent accounts for or on behalf of VEF Banka. The new rule takes effect on August 14, 2006. Second, FinCEN withdrew its finding of April 26, 2005 that Multibanka is a financial institution of primary money laundering concern and also withdrew the proposed rule that would have imposed special measures against Multibanka.³ The releases with respect to VEF Banka and Multibanka are summarized briefly below. 1 See Memorandum No. 18810, dated April 27, 2005. 2 Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations—Imposition of Special Measure Against VEF Banka, as a Financial Institution of Primary Money Laundering Concern, 71 Fed. Reg. 39554 (July 13, 2006). The release can be found at <http://edocket.access.gpo.gov/2006/pdf/E6-11043.pdf>. 3 Financial Crimes Enforcement Network; Withdrawal of the Finding of Primary Money Laundering Concern and the Notice of Proposed Rulemaking Against Multibanka, 71 Fed. Reg. 39606 (July 13, 2006). The release can be found at <http://edocket.access.gpo.gov/2006/pdf/E6-10941.pdf>. 2 VEF Banka The new rule imposes one of the five "special measures" permitted pursuant to Section 311. The new rule requires mutual funds and other covered financial institutions, by August 14, 2006, to terminate any correspondent account that is open or maintained in the US for or on behalf of VEF Banka. The new rule also requires mutual funds and other covered financial institutions to apply due diligence to its correspondent accounts that is "reasonably designed to guard against their indirect use" by VEF Banka. At a minimum, the rule requires

such due diligence to include notifying correspondent account holders that the account may not be used to provide VEF Banka with access to the mutual fund, and taking reasonable steps to identify any indirect use of its correspondent accounts by VEF Banka, to the extent that such indirect use can be determined from transactional records maintained in the mutual fund's normal course of business. If the mutual fund obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to VEF Banka, the mutual fund must take "all appropriate steps" to prevent such indirect access, including terminating the account within a "commercially reasonable" period of time. The new rule is substantively identical to the rule adopted on March 15, 2006 with respect to the Commercial Bank of Syria.⁴ Multibanka Effective immediately, FinCEN has withdrawn its designation of Multibanka as a financial institution of primary money laundering concern and the accompanying proposed rule, which was substantively identical to the rule against VEF Banka. Robert C. Grohowski Senior Counsel - International Affairs ⁴ See Memorandum No. 19876, dated March 22, 2006.

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