



Compliance Ireland

www.complianceireland.com

email: peter@complianceireland.com

Mespil House, Sussex Road, Ballsbridge, Dublin 4, Ireland
Phone: + 353 (0) 87 273 1434 (Peter) Fax: +353 1 633 5005

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Irish firms implicated in US money-laundering investigation

FinCEN, the US Treasury's Anti-Money Laundering arm, announced on Wednesday 25th August that it proposes to ban a number of foreign financial institutions, including two Irish entities, from accessing the US financial system. The Irish institutions concerned are First Merchant Finance Limited and First Merchant Trust Limited, yet according to records of the Companies Registration Office both companies have been dissolved. However the Irish parent company, Standard Finance Limited, remains in operation with its registered office at 20 Clanwilliam Terrace, Dublin 2. Standard Finance is not subject to FinCEN's findings.

A copy of FinCEN's two announcements, one relating to First Merchant Bank and the second to Infobank, established in Belarus (and one of that country's ten largest banks) can be accessed at from its website at <http://www.fincen.gov>

Under the USA PATRIOT Act 2001, institutions which are deemed to be of "*Primary Money Laundering Concern*" will be blacklisted, meaning that US banks are prohibited from providing correspondent banking services to them. Before FinCEN may make a rule blacklisting an entity, it must publish a proposal for public comment, as happened on Wednesday. Public comment closes on Friday 24th September.

The following points are relevant to FinCEN's notices:

1. this is a proposed rule, but having got this far, it is hard to imagine that FinCEN's proposal will not become a final rule once the period for public comment closes. The reasons for the proposed blacklisting, as detailed in FinCEN's notices, are pretty damning;
2. clearly US laws do not apply in Ireland, although any US branch of an Irish bank is covered by the final rule. However a non-US financial institution which is found to be doing business with a blacklisted firm, even if this business is neither in USD or in the US, is unlikely to endear itself to its US clearing bank;
3. the FinCEN notice states that First Merchant Bank is 98% owned by Standard Finance Limited, an Irish company. Standard Finance is not subject to the proposed rule;
4. Companies Registration Office documents record that the two Irish companies subject to the proposed rule have been dissolved. Standard Finance remains in existence; and
5. IFSRA have confirmed to us that none of the Irish entities referred to in FinCEN's notice are regulated by IFSRA.

The cases of First Merchant Bank and Infobank appear to be the first time that the USA PATRIOT Act has been used to attempt to deny USD clearing facilities to overseas financial institutions. Although the notices allege fairly serious, wilful and complicit misbehaviour, the US authorities could perceivably take similar action in the face of lesser alleged criminal conduct. We believe that in the event a foreign financial institution unwittingly allows terrorist funds to pass through it (because of lax anti-money laundering controls) where such funds can be connected to an actual terrorist attack, then US authorities would likely apply similar sanctions. These notices further demonstrate that US authorities (like the UK's FSA) have no tolerance for firms which fail to meet their anti-money laundering regulations.

For further information on the above or anti-money laundering laws affecting Irish and UK firms generally, please contact Peter Oakes on the number above. Or visit our website at www.complianceireland.com.

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