

## **FBME Limited: Update Regarding FinCEN Summary of Meeting with Hogan Lovells**

On 9 April 2015, The US Department of the Treasury's FinCEN bureau filed a public comment in which it briefly summarised details of its meeting with FBME Bank's lawyers in Washington, Hogan Lovells. The comment contains a high-level summary of the meeting. FinCEN did not include any opinions or other qualitative information.

The FinCEN announcement is on:

<http://www.regulations.gov/#!documentDetail;D=FINCEN-2014-0007-0006> and reads, in its entirety:

“On January 21, 2015, representatives of FinCEN met with counsel for FBME at FinCEN's offices to discuss written comments that FBME had previously submitted regarding FinCEN's Notice of Proposed Rulemaking (NPRM), dated July 15, 2014, and Finding, dated July 15, 2014, which identified FBME as a primary money laundering concern under Section 311 of the USA PATRIOT Act. Representing FinCEN were Stephanie Brooker, Richard May, Lawrence Scheinert, Ryan Williams, Carlton Greene, and Mona Sahaf. Representing FBME were attorneys Jeanne Archibald, Ethan Kate, Beth Peter, Evans Rice, and Peter Spivack of Hogan Lovells, LLP. FBME provided information concerning the applicability of the statutory factors set forth at Section 311 of the USA PATRIOT Act to FBME; the factual basis of the Finding; the sufficiency of FBME's anti-money laundering (AML) compliance program, including changes that FBME has made to its AML program; and the relative impact of the NPRM.”

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FBME Limited welcomes the statement in that it sheds light on the continuing nature of the engagement between the Bank and its lawyers on one hand, and FinCEN on the other. FBME Limited hopes that this points the way to a formal end and a rescission of the Notices against the Bank.

The 21 January 2015 meeting between Hogan Lovells and FinCEN officials was productive. During the meeting, Hogan Lovells elaborated upon and amplified the facts of its extensive submissions to FinCEN following the issuance of the Notice of Proposed Rulemaking (“NPRM”) and Notice of Findings (“NOF”).

Section 311 of the USA PATRIOT Act outlines several statutory factors that FinCEN must consider before making a final decision. These factors are: firstly, whether similar

action has been taken or is being taken by other nations or multilateral groups; secondly, whether the imposition of the Fifth Special Measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance for financial institutions organised or licensed in the United States; and, thirdly, the extent to which the action would have a significant adverse systemic impact on legitimate business activities involving FBME.

At its meeting with FinCEN, FBME's representatives explained that these statutory factors support a rescission of the NPRM. With regards to each of the factors described above, FBME's lawyers explained that no other nation or multilateral group, including the EU, Bank of Tanzania, or Central Bank of Cyprus has taken any similar action to designate FBME as a money laundering concern. FBME's representatives also stated that the imposition of the Fifth Special Measure would create costs or burden on US financial institutions, so this factor does not support finalisation of the Proposed Rule.

Finalisation of the Proposed Rule would have a significant adverse impact on the thousands of legitimate account holders unconnected to FinCEN's allegations. Furthermore, the NPRM itself and the threat of the Fifth Special Measure are already having a significant adverse impact on FBME's account holders. The NPRM and NOF contain no discussion of the impact on FBME and its account holders, despite the obviously severe consequences.

Thus, the factors support FBME's argument that the NPRM should be rescinded.

FinCEN's comment notes that FBME provided information concerning 'the factual basis of the Finding'. Indeed, FBME has submitted more than 700 pages of factual materials concerning the sufficiency of its AML compliance programme, including many enhancements to that programme, and facts demonstrating the many statements that are either inaccurate or omit relevant information within the NOF. FBME's representatives used this information to show why the facts, coupled with the enhancements to the compliance programme, the statutory factors set forth at Section 311 of the USA PATRIOT Act, and the 'relative impact of the NPRM' both in the US, Cyprus, and Tanzania, demonstrate that the NPRM should be rescinded.

On behalf of FBME Bank, Hogan Lovells continues to engage with FinCEN to achieve rescission of the NPRM. At the meeting and in subsequent conversations with FinCEN since the meeting, FinCEN confirmed that it had not yet reached a decision regarding finalisation of the Proposed Rule.

FBME has continuously reiterated that it shares FinCEN's goal of eliminating illicit activity from the international financial system and emphasised that it is a willing partner to FinCEN and its regulators in achieving these goals.

For its part, FBME Limited confirms the continuity of contact and engagement between FinCEN and FBME Bank via its lawyers. FBME Limited takes this opportunity to reaffirm its commitment to full cooperation with FinCEN.

FBME will continue to publish further updates on its website, [www.fbmeltd.com](http://www.fbmeltd.com), as they become available.

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