

FinCEN Proposes Cutting Off Swiss Bank MBaer's U.S. Financial System Access

March 13, 2026

On February 26, 2026, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued a notice of proposed rulemaking (the "NPRM") setting out FinCEN's finding that Swiss bank MBaer Merchant Bank AG ("MBaer") is "of primary money laundering concern" in connection with its support for Venezuelan, Russian and Iranian illicit actors.¹ Based on this finding, FinCEN proposed measures to sever MBaer's access to the U.S. financial system. FinCEN's action followed earlier enforcement proceedings against MBaer by its home market supervisor, the Swiss Financial Market Supervisory Authority ("FINMA"), related to "serious, systematic shortcomings" in the bank's compliance with anti-money laundering ("AML") and sanctions obligations.²

FinCEN's designation of MBaer as a non-U.S. financial institution "of primary money laundering concern" and proposed rule to cut off MBaer's access to the U.S. financial system were issued pursuant to Section 311 of the USA PATRIOT Act ("Section 311"), which provides the Treasury Department with tools to defend the United States from money laundering and terrorist financing risks. The specific so-called "special measure" proposed under FinCEN's NPRM would prohibit covered U.S. financial institutions from opening or maintaining in the United States a correspondent account for or on behalf of MBaer.

Shortly after FinCEN announced its Section 311 designation of MBaer, FINMA announced that MBaer would enter into liquidation. Although non-U.S. financial institutions may (rightly) devote significant focus to the potentially devastating impacts of a designation under U.S. sanctions, FinCEN's AML-focused action against MBaer underscores that multiple tools are available to U.S. authorities to impose significant adverse consequences on non-U.S. financial institutions determined to support customers and activities contrary to U.S. national security and foreign policy. The use of

¹ FinCEN, Proposal of Special Measure Regarding MBaer Merchant Bank AG as a Financial Institution Operating Outside of the United States of Primary Money Laundering Concern, 91 Fed. Reg. 10034 (Mar. 2, 2026).

² FINMA, FINMA proceedings: MBaer Merchant Bank AG in liquidation (Feb. 27, 2026), <https://www.finma.ch/en/news/2026/02/20260227-mm-mbaer-liquidation/>; see also FINMA, Measures at MBaer Merchant Bank AG (Feb. 26, 2026), <https://www.finma.ch/en/news/2026/02/20260226-mm-mbaer/>.

this tool also highlights the critical importance of non-U.S. banks remaining vigilant as to U.S. sanctions evasion and other illicit activities.

Background and Implications of Proposed Special Measure

Section 311 authorizes FinCEN, through delegated authority, to require domestic financial institutions to take one or more of five “special measures” if reasonable grounds exist for concluding that a foreign jurisdiction, a non-U.S. financial institution, a class of transactions or a type of account is “of primary money laundering concern.”³ Four of the five authorized special measures pertain to additional recordkeeping, information collection and reporting requirements and are not proposed by FinCEN to be imposed with respect to MBaer.

The fifth special measure, which the NPRM proposes to use against MBaer, is the most restrictive. It permits FinCEN to prohibit or impose conditions on the “opening or maintaining in the United States of a correspondent account or payable-through account” for or on behalf of a foreign jurisdiction, foreign financial institution or class of transactions targeted under Section 311.⁴ With respect to MBaer, the proposed rule imposing the fifth special measure would, if finalized, prohibit covered U.S. financial institutions from opening or maintaining correspondent accounts for or on behalf of MBaer and require such institutions to take reasonable steps to prevent MBaer’s indirect access to correspondent banking services. The proposed rule would require special due diligence to implement these restrictions, including notifying foreign correspondent account holders known or believed to provide services to MBaer that they may not provide MBaer with access to their correspondent accounts and taking reasonable steps, based on transactional records maintained in the normal course of business, to identify any use of their foreign correspondent accounts by MBaer.

This prohibition on correspondent accounts is the special measure most commonly imposed by FinCEN, and a foreign bank subject to these restrictions loses both direct and indirect access to the U.S. financial system and U.S. dollar transactions.

³ For a list of FinCEN’s findings, rulemakings and orders under Section 311 and similar authorities authorizing the imposition of special measures, see FinCEN, Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern, <https://www.fincen.gov/resources/statutes-and-regulations/special-measures>.

⁴ USA PATRIOT Act of 2001, Pub. L. No. 107-56, § 311, 115 Stat. 272, 298 (2001) (codified at 31 U.S.C. § 5318A).

Summary of FinCEN's Findings Regarding MBaer

According to the NPRM, MBaer is a Swiss private bank with assets of approximately \$717 million that offers its individual and business customers depository accounts and funds transfer and asset management services, among others. FinCEN indicates that MBaer accesses the U.S. financial system through one direct U.S. correspondent relationship and at least one indirect correspondent relationship.

As support for its finding that MBaer is of primary money laundering concern, FinCEN describes MBaer's business model as predicated on offering services to customers engaged in money laundering and other illicit activities, particularly Venezuelan, Russian and Iranian illicit actors, with at least \$100 million in illicit transactions through MBaer identified by FinCEN since 2019. FinCEN indicates in the NPRM that MBaer's AML/countering the financing of terrorism controls insufficiently mitigated the risks presented by its higher-risk customer base and that the bank and its executives and employees in some cases deliberately facilitated or likely were complicit in customers' illicit activities.

Venezuela

FinCEN states in the NPRM that MBaer was a key facilitator in laundering funds tied to oil corruption and sanctions evasion schemes involving Venezuela's sanctioned state-owned oil company, Petróleos de Venezuela, S.A. ("PdVSA"). The relevant schemes were perpetrated by a former MBaer board of directors vice chairperson on behalf of her husband, a MBaer minority shareholder who was targeted by U.S. sanctions at the relevant time for his facilitation of PdVSA's sanctions evasion network. Additionally, FinCEN indicates MBaer maintained accounts for persons involved in and/or sanctioned in connection with laundering proceeds of other Venezuelan public corruption.

Russia

According to FinCEN, MBaer has significant exposure to illicit Russian activity and relies on wealthy Russians, including sanctioned persons, as a central customer group. MBaer purportedly stored its Russian client data in a concealed manner and may have intentionally concealed information about its Russian client base from its regulator, FINMA.

FinCEN indicates in the NPRM that MBaer facilitated money laundering and sanctions evasion schemes for U.S.-sanctioned Russian persons, various Russian oligarchs and Russian politically exposed persons, including by managing trust and front companies and executing transactions for shell companies for the benefit of such persons. FinCEN states further that illicit transactions facilitated by or conducted through accounts at

MBaer involved Russian organized crime, public corruption, illegal asset transfers and fraud schemes. Finally, FinCEN indicates that MBaer has a history of facilitating illicit transactions supporting Russia's military, including payments in connection with schemes to supply stolen Ukrainian grain to and procure equipment for export to the Russian military.

Iran

FinCEN found that MBaer enabled access to the U.S. financial system for persons providing material support to Iran-related money laundering and terrorist financing efforts, including support for an Iranian entity designated as a foreign terrorist organization by the U.S. State Department and sanctions and export control evasion schemes. FinCEN alleges, in particular, that MBaer facilitated sanctions evasion activities related to Iran's oil industry.

Implications and Considerations

FinCEN's action targeting MBaer warrants attention for several reasons, particularly for non-U.S. financial institutions.

- First, FinCEN's action underscores U.S. authorities' willingness to use AML and other authorities to target non-U.S. banks engaged in activities deemed contrary to U.S. interests, even for activities that may have limited or no U.S. nexus and with respect to institutions or jurisdictions that generally have not been seen as likely targets of such authorities.

The NPRM represents FinCEN's first finding that a Swiss bank is of primary money laundering concern and proposed use of Section 311 special measures to target a Swiss bank. The MBaer action follows FinCEN's first use in June 2025 of new special measures authority under the Fentanyl Sanctions Act to restrict transmittals of funds to or from three Mexican financial institutions determined to be "of primary money laundering concern in connection with illicit opioid trafficking."⁵

- Second, severe consequences may arise for a non-U.S. financial institution merely as a result of FinCEN's finding that the financial institution is of primary money laundering concern, even when the special measures proposed by FinCEN are not yet

⁵ Fentanyl Sanctions Act, Pub. L. No. 116-92, div. F, tit. LXXII, 133 Stat. 1198, 2261 (2019), as amended by FEND Off Fentanyl Act, Pub. L. No. 118-50, div. E, tit. II, § 3201, 138 Stat. 895, 940 (2024) (adding § 7213A to the Fentanyl Sanctions Act, codified at 21 U.S.C. § 2313a); Debevoise In Depth, U.S. Prohibits Transactions with Three Mexican Financial Institutions for Cartel-Linked Money Laundering (June 30, 2025), <https://www.debevoise.com/insights/publications/2025/06/us-prohibits-transactions-with-three-mexican>.

finalized. The finding of primary money laundering concern alone can prompt scrutiny or action on the part of local supervisors, and U.S. and other counterparties are highly likely to re-assess their dealings with the targeted institution and take steps to terminate relationships or restrict dealings to mitigate illicit finance risks (even in advance of a legal obligation to comply with the proposed special measures).

For Mbaer, FinCEN's issuance of the NPRM appears to have hastened the bank's entry into liquidation and resulted in the bank deciding not to contest FINMA's enforcement action. Similarly, previous non-U.S. financial institutions found to be of primary money laundering concern under Section 311 have been forced to cease operations and liquidate, even absent FinCEN's finalization of proposed special measures.⁶ Thus, even the prospect of FinCEN finding that a non-U.S. financial institution is of primary money laundering concern presents significant (and, potentially, existential) consequences for a non-U.S. financial institution.

- Finally, FinCEN's findings in the NPRM reveal a significant focus by FinCEN on Mbaer's sanctions evasion activities and other support for sanctioned persons, which reinforces the U.S. government's focus on combatting sanctions evasion, particularly with respect to U.S. sanctions on Venezuela, Russia and Iran.

Accordingly, non-U.S. financial institutions with touchpoints to those jurisdictions—and particularly Iran, given the ongoing combat in the Middle East—may want to consider carefully their exposure to activities implicating potential U.S. sanctions evasion and to make any necessary updates to risk-based sanctions compliance policies and procedures.

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Please do not hesitate to contact us with any questions.

⁶ See, e.g., FinCEN, Proposal of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern; Withdrawal, 89 Fed. Reg. 79184 (Sept. 27, 2024) (noting that, within months of FinCEN's primary money laundering concern finding, ABLV Bank AS experienced an abrupt wave of deposit withdrawals and inability to access to U.S. dollar funding, lost its banking license, ceased operations and entered liquidation). Cf. FinCEN, Withdrawal of the Notice of Finding Involving Banco Delta Asia S.A. (BDA), 85 Fed. Reg. 48104 (Aug. 10, 2020), and FinCEN, Repeal of Special Measure Involving Banco Delta Asia (BDA), 85 Fed. Reg. 48105 (Aug. 10, 2020) (2020 withdrawal of FinCEN's 2005 finding of primary money laundering concern and repeal of 2007 final rule imposing fifth special measure with respect to Banco Delta Asia, following the bank's 15-year effort to challenge FinCEN's action and a settlement in related litigation).



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