S. HRG. 113–10

PATTERNS OF ABUSE: ASSESSING BANK SECRECY ACT COMPLIANCE AND ENFORCEMENT

HEARING

BEFORE THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING BANK SECRECY ACT COMPLIANCE AND ENFORCEMENT

MARCH 7, 2013

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C O N T E N T S

THURSDAY, MARCH 7, 2013

WITNESSES

PATTERNS OF ABUSE: ASSESSING BANK SECRECY ACT COMPLIANCE AND ENFORCEMENT

THURSDAY, MARCH 7, 2013

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:03 a.m., in room SD–538, Dirksen Senate Office Building, Hon. Tim Johnson, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN TIM JOHNSON

Chairman JOHNSON. The Committee is called to order.

Today we will assess large money center banks' compliance with U.S. anti-money laundering rules. Our financial system is a major target for those who want to conceal and move illicit funds since the dollar is the world's reserve currency. That is why strong AML compliance coupled with tough enforcement is critical.

In recent years we have seen major enforcement actions against a large number of global banks that allowed billions of dollars to flow through the U.S. financial system in a concealed way. They include ABN AMRO, Lloyd's, Credit Suisse, Wachovia, Barclays, ING, Standard Chartered, and HSBC. These banks violated the Bank Secrecy Act and our sanctions rules against Iran, Cuba, and other countries in various ways, which cost the banks over $5 billion in fines and forfeitures. In addition, Citibank and JPMorgan Chase have been required to overhaul their BSA compliance systems in the face of major violations.

This pattern of violations is disturbing. Holes in banks' anti-money laundering systems can protect funds stolen by corrupt leaders and drug cartels, help sanction violators, and enable terrorist financing. To address this threat, we must understand how banks' safeguards malfunction and assess the way the Government enforces our AML rules. As we do that, we should consider several important issues:

The Government depends on bank compliance programs to detect and prevent money laundering. Should senior management be required to confirm the strength of their programs regularly so that they do not break down, as appears to have happened at a number of banks?

In the recent major penalty cases, U.S. banks failed to deal effectively with funds from non-U.S. branches or affiliates; some of the latter intentionally undermined rules and procedures that they

knew were required in the U.S. How can we ensure more uniform compliance and enforcement of U.S. and international rules?

The time between citations by bank examiners and enforcement actions cannot be allowed to drag out, as was done in some of these cases. While I am pleased that the OCC and other regulators are intensifying their efforts in this area, they must let law enforcement know early on about potential problems to prevent illicit funds from being moved while problems are being fixed.

Last, questions have been raised about remedies, including the need for prosecution. We should consider today the full range of remedies in cases like these, including: BSA injunctions, banning from the industry those individuals who violate the rules, suspending a particular kind of activity or line of business at a bank in response to violations, and other measures.

We must do more to ensure that global banks, including their affiliates and branches who seek access to the U.S. system, have effective anti-money laundering systems in place. If the recent record of AML-related violations by U.S. banks is any indication, we clearly have a long way to go before that is accomplished. I hope today's hearing can advance the discussion of how to reach this goal.

I will need to excuse myself momentarily to attend an Energy Committee hearing, but I appreciate the witnesses' testimony and will follow up if I have additional questions. I understand Ranking Member Crapo is sick and regrets not being here today. His statement will be submitted for the record.

I will now turn it over to Senator Warner.

STATEMENT OF SENATOR MARK R. WARNER

Senator WARNER [presiding]. Thank you, Mr. Chairman, and I thank my colleagues, particularly Senator Reed. I think you have got to head off, too, so to make sure to the folks here, I am not jumping line. And I am going to assume we are going to honor the old Corker rule here in that nobody else wants to make a statement at this point, so I can go ahead and introduce the witnesses.

I want to remind all my colleagues that the record will be open for the next 7 days for opening statements and any other materials you would like to submit. Now I would like to introduce our witnesses.

The Honorable David Cohen is the Treasury Department's Under Secretary for Terrorism and Financial Intelligence. Mr. Cohen formerly served as Assistant Secretary for Terrorist Financing, and prior to that he was in private practice at Wilmer, Cutler, Pickering, Hale & Dorr. He also served in various roles in the Treasury Department's Office of General Counsel.

The Honorable Thomas J. Curry is the Comptroller of the Currency. Prior to becoming Comptroller, Mr. Curry served as the Director at FDIC as well as the chairman of the NeighborWorks America Board of Directors. He previously served five Governors as the Commissioner of Banks for the Commonwealth of Massachusetts.

Then, finally, the Honorable Jerome H. Powell is the Governor on the Board of the Federal Reserve System. Before joining the Board, Mr. Powell was a visiting scholar at the Bipartisan Policy Center, and prior to that he served as a partner at the Carlyle

Group, as Assistant Secretary and Under Secretary of the Treasury in the first Bush administration, and as a lawyer and investment banker in New York City. And I am friends with Mr. Powell and his Mr. Powell and his family.

I am going to go ahead, since this is a rare opportunity for me to actually move up to the Chairman's seat. I am going to take advantage of this—it may be years before I get to sit there again—before I call on Mr. Cohen to give his opening statement.

If Senator Reed or Senator Johnson were still here, they would say, "Do not get too comfortable."

With that, Mr. Cohen, please proceed.

STATEMENT OF DAVID S. COHEN, UNDER SECRETARY FOR TERRORISM AND FINANCIAL INTELLIGENCE, DEPARTMENT OF THE TREASURY

Mr. COHEN. Thank you, Chairman Johnson, Ranking Member Crapo, distinguished Members of the Committee. Thank you for inviting me to testify today on a core focus of our efforts at the Department of the Treasury: promoting a safe and secure financial system, and effectively combating money laundering, terrorist financing, and related forms of illicit finance. I would like to commend you, Mr. Chairman, and this entire Committee for your strong leadership on this topic.

The spate of recent high-profile enforcement actions against some of our largest and most sophisticated financial institutions raises troubling questions about the effectiveness of our domestic anti-money laundering and counterterrorist financing efforts. It is critically important to understand why these failures occurred and what we can do—whether through better legislation, regulation, examination, or enforcement—to prevent the recurrence of such failures.

The Bank Secrecy Act and the regulations promulgated by Treasury's Financial Crimes Enforcement Network, known as FinCEN, and the Federal functional regulators established the framework for guarding the financial system from money laundering and terrorist financing. These laws and regulations work in tandem with the sanctions programs implemented by Treasury's Office of Foreign Assets Control, known as OFAC.

These laws and rules aid financial institutions in identifying and managing risk, provide valuable information to law enforcement, and create the foundation of financial transparency required to deter, detect, and punish those who would abuse our financial system.

But the laws and rules can only do so much. A truly robust AML/CFT framework requires effective AML program implementation by financial institutions, buttressed by strong enforcement efforts.

In light of what we have seen in recent years, it is clear that significant design, oversight, compliance, and enforcement challenges remain. I would like to highlight the Treasury Department's efforts to strengthen the effectiveness of our AML/CFT regime.

First, Treasury's AML/CFT regulators, FinCEN and OFAC, are committed to continuing their vigorous investigation and enforcement of violations. In my written testimony, I describe a number of recent FinCEN and OFAC enforcement actions, including the

HSBC matter last December, in which FinCEN imposed a $500 million civil penalty for willful violations of the BSA, and OFAC imposed a $375 million fine for sanctions evasion.

Moreover, FinCEN, as part of a thorough review being conducted by its new Director, is redoubling its AML enforcement focus, including by ensuring that it is employing all of the tools at its disposal to hold accountable those institutions and individuals who allow our financial institutions to be vulnerable to illicit financial activity.

Second, because aggressive enforcement is a necessary but not sufficient response to the problems exposed by recent investigations, we have set up two groups to examine and improve the legal, regulatory, compliance, and enforcement framework.

FinCEN recently organized a group of representatives from the financial service industry, financial regulators, and law enforcement whose mission is to identify gaps between illicit finance risks and compliance efforts, and to develop recommendations to close those gaps. This group's work will feed into the efforts of an interagency group that I convened last fall known as the AML Task Force. Other task force members include senior representatives from all regulators with responsibility to combat money laundering: FinCEN, the Fed, the OCC, the FDIC, the NCUA, the CFTC, the SEC, and the IRS, as well as the Justice Department's Criminal Division.

The task force is taking a step-back look at our AML/CFT framework to assess how the entire enterprise is operating. It is looking at illicit finance risks and compliance requirements and will evaluate information-sharing, supervision, and enforcement practices to determine if there are ways to better inform, assess, encourage, and, as necessary, compel financial institution compliance.

Third, we are moving ahead with an initiative to enhance financial transparency, a new rule that would explicitly require financial institutions to conduct in-depth customer due diligence to identify the true beneficial owner of accounts. Current law explicitly requires enhance customer due diligence in only certain limited circumstances. This may permit illicit actors to access the financial system undetected and to engage in transactions that financial institutions may fail to identify as suspicious. We have gathered a wealth of useful information on this proposal from written submissions and in a series of public hearings. We anticipate publishing a proposed rule for further notice and comment soon.

Finally, I want to note our international efforts to strengthen the global AML/CFT framework. Given the global nature of money laundering and terrorist financing and the increasing interrelatedness of the global financial system, a secure global framework is essential to the integrity of the U.S. financial system. Working with several intergovernmental and international organizations, most notably the Financial Action Task Force, we are helping lead international efforts to revise and strengthen global AML/CFT standards.

The United States is home to one of the strongest anti-money laundering and counterterrorist financing regimes in the world, but clearly there is work to be done to make our AML/CFT regime

more efficient, effective, and to elicit better compliance from financial institutions.

I look forward to working with this Committee on these critical issues and would be pleased to answer your questions.

Senator WARNER. Thank you, Mr. Cohen.

Mr. Curry.

STATEMENT OF THOMAS J. CURRY, COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY

Mr. CURRY. Chairman Johnson, Ranking Member Crapo, and Members of the Committee, I appreciate the opportunity to appear before you today to discuss what the OCC is doing to ensure that Federal banks and thrifts have programs in place to deny money launderers and other criminal elements access to the banking system.

I cannot overstate the importance of the Bank Secrecy Act and other anti-money laundering statutes. When it was first signed into law in 1970, the Bank Secrecy Act was intended to be another tool in the battle against illicit drugs. Today it is also an important weapon in combating a host of financial crimes as well as in the war against terrorism, and that is why the OCC continues to search for ways to improve our supervision in this area.

Lately, we have observed a number of instances in which our largest institutions have failed to meet the requirements of the Bank Secrecy Act, and the OCC has taken some very significant enforcement actions against those banks.

In the wake of the financial crisis, too many banks inappropriately cut staffing and spending for BSA and anti-money laundering compliance as austerity measures, and our examiners are now working to ensure that these institutions add resources they need to maintain solid BSA/AML programs.

Although many of our recent enforcement actions have involved large banks, BSA is an issue for institutions of all sizes. In fact, as large banks improve their BSA/AML programs and jettison higher-risk lines of business, we are concerned that money launderers will migrate to smaller institutions.

While we are committed to ensuring that all the institutions we supervise have effective BSA/AML programs in place, we recognize the increased burden this places on community banks and thrifts. We will work with these institutions to help them calibrate their controls to reflect the risks they face, thereby reducing unnecessary burden.

BSA compliance is inherently difficult. It involves the challenge of sifting through large volumes of transactions to identify those with suspicious features, a task made especially difficult by the ingenuity criminal elements have shown. As a result, financial institutions and supervisors are devoting more resources to maintain effective programs.

Most of the problems we find in BSA/AML programs are attributable to the following root causes: the strength of an institution's compliance culture, its willingness to commit sufficient resources, the strength of its information technology and monitoring processes, and its risk management.

The health of a bank's culture starts at the top, and so it is important that senior management demonstrate a commitment to BSA/AML compliance. Employees need to know BSA compliance is a management priority and that the compliance function will receive the resources it needs to succeed, including training and first-rate information technology.

We are currently in the process of drafting detailed guidance to banks on sound corporate governance processes that will incorporate many of these concepts, including business line accountability for BSA/AML compliance and the independence of the compliance function.

We are also reviewing certain statutory provisions and exploring whether a regulation or agency issuance interpreting these provisions would be helpful in enhancing our enforcement authority against insider wrongdoing in this area. Several agencies have a role in addressing BSA issues, and we participate in a number of interagency groups to address them.

Additionally, we regularly provide information, documents, and expertise to law enforcement for use in criminal investigations on a case-specific basis. We also work closely with the Federal Reserve and the other banking agencies, and we are active participants on the interagency task force that Under Secretary Cohen formed to examine how this 40-year-old statutory framework can remain relevant in today's world.

Despite problems we have identified, many financial institutions have developed strong BSA compliance programs responsible for detecting and reporting potential criminal violations to law enforcement. To this point, more than 5.6 million SARs have been collected in the centralized data base that is maintained by FinCEN, and these reports provide critical information to law enforcement agencies. The majority of these SARs have been filed by national banks and Federal thrifts. These reports play a vital role in combating drug traffickers and other criminal elements, and we at the OCC believe Congress should act to clarify and strengthen the safe harbor for institutions that file SARs.

Banks need to know that they can share information with law enforcement agencies without incurring liability and that they can file SARs without running the risk that their bank will be exposed to litigation for simply complying with Federal law. We would be happy to work with the Committee in exploring these ideas.

While there are many challenges ahead of us, we will continue to work with Congress, law enforcement, other regulatory agencies, and the industry to develop and implement a coordinated and comprehensive response to the threat posed to our Nation's financial system by terrorist and criminal organizations.

Thank you, and I look forward to your questions.

Senator WARNER. Thank you, Mr. Curry.

Mr. Powell.

STATEMENT OF JEROME H. POWELL, MEMBER, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. POWELL. Thank you, Mr. Chairman. Chairman Johnson, Ranking Member Crapo, and other Members of the Committee, thank you for inviting me to discuss the role the Federal Reserve

plays in the U.S. Government's efforts to combat money laundering and terrorist financing.

The Federal Reserve requires the institutions we supervise to have an effective BSA compliance program. In coordination with other Federal agencies, we have adopted regulations and guidance that explain our expectations for the features of an effective BSA compliance program.

Banking organizations must also maintain a program for ensuring compliance with U.S. economic sanctions that is effective in identifying higher-risk areas within a bank's operations and screening and reporting prohibited transactions.

As part of these programs, institutions we supervise must provide law enforcement with the reports prosecutors need to investigate suspicious activity. The Federal Reserve reviews these BSA and OFAC compliance programs as part of our regular safety and soundness examination program for the approximately 1,060 State member banks, State chartered branches and agencies of foreign banking organizations, and Edge Act and other corporations we supervise.

We also conduct targeted examinations of financial institutions that show signs of being vulnerable to illicit financing. To ensure consistency, we use procedures developed jointly in a joint manual with FinCEN, OFAC, and the other members of FFIEC. Importantly, the Federal Reserve takes the findings of our BSA and OFAC exams into account in determining the institution's examination ratings.

The Federal Reserve devotes substantial resources to BSA and OFAC compliance. In addition to its examination force, each Federal Reserve Bank, each of the 12, has a BSA/OFAC specialist and coordinator, and the Board's Division of Banking Supervision and Regulation has long had an anti-money laundering section, overseen by a senior official, who is here with me today, to help coordinate the system efforts.

We also coordinate with other agencies. For example, the Federal Reserve brings every instance of a serious anti-money laundering deficiency or violation to the attention of FinCEN, OFAC, the Department of Justice, State law enforcement, the Federal banking agencies, and State regulators, as appropriate, as part of our enforcement program.

We also participate in a number of interagency and international groups that develop standards for and coordinate interagency compliance, monitoring, and enforcement efforts.

While the majority of institutions we supervise have well-administered and effective BSA and OFAC compliance programs, some cases require the use of our enforcement authority. In the last 5 years, we have issued 113 enforcement actions relating to BSA and OFAC compliance, including 25 public cease-and-desist orders and written agreements, and imposed hundreds of millions of dollars in civil penalties. These actions involve institutions that are large and small, domestic and foreign. In each case, the Federal Reserve has required the institution to take corrective measures to ensure that its programs are brought into compliance.

Many of the recent U.S. sanctions cases the Federal Reserve has pursued involve foreign banks with operations that extend across

many different countries. Foreign banks that operate in countries without sanctions similar to those imposed by the United States have not always had in place mechanisms to ensure transactions routed through the U.S. comply with U.S. law. The Fed's enforcement action against ABN AMRO in 2005 triggered important changes in cross-border payment practices.

The Federal Reserve has played a key role in developing the standards that have since been adopted to improve transparency in cross-border payment messages, including the standards operated by Basel and SWIFT. These standards require the expanded disclosure of the originator and beneficiary on payment instructions sent as part of a cover payment.

The Federal Reserve places great importance on ensuring that the institutions we supervise comply with the BSA and U.S. economic sanctions. When we find problems at a supervised institution, we demand specific corrective measures, by specific dates, and we take strong enforcement measures when necessary. We will continue these efforts and work cooperatively with law enforcement and other financial regulators to ensure a coordinated response to the threat posed by illicit financing to the U.S. financial system.

Let me conclude by saying that we recognize that money laundering and illicit financing threats have become more complex and, in addition, the financial markets have evolved so that the BSA/AML framework, which was established decades ago and based primarily on a bank-centric model, may no longer be fully effective. We, therefore, join with the Treasury Department, the OCC, law enforcement, and other banking agencies to conduct a zero-based review of the U.S. supervisory and enforcement regimes for BSA/AML compliance. This review will provide the basis for identifying potential improvements to the AML framework and developing recommendations to implement those improvements.

Thank you.

Senator WARNER. Thank you, gentlemen. I appreciate your testimony.

We will put 5 minutes on the clock for us, but since it may just be a few members, we will get a good chance to get into some depth and detail.

You know, I saw I believe it was the Attorney General recently made a statement that I would like to get some clarification from all of you, that there were concerns that some banks were potentially too large to prosecute in terms of their potential effect upon the economy. I do not personally believe that it can be the position of the U.S. Government that any institution should be too large to prosecute. As someone who was quite involved in Title II of Dodd-Frank, putting in place resolution authority and the ability to get both at the management and shareholders of firms, mostly here focusing on prudential standards, safety and soundness, but there is some question as well, as we look at BSA/AML enforcement, while the Committee has put forward 10 cases, these are all cases that have been—where there has only been monetary fines. There has not been actually prosecution of an institution. There has not been prosecution of individuals.

And I guess what I would want to start with is, as the Chairman mentioned earlier in his opening remarks, how do we ensure that

we have strong BSA/AML compliance standards within these institutions? How do we ensure that we make sure that during times of financial stress compliance is not being cut back on? And do you each feel we have the appropriate tools where, as necessary, to move beyond just the fine capacity but to actually—each of you have got tools to be able to bar individuals from continuing to pursue—or bar individuals from being involved in the banking system? And how do we make sure those tools are effectively used? And I would like to hear from each of you. Briefly, if possible, because I have got a couple more rounds.

Mr. COHEN. Certainly. Thank you, Senator Warner. I will address this in two ways.

I think we do have a number of tools that we have used in the past and that we are intending to use in appropriate cases in the future to ensure that when there are enforcement actions to be taken against institutions and individuals, that we do so and are vigorous in our enforcement efforts. I set out, as I said, in my testimony some of the prior enforcement actions, but I have also said and want to reiterate that one of the objectives of the review that is underway now at FinCEN is to consider ways for FinCEN's enforcement authority to be even more effectively discharged, including looking at ways to take action against individuals—officers, directors, shareholders, partners, whoever it may be—if they are themselves involved in the misconduct that——

Senator WARNER. And is part of that looking at actually having these officers and directors sign off on compliance work in a stronger way than they do right now?

Mr. COHEN. Well, it is that as well as, I think, more aggressive action with respect to those individuals, including the possibility of barring them from the industry and other injunctive action.

So we are looking at the full range of ways to continue to enforce aggressively as well as to enhance our enforcement efforts, and I think we have the legal authority to do that. Frankly, it is our intention to ensure that we exercise that authority in——

Senator WARNER. I want to hear from the other gentlemen. Please.

Mr. CURRY. Thank you, Senator. At the OCC our job is to make sure as a civil enforcement agency that the banks have effective and adequate BSA/AML programs on an ongoing basis within the institutions. We conduct annual assessments of those systems, and if we find deficiencies, it is our policy to demand remedial action. If remedial action is not taken or it is a serious issue, we will proceed to use the arsenal of both informal and formal enforcement powers we have administratively.

One of the areas that I focused on since becoming Comptroller is really to emphasize the corporate governance aspects of BSA compliance. That is part of the reason why we are developing and will be issuing soon specific guidance on what the expectations are for board and management accountability. And those have also served as important parts of our enforcement orders that we have issued in the last several months. They focus in a detailed fashion on the roles and responsibilities of operating management, and the board of directors as well.

Senator WARNER. Mr. Powell.

Mr. POWELL. Thank you, Senator. I will start by addressing your first question, which was the comments of the Attorney General yesterday, and I just want to say it is fundamental in this country that everyone is equal before the law, and I think his comments only underscore the need to end too big to fail and the need for the agencies to forcefully implement Title I and Title II as it relates to too big to fail. Just to address that part of your comment.

In terms of enforcement, I do not have that much to add. I would just say that we examine for BSA compliance as part of our regular examinations on a 12- to 18-month schedule for all of the institutions that we examine. We have a well-worked-out, commonly agreed manual, and we have an accelerating series of sanctions. We are all very focused on assuring that those are adequate to the task, and we are particularly focused on enterprise-wide global risk—risk assessment and risk management mechanisms, compliance mechanisms that address this cross-border issue.

Senator WARNER. Let me just say, before I turn to Senator Reed, just that—and I will come back to this in the second round—I also have an enormous concern that the length of time to prosecution and the amount of potentially illegal and also potentially threatening in terms of terrorist financing, Iran a case in point, I want to come back to see how we can intervene even before perhaps an enforcement action needs to be taken so that we do not have this long drag period.

Senator Reed.

Senator REED. Well, thank you very much, Mr. Chairman, and this is an incredibly important hearing. I just came from the Armed Services hearing, and we are talking with General Ham down in Africa Command, and the reality is these terrorist, criminal narco-syndicates need money. Without it, they are a nuisance. With it, they are potentially devastating opponents of the United States. And what you do is absolutely critical to shut off their ability to operate. And if we do not, then the alternative is not only very difficult for us, leading up to military action, but extraordinarily expensive. So I just want to emphasize how critical your roles are and how important this issue is. We cannot say it enough, because if you do your work right, then we do not have to contemplate or implement much more dangerous and expensive options.

But let me echo a point that the Chairman made, I think very well, to Secretary Cohen, which is that under Sarbanes-Oxley, for example, we require a chief executive to sign off on the financial statements, and that seems to have put a lot of vigor into the review of these issues that is lacking under the Bank Secrecy Act. I know you mentioned you are considering it, but I guess I would urge you to serious consider it. Can you comment again?

Mr. COHEN. So, Senator Reed, I first want to say I wholeheartedly agree with your first comment and can tell you that the work that we do on the domestic anti-money laundering regime and the work that we do internationally in our various sanctions regimes is designed to accomplish exactly what you highlighted.

With respect to elevating within the institution the obligation to sign off on the AML program, I think under current law it needs to be adopted by the board and reflected in the minutes of the

board, the AML program. I think one of the things that the AML task force that I convened and that both of my colleagues here participate in, as well as others, is looking at how to adjust the regulatory requirements to be more effective. And I think this is an area that we will take up, and I think it is a worthy suggestion.

Senator REED. Thank you, and I think you have got to move expeditiously, too, because the threats out there are not—they are getting worse each moment.

Mr. Curry.

Mr. CURRY. Senator, I share your concern. We are focusing on the corporate governance aspects. We believe that top management and the board needs to be held responsible for effective BSA/AML compliance, and that is part of the reason why we are going to be issuing our corporate governance guidance. And in our orders, I want to point out the board of directors has to sign our orders, the orders that are outstanding, which specify that they are responsible for the program, and if they fail to comply with that order, they face personal liability in the form of civil money penalties.

Senator REED. Yes, but just going to the long—this goes back to the Annunzio-Wiley anti-money laundering before. You have injunctive authority. I do not think the Comptroller has ever used it, et cetera. I do not think, to my knowledge, you can cite any specific incidence where someone has been seriously sanctioned, a director or—is that accurate, or am I—I want to be clear.

Mr. CURRY. That is an issue that we are pursuing. That is part of the reason we are looking at interpreting provisions of Section 8(e) of the FDIC Act. There are terms used there—I am paraphrasing—excusing inadvertent or unintentional violations. We want to tighten up that language so that we can have greater ease in bringing removal or prohibition actions under the FDIC Act.

Senator REED. Governor Powell, you are specifically responsible for the branches of foreign banks in the United States. In that role, any comments you might have, particularly a general question whether any fines against these institutions are effective or they are simply passed on to the consumers?

Mr. POWELL. We examine them under the same manual and in the same way as the OCC examines national banks, and we treat them from an enforcement standpoint in exactly the same way. We believe it is fundamentally reasonably effective.

I think you raise good questions that are going to receive very serious consideration at the task force, but I believe we do treat them essentially as we treat American banks.

Senator REED. Thank you very much, gentlemen, and if I can get back, I would love to do a second round. Thank you.

Senator WARNER. Senator Warren.

Senator WARREN. Thank you, Mr. Chairman, and thank you to all three for being here today.

As Senator Reed just pointed out, the U.S. Government takes money laundering very seriously for a very good reason, and it puts very strong penalties in place. In addition to monetary penalties, it is possible to shut down a bank that has been involved in money laundering. Individuals can be banned from ever participating in financial services again, and people can be sent to prison.

Now, in December, HSBC admitted to money laundering, to laundering $881 million that we know of, for Mexican and Colombian drug cartels and also admitted to violating our sanctions for Iran, Libya, Cuba, Burma, the Sudan. And they did not do it just one time. It was not like a mistake. They did it over and over and over again across a period of years. And they were caught doing it, warned not to do it, and kept right on doing it, and evidently making profits doing it.

Now, HSBC paid a fine, but no one individual went to trial, no individual was banned from banking, and there was no hearing to consider shutting down HSBC's activities here in the United States.

So what I would like is—you are the experts on money laundering. I would like your opinion. What does it take? How many billions of dollars do you have to launder for drug lords and how many economic sanctions do you have to violate before someone will consider shutting down a financial institution like this? Mr. Cohen, can we start with you?

Mr. COHEN. Certainly, Senator. No question the activity that was the subject of the enforcement action against HSBC was egregious, both in the money laundering that was going on at HSBC and the sanctions violations.

For our part, we imposed on HSBC the largest penalties that we had ever imposed on any financial institution. We looked at the facts and determined that the appropriate response there was a very, very significant penalty against the institution.

Senator WARREN. Let me just move you along here, though, on the point, Mr. Cohen. My question is: Given that this is what you did, what does it take to get you to move toward even a hearing, even considering shutting down banking operations for money laundering?

Mr. COHEN. So, Senator, we at the Treasury Department under OFAC and FinCEN authority do not have the authority to shut down a financial institution.

Senator WARREN. I understand that. I am asking, in your opinion—you are the ones who are supposed to be the experts on money laundering. You work with everyone else, including the Department of Justice. In your opinion, how many billions of dollars do you have to launder for drug lords before somebody says, "We are shutting you down"?

Mr. COHEN. Well, I think the authority to pull a license, pull the charter, is the authority that is committed to the supervisors, to the OCC, the Fed, whoever the supervisor may be. We take these issues extraordinarily seriously. We aggressively prosecute and impose penalties against the institutions to the full extent of our authority. And as I said earlier, one of the issues that we are looking at——

Senator WARREN. I am not hearing your—I am sorry. I do not mean to interrupt, and I just need to move this along. But I am not hearing your opinion on this. You are supposed to be, Treasury is supposed to be one of the—you are the leaders in how we understand and work together to stop money laundering. And I am asking: What does it take even to say, "Here is where the line is. We

are going to draw a line here, and if you cross that line, you are at risk for having your bank closed"?

Mr. COHEN. So, Senator, we are mindful of what our authorities are, mindful of what the supervisors' authorities are. We will and have and will continue to exercise our authorities to the full extent of the law. The question of pulling a bank's license is a question for the regulators——

Senator WARREN. So you have no opinion on that? You sit in Treasury, and you try to enforce these laws. And I have read all of your testimony. You tell me how vigorously you want to enforce these laws. But you have no opinion on when it is that a bank should be shut down for money laundering? Not even an opinion?

Mr. COHEN. Of course, we have views on——

Senator WARREN. That is what I asked you for, your views.

Mr. COHEN. But I am not going to get into some hypothetical line-drawing exercise, but I will——

Senator WARREN. Well, it is somewhere beyond $881 million of drug money.

Mr. COHEN. Well, Senator, the actions—and I am sure the regulators can address this issue. The actions that we took in the HSBC case we thought were appropriate in that instance.

Senator WARREN. Governor Powell, perhaps you could help me out here.

Mr. POWELL. The authority to shut down an institution or hold a hearing about it I believe is triggered by a criminal conviction, and we do not do criminal investigations, we do not do trials or anything like that. We do civil enforcement, and in the case of HSBC, we gave essentially the statutory maximum civil money penalties, and we gave very stringent cease-and-desist orders, and we did what we have the legal authority to do.

Senator WARREN. I appreciate that, Mr. Powell. So you are saying you had no advice to the Justice Department on whether or not this was an appropriate case for a criminal action?

Mr. POWELL. The way it works is the Justice Department has total authority. This is the heart of what they do.

Senator WARREN. I understand that.

Mr. POWELL. It is the heart of their jurisdiction to decide who gets prosecuted and for what. It is not our jurisdiction. They do not do monetary policy. They do not give us advice on that. We collaborate with them, and we discuss with them—we have collaborated with them, and we did on HSBC. They asked us specific questions: How does this statute apply? What would happen if we did this? We answered those questions. That is what we do.

Senator WARREN. So what you are saying to me is you are responsible for these banks, and, again, I read your testimony, and you talk about the importance of vigorous enforcement here. But you are telling me you have no view when it is appropriate to consider even a hearing to raise the question of whether or not these banks should have to close their operations when they engage in money laundering for drug cartels?

Mr. POWELL. I will tell you exactly when it is appropriate. It is appropriate where there is a criminal conviction.

Senator WARREN. And so you have no view on it until after the Justice Department has done that?

Mr. POWELL. Again, the Justice Department makes that decision. We play our role in that. We have a constant dialog with them, around—a broad range of violations that take place. We always have the Justice Department involved. But when they make these decisions, they make them themselves.

Senator WARREN. I understand that I am over my time, and I will just say here, you know, if you are caught with an ounce of cocaine, the chances are good you are going to go to jail. If it happens repeatedly, you may go to jail for the rest of your life. But evidently if you launder nearly $1 billion for drug cartels and violate our international sanctions, your company pays a fine and you go home and sleep in your own bed at night, every single individual associated with this. I think that is fundamentally wrong.

Senator WARNER. Senator Kirk.

Senator KIRK. I appreciate the Senator's driving this issue. You would think—I agree with most of the direction you are going in. You would think there would have been one hell of a penalty for money laundering for terrorists who are building nuclear weapons. You would actually think and hope that you would get a clear answer. I thank the Senator.

Mr. Chairman, over to you.

Senator WARNER. Senator Merkley.

Senator MERKLEY. Well, thank you very much, Mr. Chair.

The first political act in my life, at least as far as I can recall, was when I was a junior in high school, and I was reading the evening newspaper in Portland, and it reported that Vice President Spiro Agnew had been convicted of accepting bribes. This memory is decades old, so I may not have the numbers quite right. It was something like he accepted $100,000 in bribes, and his penalty for his criminal conviction was a $10,000 fine. And I sat down and wrote a letter to the newspaper, the *Oregon Journal*, and said, "How can anyone believe that there is justice, that if you take $100,000 you only get charged 10 percent of it? How is that possibly justice?"

And I find myself asking exactly the same question in this situation. On, I believe it was, the day after the announcement that HSBC had essentially been caught laundering billions of dollars in funds, there was a story about a woman who her boyfriend had stored I believe a suitcase or a coffee can with his drug money in her upstairs or her attic or something like that, and she was doing something like 10 years in prison for having that tangential connection to the flow of this illegal money.

So if an individual gets 10 years in prison, can you explain, each of you, how you would explain to an ordinary citizen in America that a company which launders billions of dollars tied to criminal syndicates that in northern Mexico 40,000 people have died—I do not know about the terrorist side of this, but the drug side is pretty well documented. How do we explain that that is a system of justice in the United States of America? Mr. Cohen.

Mr. COHEN. Senator Merkley, as I am sure you know, it is the Justice Department that determines——

Senator MERKLEY. I understand. I am asking you your opinion. How would you explain to your neighbor asking you, saying, "You

are a high official in the U.S. Government. This is the decision our Government made." What would be your personal sense of it?

Mr. COHEN. What I would tell my neighbor is, first of all, the agencies within my area of responsibility took action in this circumstance in an extraordinarily aggressive way and in a powerful way and beyond anything we had ever done previously.

With respect to the Justice Department, we of course, were working on this investigation with the Justice Department, but at the end of the day, it is the Justice Department's sole prerogative to determine who to prosecute, when to prosecute, and what to charge.

Senator MERKLEY. Let me interrupt for a minute. While you are working with them on this, if a member of the Justice Department said, "David, what is your opinion? Should we prosecute?" Your response would be?

Mr. COHEN. Well, Senator, I think it depends whether you are asking me, personally asking me as the Under Secretary. And it also depends on what the "it" is, whether we are talking about prosecuting an individual, prosecuting an institution, what the charges may be. These are all issues that——

Senator MERKLEY. So you say to the Justice Department, you say, "Well, I am working very closely with you. I want to know what if, should we do individuals or should we do the corporation?" And he says, "I would like your opinion on both." And so then you say, "My opinion on the individuals is X, and my opinion on the corporation is Y." And your opinion is?

Mr. COHEN. Let me say my role in the Treasury Department and I think the Treasury Department more broadly, our role is to——

Senator MERKLEY. I understand that. That was not my question. But you are welcome to simply say, "I do not feel it is appropriate for me to answer your question." That would be better than just pretending not to answer it.

[Laughter.]

Mr. COHEN. No, I—I was trying to answer your question. But it is not our role to advise the Justice Department on how to exercise their prosecutorial discretion.

Senator MERKLEY. Thank you.

Mr. Curry.

Mr. CURRY. Perhaps it might be helpful, Senator, to explain how we arrived at the penalty that we imposed at the OCC, the $500 million penalty.

Senator MERKLEY. I am pretty familiar with that. That is not the heart of my question.

Mr. CURRY. I think it reflects what we are trying to do from a civil enforcement standpoint to make sure that——

Senator MERKLEY. I do not want you to recite history I am already familiar with. Let me ask the question differently. Do we have a situation where banks have become so large that, in the words of Attorney General Holder, if you prosecute them, "it will have a negative impact on the economy and the financial system at large"? And does that mean essentially we have a prosecution-free zone for large banks in America?

Mr. CURRY. It is my view that no bank is above the law. As Governor Powell stated earlier, if in a particular case the Justice De-

partment met the requirements of the statute, that there was a criminal conviction for any money-laundering violations, I would start the process under the National Bank Act to consider——

Senator MERKLEY. Yes, and I appreciate that, and I realize that is where you responsibility comes in, and it comes in after the prosecution and the conviction.

Mr. CURRY. I would not hesitate to start that process.

Senator MERKLEY. Thank you.

Governor Powell, does this create a fundamental concern about a fair system of justice across America?

Mr. POWELL. Yes, it does. It is absolutely fundamental that we are all equal before the law, and that is why we are all committed to ending too big to fail. And in the first instance, Congress has passed Dodd-Frank. The agencies are vigorously implementing Title I and Title II and carrying out the plan that you have given us, led by the FDIC, but we are all involved—to eliminate too big to fail. And I think that has been well done.

The question in the end is: Is it enough? And I think we will know the answer to that in the relatively near future. It is not a game plan that can be implemented overnight. But until we finish that, I could not look this guy in the eye. You asked me to explain to him how it is fair? I cannot do it.

Senator MERKLEY. Thank you for that very direct answer.

Thank you, Mr. Chair.

Senator WARNER. I think before I move to Senator Heitkamp, I just want to—the point that we have all been raising, and I think that Senator Warren and Senator Merkley raised, while each of you kind of say, all right, let us pass the potato over to the Justice Department and we are only going to act there, let us remind you what Senator Reed has already made mention of. You have other remedies other than fines in terms of injunctive action and removal authority that has not been used, and I think we are all—and, again, I want to make sure I observe the rules I am trying to hold everybody else to. Senator Heitkamp? But I just want to make that point, that it is not an either/or the way you have responded to each of these Senators.

Senator HEITKAMP. Changing the subject just a little bit, do you think there is an effective deterrent based on how you have handled these cases in the past? If you were a bank executive today faced with the opportunity to make millions and millions of dollars laundering drug money, or facing you guys, looking at, you know, what you are going to suffer in terms of the consequences, do you think there is an effective deterrent today to prevent this from happening again? I would ask Mr. Cohen first.

Mr. COHEN. I will answer that in two parts.

With respect to sanctions evasion, the stripping cases in particular, I think there is effective deterrence. I think we have gotten the attention of the international financial institutions as well as the U.S. financial institutions. They understand that these practices of stripping international payment messages will be found and will be addressed in a very serious manner.

The money-laundering side of things, I think that is a fair question. I think that is part of the reason that we are engaged in the

processes that we are engaged in, is to understand whether we need to have more effective deterrence.

Senator HEITKAMP. And, Mr. Cohen, just for my edification, you know, I was an Attorney General. I was somebody who did both civil and criminal prosecution. And I can assure you criminal prosecution in white-collar crime is much more effective than fines and penalties and shame that you might experience when you are walking into a courtroom. Unless you are willing to work collaboratively—and I think everybody here understands that you are looking at your jurisdiction, trying to explain what your agency has done. But my question back to you is: How could you collaborate in a more effective way with the Justice Department to ensure that we will see prosecutions that Senator Warren here has so eloquently begged for? How can we make that happen?

Mr. COHEN. Well, I would just say this, Senator: The Justice Department is part of the exercise that we are undertaking. They are part of this AML task force. Part of what we are looking at is more effective enforcement, both the civil and the criminal side. And so that is an issue that we are addressing in that work.

Senator HEITKAMP. Yes, but, Mr. Cohen, one of the disturbing parts of this dialog that we are having is that at every sense there seems to be, "It is not my job, it is not my problem," that this is someplace else. And one of the great tragedies, I think, for the American people looking at Government is too much "It is not my job." And so what we are really asking is that this be everybody's job. I would move on to Mr. Curry.

Mr. CURRY. Senator, I agree with you. In our testimony, we highlight the concerns we have over corporate governance. We believe at the OCC that you need to hold CEOs and the boards of directors accountable for BSA/AML policies and procedures and their compliance program. You need to establish that basic premise first before you can start assessing criminal or civil liability, and that is where we are going. That is why we are looking at our authority under Section 8 of the FDIC Act to actually remove from office or prohibit from banking those individuals that violate BSA programs. So we are looking to try to tighten up the legal duties and authorities of individuals at banks and then to enable us to take an appropriate level at the civil, administrative level, and potentially to assist the criminal authorities.

Senator HEITKAMP. I understand that, and the problem is that the expertise is with your agencies, and you are asking the Justice Department or the Justice Department sees a lot of complexities in what you do, and there does not seem to be a real opportunity for a comfort level of a prosecution that needs to happen, at least needs to be tried, needs to be attempted.

Mr. CURRY. We have a consistent and longstanding practice of cooperating fully with the Justice Department in criminal investigations and will continue to do that.

Senator HEITKAMP. But I would say that in these cases that cooperation has failed to achieve a result that is acceptable to the American public.

Governor.

Mr. POWELL. There are strong incentives that we have provided to the banks to put in very strong compliance programs. We can

always do better. I think what you hear from us is that the area where we are focusing is on collaborating better and coming up with ways to strengthen the supervision, and my colleagues have talked about some of those.

But the incentives to deal seriously with compliance are large in the wake of these latest events. The other side of it, though, is that the bad guys have huge incentives to find new ways to penetrate, and the issue is—we have to stay ahead of that. It is not a static game. They are very well funded. They have great resources, and you have got this global financial system with prepayment cards and mobile payments and that kind of thing.

So we are in a race with them to stay ahead and I think that is really the risk. It is not that the banks do not take it seriously, although we can certainly help with that, too.

Senator HEITKAMP. I agree, Governor. Ever more reason to use the very limited resources we have in enforcement in a very efficient and very collaborative way.

Senator WARNER. I would just again, before—Senator Kirk did not get his full round. I want to go back to Senator Kirk. But we have got this continuum that goes from fines to injunctive to removal to Justice Department prosecutorial. We have only used one of the series of tools, and because it takes so long to prosecute, in the interim you have actions going on, whether it is—Senator Merkley mentioned drug laundering, or Senator Reed mentioned, you know, potentially financing of terrorists.

Senator Kirk.

Senator KIRK. I just wanted to take the opportunity, based on what we have learned today from Treasury, to ask Senator Warren to join me in a big bank money-laundering practice where we just handled drugs and terrorism. I think we can make a killing that way, and no danger of prosecution.

[Laughter.]

Senator KIRK. Nothing to fear from the Government.

Senator WARNER. I am not sure you are—you are not citing that for the record, are you?

[Laughter.]

Senator WARNER. Senator Manchin.

Senator MANCHIN. Thank you, Mr. Chairman. I am sorry I was late. I had two other Committee meetings. But I understand it has been a little bit spirited, and I am sorry I missed that, too.

We all have a hard time understanding why you have not cracked down on banks that are using illicit funds, something that is just wreaking havoc, is of epidemic proportion, and drugs in American culture, and you have a chance to do it. And I do not know what else—what tools do we need to give you all as regulators to shut these people down? Is there something you are lacking in your tool box right now? Can anybody speak to that?

Mr. CURRY. Senator, in our testimony, we have actually asked for the Committee to consider tightening up the safe harbor provisions for banks to actually file suspicious activity reports without facing potential civil liability for doing that.

We have also asked for authority to expand the safe harbor to allow them to share the information from suspicious activity reports so that if there is a particular criminal activity or use of the

system, that institutions could share that among themselves so that they could not allow the migration of illegal activity to occur, or to help the law enforcement officials——

Senator MANCHIN. I think what you are hearing is those of us who are frustrated that what tools you do have you are not using. I come from the little State of West Virginia where there is a lot of common sense, which you do not find very common up here in Washington. And basically we never had bank failures, we never had closures, because we still had just common-sense procedures. You had to have a little skin in the game. You could not be buying something you could not afford. So on a different scale, we were basically living within our means, and we were enforcing that. And our banks did not collapse and fail, and we did not have a mortgage bubble burst on us.

And what we are saying is if we give you more tools and you will not use the ones you have today, that is our concern. That is the frustration from the—this is one thing you see us probably united from the Democrat and Republican side, and there are very few things that you will find that we have had chances to agree on, but this one we do, and I think we are so frustrated. And if the banks are going to do business in this country, they should do them by our values. And if you do not enforce those values, you know, we have got to find people that will enforce those values, I think is what we are saying.

We just want our country to be what we believe would help us in growth and get back to the values we believe in, and the drug cartels and all the illicit trade that goes on and the banks are being a harbor and putting their money because it is a safe haven is not something we condone as Congress, I do not believe. And that is what we are asking.

Sir, if you would speak to that?

Mr. COHEN. I could not agree with you more, Senator, and what I have committed to this Committee and what we are doing at the Treasury Department is reviewing what we have done and ensuring that the authorities that we have we exercise to the full extent of their capacity.

As I noted earlier, one of the areas where we think we have not been sufficiently aggressive is in going after individuals and institutions who are responsible for the conduct that has resulted in fines and penalties against the institution itself. That is something that we are committed to pursuing and will pursue in the appropriate cases in the future. So I——

Senator MANCHIN. But the HSBC, I mean, they paid the largest fine in history, and nobody was prosecuted. Not a thing was done. But you found them guilty.

Mr. COHEN. I cannot speak to the Justice Department's decision not to prosecute in the HSBC case. It is the Justice Department's decision to make. I can tell you from our standpoint, we applied very significant penalties against the institution there on the judgment that the conduct that we saw was institution-wide, it involved a pattern of behavior over a number of years that the institution was the appropriate entity to apply the penalties against in that instance.

Senator MANCHIN. Mr. Chairman, I am running out of time. I would just ask for the consideration of the Chair, if you would ask the DOJ to come and give testimony on why they have not prosecuted, why they will not enforce the laws of our land, if you would ask and request them to appear before this Committee?

Senator WARNER. I will consult with the actual Chair to make that request, but——

[Laughter.]

Senator MANCHIN. You are the actual Chair today, sir.

Senator WARNER. At least today. I think what you are hearing from all of us is an enormous concern, coupled with some of the comments the Attorney General made, and I appreciate Mr. Powell's directness that, you know, we have got to make sure there is no institution that is too large to prosecute.

There is also a concern, starting on the second round now, that even short of punting all this to the Justice Department, there are other tools that you all have not used in terms of injunctive relief, removal activities, suggestions in terms of further compliance activities of senior management in terms of owning compliance, as well as, you know, how do we make sure on a going-forward basis that in moments of fiscal risk, the compliance department is not the first place the bank cuts? I would like an answer to that, but let me pose a second part to this question.

I also have an enormous concern, when you look at not just—we have talked about HSBC, but there are 10 other cases that the Committee has cited. Each of these are cases that have taken literally years to get to the fine stage, let alone the fact that there has not been actual prosecution.

The concern I have is that in that interim period, how open are you and what other tools—Mr. Curry, you mentioned safe harbor—so that we can notify or put on notice at least so that these activities do not continue until you get around to actually issuing a fine or taking action? Number one. And, number two, echoing what Mr. Powell has said, you know, this is an issue that is going to just get tougher and tougher as we move into these mobile banking technologies, as we think about the intersection between drug trafficking, money laundering, terrorist financing, and cyber activities, and are there points that, as we consider cybersecurity legislation, we ought to have a component that overlaps with existing BSA and AML legislation? But if you could take each of those, but particularly the piece about how do we make sure that in this interim period between discovery of potential money laundering, drug activity, or terrorist financing and the time when you feel like you can actually bring some kind of case—and we all say the cases have not been stringent enough. It appears to be years in that activity in many cases seems to have been ongoing during that period. Let us start with you, Mr. Cohen.

Mr. COHEN. So, Senator Warner, I think the answer to that is both to ensure that we are investigating these cases as rapidly as possible and coordinating, and part of what you have heard today is that one of the things that we are looking at is how to ensure that we are sharing the information among the agencies that investigate these cases as efficiently as possible.

But, second, the other point——

Senator WARNER. Let me just interrupt you there. One of the things that is clear from each of your conversations is that we have a lot of stovepipes here.

Mr. COHEN. Right.

Senator WARNER. Everybody seems to be passing the hot potato. You are responsible for putting this interagency task force together. Would you commit today to make sure that you will brief Committee staff on the progress of those interagency sessions.

Mr. COHEN. Certainly. I am happy to do that. And one of the things that this interagency task force is designed to do is to break down stovepipes to the extent that they impede the exercise of our authorities.

But then the other point I would just make is, talking about injunctive authority, I think we will go back and look at whether there is the possibility of taking injunctive action during the course of an investigation as sort of a preliminary measure to ensure that the conduct stops before we get to the finish line.

Senator WARNER. So you feel like using the injunctive authority, that would allow you to notify the institution, to at least put them on warning, short of maybe a Justice Department proceeding or a fine, that you are not just going to allow this action to continue?

Mr. COHEN. I want to make sure that our current authority allows us to do that, but if so, then that is something that——

Senator WARNER. I want to make sure I get a word from Mr. Curry and Mr. Powell on how we—again, the question—I have got a series, but the question with the remaining time I have got is—we all want you to be more aggressive here, but in that interim period between—and this is the case, obviously, across the board on many criminal investigations, between launching an investigation and bringing a prosecution, how do we make sure that the activities——

Mr. CURRY. I would like to clarify something about the process.

Senator WARNER. Please.

Mr. CURRY. If we are on-site examining an institution and we detect unacceptable activity or behavior, we require it to stop then and there and the remediation to occur regardless of whether or not we get to the point in the future of issuing a CMP order or a C&D. So immediately upon detection, we require corrective action.

You asked about injunctive authority. We have and use civil injunctive authority through our consent orders. They have affirmative covenants in them that require certain activity to be taken or to refrain from taking other activity.

And with our recent orders with national banks, we have actually prohibited them from re-entering areas that have been of concern or starting into other high-risk activities.

So we are doing things in terms of the prompt, immediate effect that will be followed up by CMP at a later date.

Senator WARNER. Well, I guess I would simply ask—and I want to hear Mr. Powell and then move to Senator Warren. There are 10 separate cases—we are focusing on HSBC, but there are 10 separate cases that the Committee has laid out. It would seem to me, in at least my reading of the materials, that there was a considerable lag time between discovery in each of these times and ultimate

action, and that there was not action taken by the prudential regulator in a timely fashion in many of those cases.

Mr. Powell.

Mr. POWELL. Senator, I believe that we also require immediate remediation when the violations are discovered. What takes a long time is that we require these institutions to go back and go through millions and millions of transactions to find all the things that they have done wrong. It takes a long time, and it is very labor intensive—a very simple but labor-intensive process. And then the actual enforcement action comes sometime later. But that does not mean that the violations have continued. At the point when many of these have been identified—they have turned themselves in on almost all of the sanctions cases. In many of them they have put a stop to this kind of thing, and then they are just working on putting together the compliance order.

Senator WARNER. Thank you.

Senator Warren.

Senator WARREN. Thank you, Mr. Chairman.

I just want to follow up to make sure that I am just following what is going on here. So do you consult with the Department of Justice on each of these major drug-laundering cases and terrorism cases? Is that right, Mr. Cohen?

Mr. COHEN. Certainly in the course of the investigation, there is, you know, a constant dialog among the investigators about what is being found, what the facts are, sharing information.

Senator WARREN. And so when the Justice Department is making the decision about whether or not to make a criminal prosecution, do they ask you about the impact on the economy for one of these large banks?

Mr. COHEN. So I cannot speak to every instance whether that occurs. That did occur in the HSBC matter. We told the Justice Department that we were not in a position to offer any meaningful assessment of what the impact might be of whatever criminal disposition they may take. But I would distinguish between the ongoing communication among investigators to the ultimate——

Senator WARREN. Wait. I want to make sure I understand what you just said. The Justice Department, in making its decision whether or not to pursue a criminal prosecution, checked with the Department of Treasury to determine your views on whether or not there would be a significant economic impact if a large bank were prosecuted? Is that what you just said?

Mr. COHEN. What I said was the Justice Department contacted us, asked whether we could provide guidance on what the impact to the financial system may be of a criminal disposition in the HSBC case. We informed the Justice Department that, given the complexity of the potential dispositions, given the fact that we are not the prudential regulator, given the fact that we are not privy to the different charges that the Justice Department may bring, and we are not privy to the responses that the regulators may have to the variety of different ways that the Justice Department may resolved the case, that we were not in a position to offer any meaningful guidance to the Justice Department in that matter.

Senator WARREN. So you just said to the Justice Department, "You are on your own in figuring this out"?

Mr. COHEN. We said that—we said exactly what I just said.

Senator WARREN. I know you said it in a nice long way, but——

Mr. COHEN. That is what we—what we said to the Justice Department was exactly what I just told you, Senator.

Senator WARREN. Mr. Powell, did the Justice Department get in touch with the Fed on this question before making a decision whether to prosecute HSBC?

Mr. POWELL. Senator, there were conversations between Justice and the Fed, but I do not believe that question was asked or answered. I will make sure of that and follow up. But I believe that the questions we were asked were specific questions about the application of this or that statute. For example, are certain kinds of investors prohibited from investing in a company that has been indicted—or, sorry, not indicted but convicted or pled guilty to a felony? So that is, I believe, the role we have had, and I do not think it went any farther than that.

Senator WARREN. Mr. Curry.

Mr. CURRY. The only question that we discussed——

Senator WARREN. I am sorry, Mr. Curry. Could you push your button? There you go.

Mr. CURRY. The only question that the Justice Department asked us was with the application of the charter revocation provision of our National Bank Act.

Senator WARREN. And who is responsible for making a determination about whether to revoke the charter?

Mr. CURRY. There is a statutory process. It requires notice and hearing, and we went through how that process would work.

Senator WARREN. And who would initiate that?

Mr. CURRY. That process would be initiated by the Comptroller's office, but only upon a conviction for any money-laundering violations.

Senator WARREN. So whether or not you could revoke the charter depended on what the Justice Department did. Did you have that discussion with the Justice Department to encourage them to bring a criminal prosecution so that you could have a hearing about whether to revoke the charter?

Mr. CURRY. Our position was that it is a criminal justice determination that is left to the discretion of the Justice Department. We are and were prepared to follow our statutory procedure if and when there was a criminal conviction.

Senator WARREN. So you did not make it clear to the Justice Department that if the Justice Department did not bring a criminal prosecution, that you would not be able to use one of the significant tools of enforcement given to you by Congress?

Mr. CURRY. We explained to them how the——

Senator WARREN. You did explain it?

Mr. CURRY. ——statute works, and that would be the consequence of not having a conviction. The statute would not be triggered.

Senator WARREN. All right. If I can, could I just ask a little more of a review question about this? I am hearing four major actors, the three of you here and the Justice Department. Why are there four departments trying to figure out money laundering? I read through your reports. They seem to overlap significantly. We seem to have

a lot of people with the same expertise and yet not quite the same expertise. Why is this not consolidated into a single function? Mr. Powell?

Mr. POWELL. That is a great question. This is our system. We have all these bank regulatory agencies, and they regulate different kinds of institutions. Twenty years ago, when I was in the first Bush administration, we proposed to merge some of them, and they are still not merged. But so——

Senator WARNER. We proposed some of that, too.

Mr. POWELL. Yes.

Senator WARNER. And they still were not merged.

Mr. POWELL. I think there have been a lot of attempts over the years. But more to the point, this is our system, and I think the obligation is on us to play as a team and to collaborate. And I think we try very hard at that, and I would say particularly in recent years you see a lot of interagency collaboration such as the task force and the BSAAG, Delta Force, and all the things that are going on now. There is very regular communication among all of us and with Justice—and with the industry, by the way—to try to get better and stay ahead of these threats. But that is the system we have, and we have to work with it.

Senator WARREN. Thank you.

Thank you, Mr. Chairman.

Senator WARNER. Senator Merkley. And then just for order, Senator Kirk and Senator Heitkamp.

Senator MERKLEY. Thank you very much, Mr. Chair.

I want to ask a specific question about the way that wire transfers are utilized in money laundering, and the Bank Secrecy Act has regulations that allow a U.S. bank to accept and process a wire transfer from overseas, even if the transmitter is blank—that is, you have no idea where it is coming from. And that might have been understandable 15 years ago when the regulation was written, but in the intervening period, we have learned an awful lot about international money laundering. And so in the light of the extensive history of abuse—and when I am talking about extensive history of abuse, I think anyone who has followed the details of this case realizes that this goes back a decade or more of interaction over money-laundering issues. Why are we still allowing—and I want specifically to ask you—Mr. Curry, I realize you were not there at the time that this was wrestled with, but also Mr. Cohen, because the Treasury Department has broad regulatory authority. Why are we still allowing this type of open-ended instrument with basically no information attached to it in light of the money-laundering issues?

Mr. CURRY. That is a legitimate area that——

Senator MERKLEY. Can you turn on your microphone, please?

Mr. CURRY. That is an area of legitimate concern, and we are looking at it, particularly in the context of foreign affiliates. That was a major issue with respect to HSBC, the stripping of necessary information to monitor here in the United States affiliate that we supervise, and that is one of the reasons that our cease-and-desist order does have limitations or requirements that affiliates—they have an obligation to be assured that affiliates are complying with our BSA and AML requirements.

Senator MERKLEY. OK. Now, as I understand it, the requirements are currently that that field does not have to be filled in. Are you looking at changing that requirement?

Mr. CURRY. We will be taking a look at that, Senator.

Senator MERKLEY. I know a lot of times when I talk about bank regulations, I am looking at it as a multiyear process. Is this something where there will be a formal process launched? In 6 months will we have an answer as to whether we should change this tool that is used in money laundering?

Mr. CURRY. We will endeavor to get back to you as quickly as possible and come up with an answer.

Senator MERKLEY. Thank you.

Mr. Cohen, from Treasury's point of view, is the evidence about the use of this tool problematic enough that you are all going to weigh in and try to see this rule changed?

Mr. COHEN. Absolutely, and I would just add one point on this, which is that the stripping cases where we have taken enforcement actions over the last several years involve either removing or obscuring or including false information in payment messages, we have put in place new requirements in the SWIFT message process, something that was the MT 202 cover payment, to ensure that the message that comes through from foreign affiliates contains accurate originator and beneficiary information. And when institutions obscure that information, we have taken very serious enforcement actions, and the industry knows that that information needs to be included in the payment messages.

Senator MERKLEY. Thank you. I want to go on to the next piece of this, which is we basically had a fine that was a small amount of the annual profits, I believe about 10 percent of the annual profits. I know it has been described as a very severe fine. But we are talking about action that continued over a 10-year period. In 2003, the bank said it was going to reform its anti-money laundering conduct. There was continuous concerns about it. So I do not know what the profits were over 10 years, but over 1 year they were $20 billion. So let me just extrapolate that. Maybe it is not accurate, but let us say the profits over 10 years were $200 billion. So now we are talking about a fine that was 1 percent of the profits over the time that this conduct was occurring.

Does that really send a message that this type of conduct is unacceptable? Mr. Curry.

Mr. CURRY. The $500 million fine we assessed, the CMP we assessed against HSBC was the largest fine ever assessed against a national bank. Our thinking behind coming up with the $500 million—and this goes, again, to our testimony where one of the weaknesses we found in BSA/AML compliance is the lack of allocation of resources to compliance efforts. That $500 million represents the savings through the austerity programs——

Senator MERKLEY. Your answer is yes.

Mr. CURRY. Yes.

Senator MERKLEY. OK. Thank you.

Mr. Cohen.

Mr. COHEN. The only thing I would add is that we looked at the violative conduct and designed the penalty in relation to the viola-

tive conduct that we identified, both on the sanctions side and on the money-laundering side in that case.

Senator MERKLEY. Your answer is yes also, that the fine was of a size, given the context of the profits over the 10-year period where this conduct was occurring, the fine sent a strong message?

Mr. COHEN. I think so, Senator.

Senator MERKLEY. OK. Thank you.

My time is up, so I will close with a comment, which is simply this was not a new form of activity by the bank. They had been warned time and time again that the money laundering was inadequate. We had vital national security interests in stopping the money laundering of terrorist organizations. We have a neighbor to the south that is racked with violence from drug activities where money laundering is a huge issue. We worked with this bank 10 years, admonished it apparently a number of times. They apparently promised reforms that were never done, and I do not find that 1 percent of their profits over the time period of this conduct really sends a chilling message that this is unacceptable. It sounds more like the price of doing a very profitable business.

Thank you.

Senator WARNER. Thank you, Senator Merkley.

Senator Kirk.

Senator KIRK. Mr. Chairman, thank you. I just wanted to turn my attention to David. We worked so long and hard on the Iran issue. I will note, according to United Against a Nuclear Iran, since the unanimous Senate adoption of the Menendez-Kirk sanctions on Iran, the Iranian currency has fallen 63 percent in its value measured against the U.S. dollar, meaning that Iran may actually have to miss a payment to Hezbollah, which would be welcome indeed.

I will say that we recently have had a senatorial letter from 36 Senators, 19 Democrats, including 14 Members of this Committee, asking the EU to lock Iran out of the Target2 system, and they have been largely locked out of the FEDwire system—Target2 and FEDwire being the electronic settlement system for the United States.

Over time, we are making good progress in making the Iranian currency fairly unusable, which is an extremely good thing, and the mullahs have been complaining about their economic woes, being unable to finance what they want to finance, like subjugating the people of Lebanon through Hezbollah.

The letter to the EU is particularly well aimed because of an attack by Hezbollah against Bulgaria on July 18th in which 17 people were killed on a bus, and I would hope that the EU would give the political direction to the ECB on this and that you could follow up on that. We have a number of segregated accounts where the Iranians have money around the world, in several places in Europe, where a strong political signal by the EU to the ECB would significantly impact the Iranians. I would ask that you could follow up on the spirit of a letter, which I gave to your new boss, when he came by my office. I heavily praised you and your work on this segregation around the world, which has really given us a target to attack, and significantly impacts the Iranians.

Mr. COHEN. Well, Senator, it is good to see you, and also good to see the impact that we have had on the Iranian currency and

other economic impacts on Iran, which I know you are familiar with. Let me just quickly address the two issues you raised.

One, the designation of Hezbollah, following the determination by the Bulgarians that Hezbollah was responsible for that attack in Burgas, we are pressing the EU, pressing member States of the EU to get that done. I am not going to predict what the EU will do, but you can be sure that we are pressing them very hard to get that accomplished.

On the clearing and settlement through Target2 of EU transactions, we have been working hard on this issue since the regulations that the EU adopted last December, as we read them, already address this issue. It requires the ECB to essentially issue guidance that confirms that. There is a meeting today at the ECB of a number of member States addressing this issue. We have fed into that process, and we will continue to press the ECB to take what we think is the right step here, which is to cutoff euro clearing for the—or apply to euro clearing the same set of restrictive measures that the EU has on any Iranian business.

Senator KIRK. I would say knocking Iran out of Target2 is particularly appropriate after this attack, which, you know, since Hezbollah is a wholly owned subsidiary of the MOIS, the Iranian intelligence service, and we would lock up a lot of money from the Iranians by doing that. And let us hope they make the right decision at this meeting.

Mr. COHEN. And if they do not, we are going to continue pressing on this issue.

Senator KIRK. Thank you.

Senator WARNER. Senator Heitkamp.

Senator HEITKAMP. I came prepared to ask a whole series of questions, which I will submit in writing, because I want to follow up with one last point.

Mr. Cohen, and please feel free to correct me if I have paraphrased you or misquoted you, but in your earlier discussion with Senator Warren, you said it is not your role to encourage or recommend prosecution. Is that what you said?

Mr. COHEN. I do not recall precisely what I said. What we view in the Treasury Department's role is not to seek to influence or direct the Justice Department in any particular prosecutorial decision.

That being said, we are fully supportive of aggressive exercise of all authorities, criminal and civil.

Senator HEITKAMP. And I completely understand what you are saying. But if we leave here without a commitment from all of you that you will vigorously encourage and suggest and recommend that the Justice Department prosecute cases that must be prosecuted in order to ensure equal justice under the law in this country, then we have failed today. And so I would like a commitment from all of you individually that you will, in fact, encourage, recommend, and strongly suggest, when you see cases like this, that they be prosecuted, and if there is a declination, if there is an agreement not to prosecute, that somewhere along the line there is some kind of process to appeal, because any of us who have ever done any kind of civil regulation which could, in fact, go criminal, know that it is frequently the civil regulators who have the ability

and the knowledge and can encourage and can be the pain in the room when that decision gets made. And if you are not willing to play that role, then we have failed today.

Mr. COHEN. Senator, we play that role. We share and communicate with the Justice Department in these cases on an ongoing basis. The one—and I think this is important because I think it is essential in our system of justice. We want the Justice Department to exercise its authority, exercise it aggressively. The decision to prosecute in any particular case is a decision for the Justice Department to make. We will feed into that process and have fed into that process and will continue to feed into that process information, our assessment of the information, our assessment of the violations, and you have our commitment that we will continue to do that.

Senator HEITKAMP. I hope I have your commitment that you will not let them off the hook, that you—you know, I understand, and I understand that you cannot dictate to the Department of Justice that they prosecute cases. But you can be a very strong voice. You can either play the role of saying, "Here is the case, good luck," or "Here is the case, we will help, we strongly urge you and encourage you. And if you decline it, we are going to ask serious questions of you as to why you declined to prosecute this case," because the inequities that it creates and the appearance of inequity in the justice system that it creates cannot be tolerated by the Congress, and it cannot be tolerated by the Department of Justice.

Thank you, Mr. Chairman.

Senator WARNER. Thank you.

Let me just follow up on Senator Heitkamp, and I will just ask one question. We will not go through a full other round if you have just got one more question for these folks. One of the things—and you did clarify the fact that as you discover possible actions prior to taking any of the steps along this continuum from injunctive action, removal, fine, or the ultimately sanction in terms of Justice Department prosecution. I guess the question I have is: What is or should be the threshold where you find something that—the prudential regulator finds something that appears to be amiss, at what point do you turn that over to the Justice Department? What is the threshold for turning over information to the Justice Department? That is probably more for Mr. Curry and Mr. Powell, but I will take any of you.

Mr. CURRY. I think our posture is to be as—to share as much information as possible and as soon as possible. If we uncover significant program weaknesses, which is what we are assessing, we will make our counterparts through the many different channels we have—the working groups—aware of what we are seeing.

The point I would want to make, though, is the real key to the BSA/AML process is the SARs filings and the currency transaction reporting, which we monitor, and that is really where law enforcement gets its primary information to pursue illegal activity. And as a result, that really is the focus of our on-site examination activity as well.

Senator WARNER. Mr. Powell, do you have anything to add to that?

Mr. POWELL. I would just agree that the idea is not that we are waiting to see something, such as a pot to boil, and then we get in touch with Justice. It is not like that at all. Suspicious activity reports go into the data base that FinCEN keeps. Law enforcement officials have ongoing access to that. So we are overinclusive, if anything, in providing information, because they may see patterns and it may be that we are seeing one little thing, so we want all the information that might lead someone in law enforcement to see a broader patterns. We want them to have access. And they generally have it, I think early.

Mr. COHEN. And I would just add one point on that. As my colleagues notes, FinCEN is the repository for all of these suspicious activity reports and other filings the banks make. We on an ongoing basis review that information, look for, as Governor Powell said, patterns, look for instances of potential violations. The threshold is very low for making a criminal referral, and it happens on a daily basis from FinCEN, and from OFAC as well. We are, as I say, in constant communication with the regulators and with the criminal authorities and referring matters for their investigation.

Senator WARNER. Senator Warren.

Senator WARREN. I am good.

Senator WARNER. Just before we close, I want to thank all of my colleagues, Senator Warren for hanging in until the bitter end on this one, and I think, you know, you have heard a really very common theme, obviously, that not only are we concerned that you are not fully using your BSA/AML powers along this continuum, since most of the actions so far have only resulted in fines and not resulted—and, Mr. Curry, you did point out there have been some injunctive activities, but there are things, short of simply punting this to the Justice Department, actions that you could take, number one.

Number two, we clearly believe there should be no institution not only too big to fail or not any institution too big to prosecute.

And, number three, that because there are all these stovepipes—and, Under Secretary Cohen, you are kind of the hub of that wheel, and, you know, you have got to make sure that we have got strong collaboration, information sharing.

And I would simply close with a comment that Mr. Powell made as well. This is only going to get harder. This is only going to get harder as we see some of the larger institutions perhaps migrate these activities into smaller financial institutions that, again, may even have less compliance components. It is going to get harder as the overlap between money laundering and cyber activities, and that area is an area that, again, if you have got suggestions as we try to put together bipartisan cyber legislation.

And then as somebody who grew up in the wireless business, as we think about the ability to do mobile transactions, a brand-new space, trying to put some framework on that—we have had hearings in this Committee before on this issue, but trying to put some parameters around that space before it is way down the path and fully developed is an enormous, enormous challenge, because the activities of money laundering in that area have enormous, enormous potential for bad action.

So I thank all the witnesses for their testimony and for their responses to questions. There are a couple of things, including continuing giving the Banking Committee updates on the activities of your interagency proceedings. Thank you all for a very spirited hearing.

Senator WARREN. The record will remain open?

Senator WARNER. The record will remain open for 7 days. The hearing is adjourned.

[Whereupon, at 11:41 a.m., the hearing was adjourned.]

[Prepared statements and responses to written questions supplied for the record follow:]

PREPARED STATEMENT OF DAVID S. COHEN

UNDER SECRETARY FOR TERRORISM AND FINANCIAL INTELLIGENCE, DEPARTMENT OF THE TREASURY

MARCH 7, 2013

Introduction

Chairman Johnson, Ranking Member Crapo, distinguished Members of the Committee, thank you for inviting me to testify today on a core focus of our efforts at the Department of the Treasury: promoting a safe and secure financial system, and effectively combating money laundering, terrorist financing, and related forms of illicit finance. I would like to commend you, Mr. Chairman, and this entire Committee for your strong leadership on this topic, including by focusing today's discussion on these critically important issues. The spate of recent high-profile enforcement actions against some of our largest, most sophisticated, and best resourced financial institutions raises troubling questions about the effectiveness of our domestic anti-money laundering and counterterrorist financing (AML/CFT) regulatory, compliance, and enforcement efforts. It is critically important to understand why these failures occurred and, even more importantly, what we can do—whether through better legislation, regulation, examination or enforcement, or through some combination of steps—to prevent the recurrence of such failures in the future.

Background

My remarks today will focus on Treasury's long-standing efforts to promote and enforce compliance with the Bank Secrecy Act (BSA) and our counterterrorist financing sanctions programs, including new efforts under way to improve our AML/CFT regime. We share the view that there is a pressing need to improve compliance, and we are working hard at it.

To begin, I believe it is worth noting that our AML/CFT legal and regulatory regime is one of the strongest and most effective in the world. Conceived more than 40 years ago with the enactment of the Bank Secrecy Act and updated repeatedly over the past four decades through new legislation, regulations, and guidance, our AML/CFT framework has evolved to better address new and different illicit finance threats.

Our AML/CFT framework has evolved, moreover, while our financial sector has maintained its place as the largest, most sophisticated, complex, and efficient financial system in the world. The enormous size, scope, and sophistication of our financial markets facilitate economic growth, both in the U.S. and around the world.

But that size, scope and sophistication also attracts criminals who wish to access our financial system to launder the proceeds of crime and move funds for illicit purposes. This includes money launderers, terrorists, proliferators, drug lords, and organized crime figures, all of whom rely to some extent on the financial system to conduct their operations.

The BSA, and the regulations promulgated by Treasury's Financial Crimes Enforcement Network (FinCEN) and the Federal functional regulators implementing the BSA and related statutes, establishes the framework for guarding the financial system from money laundering and terrorist financing. These laws and regulations work in tandem with the sanctions programs implemented by Treasury's Office of Foreign Assets Control (OFAC), particularly those that are focused on preventing financial facilitation for terrorist organizations and rogue regimes, such as Iran.

These rules aid financial institutions in identifying and managing risk, provide valuable information to law enforcement, and create the foundation of financial transparency required to deter, detect, and punish those who would abuse our financial system. It is, of course, critical that we design our laws and rules, as well as our oversight and examination efforts, to address the spectrum of risks that we face.

But the laws, rules, and compliance manuals can only do so much. A truly robust AML/CFT framework—one that hardens our financial system against the unrelenting efforts of money launderers, financial criminals, sanctions evaders, and other illicit actors—requires effective AML/CFT program implementation by financial institutions, buttressed by strong enforcement efforts when those efforts fall short of the mark. When AML/CFT safeguards are not effectively implemented and compliance lags, money launderers, terrorist financiers, and other illicit actors freely abuse our financial system. We have seen this happen too often, at too many financial institutions, including some of our largest banks, over the past several years.

So it is clear to us that despite the strength of our AML/CFT framework, significant design, oversight, compliance, and enforcement challenges remain. I would like to turn now to the efforts the Treasury Department is taking, in collaboration with

our regulatory and law enforcement partners, the financial industry, and our foreign counterparts, to strengthen the effectiveness of our AML/CFT regime.

Treasury's Ongoing Efforts To Promote an Effective AML/CFT Framework

As this Committee is well aware, a number of Federal departments and agencies, as well as State and local agencies, play important roles in combating money laundering, terrorist financing, and other illicit financial activity in U.S. financial institutions. The Treasury Department, through FinCEN, administers the BSA, and through OFAC, administers our sanctions programs. This includes issuing rules and guidance implementing the BSA and the executive orders that establish sanctions programs; conducting investigations into potential violations; and enforcing the relevant rules through civil proceedings. In all of these efforts, FinCEN and OFAC work closely with counterparts across the Federal Government and at the State and local level, including the other Federal financial regulators, as well as law enforcement agencies.

I would like to update the Committee on Treasury's ongoing efforts to implement and enforce the BSA and our sanctions programs, as well as new work under way to improve our AML/CFT regime, including renewed focus at FinCEN on BSA enforcement; the creation of an interagency AML Task Force; our strategy to enhance financial institutions' customer due diligence efforts; and the continued development of strong international standards on combating money laundering and the financing of terrorism and the proliferation of weapons of mass destruction (WMD). Each of these efforts is aimed at improving financial transparency through better regulations, better oversight, better compliance, and better enforcement.

FinCEN and OFAC Enforcement Efforts

Turning first to FinCEN's and OFAC's ongoing enforcement efforts:

As I noted, in administering the BSA, FinCEN investigates and pursues enforcement actions against financial institutions for violations of the BSA and its implementing regulations. Most recently, in December 2012, FinCEN assessed a $500 million civil monetary penalty against HSBC Bank USA N.A. for willful violations of the BSA. Among other things, FinCEN determined that HSBC lacked an effective AML program and systematically failed to detect and report suspicious activity. FinCEN joined OFAC, the Office of the Comptroller of the Currency, the Federal Reserve and the Department of Justice in what amounted to the largest combined bank settlement in U.S. history, totaling more than $1.9 billion in penalties and forfeitures for HSBC's conduct that exposed the U.S. financial system to severe abuse. Also, in November 2012, FinCEN joined the FDIC and the Department of Justice to assess concurrent civil money penalties of $15 million against First Bank of Delaware for violations of the BSA and its AML requirements.

These and other recent FinCEN enforcement actions highlight many of the key vulnerabilities in our financial system that the BSA was designed to address, including misuse of correspondent banking relationships, private banking accounts, financial activity undertaken by nonbank financial institutions, and the use of nontransparent legal entities to move funds. While these enforcement actions reaffirm the importance of imposing additional due diligence requirements on higher-risk activities, they also underscore that existing requirements and controls may not be sufficiently robust.

For its part, OFAC administers and enforces financial, economic and trade sanctions to advance key foreign policy and national security goals, including sanctions against targeted foreign countries and regimes, terrorists, international narcotics traffickers, and those engaged in activities related to WMD proliferation. OFAC aggressively pursues investigations and enforcement actions against both U.S. and foreign financial institutions that violate U.S. economic sanctions laws and regulations.

Between June and December 2012 alone, OFAC reached settlements with four separate foreign financial institutions for a combined total of more than $1.1 billion related to almost 24,000 apparent violations of our sanctions programs involving Burma, Cuba, Iran, Sudan, and Libya. Total related sanctions and AML enforcement actions involved those institutions, including OFAC's settlements, amounted to $2.76 billion. They followed several other record-breaking enforcement actions related to the "stripping" of sanctions-related information from international payment messages that resulted in almost one billion dollars in OFAC settlements as part of almost $1.7 billion in fines and forfeitures involving financial institutions. (Appendix I to this testimony contains a compendium of recent OFAC and FinCEN enforcement actions.)

It is important to note that the conduct at issue in these "stripping" investigations primarily occurred prior to 2009—that is, before most of OFAC's "stripping" settlements were concluded and published—and that these rigorous enforcement actions

appear to have had a significant compliance and deterrent effect on global financial institutions. Of course, Treasury will continue to penalize banks for conduct that violates our sanctions programs, whenever it occurs, and will be particularly aggressive with regard to any institutions found to be engaging in the type of conduct that has been the subject of these well-publicized enforcement cases.

In their civil enforcement investigations, both OFAC and FinCEN often work closely with criminal agencies, including the Department of Justice and State and local criminal prosecutors. Neither OFAC nor FinCEN, however, possesses the authority to bring criminal charges, nor does Treasury see it as our role to influence or seek to direct the decision whether to prosecute in any given case. The decision whether to bring criminal charges is the exclusive prerogative of criminal prosecutors. Nonetheless, Treasury strongly supports vigorous law enforcement across the board—by our counterpart Federal regulators, by Federal criminal law enforcement, and by the relevant State and local authorities.

FinCEN's Renewed Focus on Enforcement

FinCEN, as the administrator of the BSA, plays a critical role in our fight against money laundering and terrorist financing in the United States and around the world, and over its 20-plus year history, it has been at the heart of our Nation's efforts to combat illicit finance. I would like to highlight two FinCEN initiatives that will position the agency to be even more effective in enforcing the BSA in the years to come.

First, FinCEN has recently completed a multiyear IT Modernization Program, which is on-time and on-budget. This project will enhance FinCEN's ability to analyze illicit financial activity and conduct enforcement investigations. It will also better serve the various agencies that work with FinCEN and rely—sometimes heavily—upon BSA data in conducting their own money laundering and terrorism cases. For example, last year the Federal Bureau of Investigation reported that 37 percent of its pending counterterrorism cases had associated BSA records. A key component of FinCEN's modernization project is a powerful new search tool to access BSA data, called FinCEN Query. Since it was activated last September it has been used 920,000 times by 6,400 users. This is a strong start and we expect the utility of this tool to grow as more of our law enforcement and intelligence partners who rely on BSA data adopt and gain facility with the new search tool.

Second, FinCEN's new Director, Jennifer Shasky Calvery, is in the midst of a thorough review of FinCEN's operations as she and her new management team at FinCEN consider how FinCEN can better organize itself to execute its mission even more effectively, including enhancing its compliance and enforcement functions. Since taking up her post, Director Calvery has met with virtually every employee of FinCEN, as well as with FinCEN's law enforcement and regulatory partners, industry stakeholders and Congressional staff, as she explores the appropriate steps to take.

Director Calvery is particularly focused on ensuring that FinCEN fulfills its key role in the enforcement of our AML/CFT regime, including by employing all the tools at the agency's disposal to hold accountable those institutions and individuals who allow our financial institutions to be vulnerable to terrorist financing, money laundering, proliferation finance, and other illicit financial activity. Some of these tools have been used in the past—such as imposing special measures under Section 311 of the USA PATRIOT Act against entities determined to be primary money laundering concerns—and we intend to continue the aggressive use of these tools in the future.

We also intend to make use of additional tools at FinCEN's disposal to ensure that those who violate the BSA are held accountable. For example, the BSA provides FinCEN with the broad authority to obtain injunctions against persons it believes have violated, are violating, or will violate, the BSA. Likewise, the BSA allows FinCEN to impose civil penalties not only against domestic financial institutions and nonfinancial trades or businesses that willfully violate the BSA, but also against partners, directors, officers and employees of such entities who themselves actively participate in misconduct. Although FinCEN has employed these tools only occasionally in the past, in the future FinCEN will look for more opportunities to impose these types of remedies in appropriate cases.

New Initiatives To Improve the AML/CFT Framework

Let me now turn to the several initiatives we are pursuing to look at our AML/CFT framework and consider where improvements can be made. At the heart of this task is a goal of ensuring that our AML/CFT obligations and actions are directing financial institutions to address the real, prevailing illicit financing risks that they face.

FinCEN's "Delta Team"

FinCEN recently organized a group dubbed the "Delta Team" under the auspices of the Bank Secrecy Act Advisory Group (BSAAG). The Delta Team includes representatives from the financial services industry, financial regulators, and law enforcement with the common mission of examining any gaps between illicit finance risks and compliance efforts. Their objective is to develop recommendations to close any gaps in order to enhance the effectiveness of our AML/CFT regulatory regime. The Delta Team had its first meeting last month, and I understand the discussions produced a number of interesting ideas that will be explored further in the ongoing dialogue.

The AML Task Force

Treasury also has recently convened a broad interagency group, known as the AML Task Force, to look in depth at the entire AML/CFT framework. Along with Treasury, the AML Task Force is comprised of senior representatives from each of the regulators with responsibility to combat money laundering—that is, FinCEN, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodity Futures Trading Commission, the Securities and Exchange Commission and the Internal Revenue Service—as well from the Justice Department's Criminal Division.

The Task Force's objective is to take a step-back look at our AML/CFT framework—from the legal and regulatory foundation, to the compliance and examination function, to the enforcement efforts—to take stock of which components of our regime are working well, which are not, how the different parts are working together, and to assess how the entire enterprise is operating. The Task Force will look at the mechanisms by which illicit finance risks are identified, and how statutory and regulatory requirements are adapted to address these risks. It will evaluate information sharing, supervision, and enforcement practices and processes to determine if there are ways to better inform, assess, encourage and, as necessary, compel financial institution compliance.

In all of its work, the Task Force will be informed by the specific deficiencies identified in the recent bank enforcement cases. The goal is to develop recommendations, and find solutions, to address any gaps, redundancies or inefficiencies in our AML/CFT framework, and to ensure that truly effective AML/CFT compliance is made a priority within financial institutions.

Enhancing Customer Due Diligence

Financial transparency depends, at the most basic level, on effective customer due diligence—that is, the steps taken by financial institutions to know their customers. Poor or weak customer due diligence may permit illicit actors to access the financial system undetected, and to engage in transactions that financial institutions may fail to identify as suspicious.

Current law, however, explicitly requires financial institutions to conduct in-depth customer due diligence—in which the true beneficial owner of an account is identified—in only certain limited circumstances. Because we believe that a broader obligation for financial institutions to conduct in-depth customer due diligence may be warranted, Treasury has embarked on a rule-making process to consider whether to impose an explicit, enhanced customer due diligence requirement.

We believe that a rule that clarifies and strengthens customer due diligence requirements for U.S. financial institutions, including an obligation to identify beneficial owners, would advance the purposes of the BSA by assisting law enforcement in their financial investigations. Moreover, such a requirement would assist financial institutions in their assessment and mitigation of risk, as well as facilitate their compliance with existing BSA requirements and U.S. sanctions programs. And it would assist in reporting and investigations in support of tax compliance.

Due to the importance of this issue, as well as its implication for all corners of our financial system, we took the unusual step of issuing an Advance Notice of Proposed Rulemaking (ANPRM), and then embarked on an unprecedented industry outreach program to discuss the proposed rule in series of public forums with a broad range of stakeholders, including Congress; law enforcement; community, regional, national, and international banks; money service businesses; broker-dealers; futures commission merchants; and other interested parties. These engagements highlighted the challenges associated with achieving clear and harmonized customer due diligence expectations while also leveraging best practices to minimize burden.

All the information gathered, through written comments as well as public engagements, has informed the development of a proposed customer due diligence rule, which we anticipate publishing for further notice and comment in the near future.

International Efforts To Strengthen the Global AML/CFT Framework

Our domestic work to strengthen the integrity and transparency of our financial system, and refine and improve our AML/CFT framework, is bolstered and extended by our efforts to work with international partners to strengthen AML/CFT regimes abroad. Given the global nature of money laundering and terrorist financing, and the increasing interrelatedness of the global financial system, a secure global framework is essential to the integrity of the U.S. financial system.

Treasury, along with others in the Federal Government, works closely with international counterparts to strengthen the global AML/CFT framework and promote implementation and enforcement of effective AML/CFT measures worldwide. To this end, we engage several intergovernmental and international organizations, such as the Financial Action Task Force (FATF), the IMF, the World Bank, the United Nations, and various FATF-style regional bodies, to develop, assess, and facilitate implementation of effective AML/CFT laws around the world.

In recent years, within the FATF, we have helped lead efforts to revise and strengthen the global AML/CFT standards, including by incorporating measures to combat proliferation financing, tax evasion, and sanctions evasion. We have also led efforts to focus the next round of jurisdictional assessments on effectiveness and implementation, in addition to technical compliance with the global standards. Most recently, we have secured the FATF's commitment to examine challenges of global compliance as a priority matter for all jurisdictions, within a broader agenda focusing on enhancing the effectiveness of AML/CFT regimes in combating the threats we face.

Through these efforts, we have established both a necessary foundation and a common set of expectations that will enable us to focus ongoing and future global AML/CFT efforts on the primary challenges we face in combating illicit finance and enhancing financial integrity. These challenges include the substantive areas of concern highlighted in recent bank enforcement actions, such as sanctions compliance (including by intermediary financial institutions), customer due diligence, AML programs, and correspondent controls. They also include cross-cutting AML/CFT issues such as enhancing information sharing to facilitate enterprise-wide risk management within global financial institutions, and aligning investigative, supervisory and compliance resources to focus on priority illicit financing risks and vulnerabilities. Thus, as we examine these issues with a view towards improving the effectiveness of our own AML/CFT regime, we are also working internationally to inform and strengthen similar efforts in other financial centers.

Conclusion

The United States is home to one of the strongest anti-money laundering and counterterrorist financing regimes in the world. But clearly, there is work to be done to make our AML/CFT regime more effective and to elicit better compliance from financial institutions. We all have an interest in enhancing the effectiveness of our framework and better protecting our financial system from abuse. I look forward to working with this Committee on these critical issues, and would be pleased to answer any questions you may have.

Appendix 1: Recent OFAC and FinCEN Enforcement Actions

OFAC Penalties

	Bank	Date	OFAC Action / Fine	Agencies Involved	Description
1	HSBC Holdings plc	12/11/2012	$375 million	OFAC, DOJ, DANY, FRB, OCC, FinCEN	HSBC engaged in payment practices such as the use of SWIFT payment messages in a manner that obscured references implicating U.S. sanctions; removed information from SWIFT messages; and forwarded payment messages to U.S. banks that falsely referenced an HSBC affiliate as the ordering institution rather than individuals or entities subject to U.S. sanctions. Management, including senior management, was aware of the conduct that took place. HSBC's conduct resulted apparent violations totaling more than 2,300 transactions valued at approximately $430 million.
2	Standard Chartered Bank	12/10/2012	$132 million	OFAC, DOJ, DANY, FRB, NYDFS	From 2001 to 2007, SCB's London head office and its Dubai branch engaged in payment practices that interfered with the implementation of U.S. economic sanctions by financial institutions in the United States, including SCB's New York branch. In London, those practices included omitting or removing material references to U.S.-sanctioned locations or entities from payment messages sent to U.S. financial institutions. SCB accomplished this by replacing the names of ordering customers on payment messages with special characters, effectively obscuring the true originator and sanctioned party in the transaction; and forwarding payment messages to U.S. financial institutions that falsely referenced SCB as the ordering institution. In Dubai, the practices included sending payment messages to or through the United States without

	Bank	Date	OFAC Action / Fine	Agencies Involved	Description
					references to locations or entities implicating U.S. sanctions. As a result, millions of dollars of payments were routed through U.S. banks for or on behalf of sanctioned parties in apparent violation of U.S. sanctions.
3	ING Bank N.V.	6/12/2012	$619 million	OFAC, DOJ*, DANY	ING Bank NV purposefully used cover payments and removed references to OFAC-sanctioned persons on any payment messages to avoid payments being stopped in the United States. ING also routed payments through non-sanctioned entities to obscure the involvement of sanctioned parties, and provided sanctioned financial institutions with false endorsement stamps to obscure the involvement of a sanctioned Cuban interest in ING payments routed through the United States.
4	Barclays	8/18/2010	$176 million	OFAC, DOJ, DANY, FRB, NYSBD	Barclays purposefully used cover payments in a manner intended to obscure the identities of OFAC-sanctioned countries and persons, and removed information from any payment messages that indicated a sanctioned interest in payments.
5	Credit Suisse	12/16/2009	$536 million	OFAC, DOJ*, DANY, FRB	Credit Suisse had standard procedures for using cover payments to avoid referencing parties subject to U.S. sanctions and omitting information, removing information, or providing incorrect information in payment messages in order to conceal the identities of U.S. sanctions targets — most notably Iran, Sudan, and Libya — in electronic funds transfer instructions executed through the United States on behalf of its bank and non-bank customers, and in securities transactions executed in the United States for a then-designated Libyan state-owned investment company and

	Bank	Date	OFAC Action / Fine	Agencies Involved	Description
					a bank located in Sudan.
6	Lloyds TSB Bank PLC	12/22/2009	$217 million	OFAC, DOJ, DANY, FRB, NYSBD	Lloyds intentionally manipulated and deleted information about U.S. sanctions parties in wire transfer instructions routed through third-party banks located in the United States.
7	ABN AMRO	12/19/2005	$80 million	OFAC, FRB, NYSDB, IL FDPF, DOJ, FinCEN	ABN intentionally manipulated and deleted information about U.S. sanctions parties in wire transfer instructions and letters of credit routed through the United States.
			* It is presumed the DOJ settlements involve forfeitures		[ONLY DOJ/DANY/OFAC sanctions-related settlements, and the Fed's civil monetary penalty against SCB, are included in this figure. The Fed's civil monetary penalty against HSBC, other USG agencies penalties against HSBC for BSA/AML, and the DFS action against SCB are not included] [ONLY DOJ/DANY/OFAC sanctions-related settlements, and the Fed's civil monetary penalty against SCB, are included in this figure. The Fed's civil monetary penalty against HSBC, other USG agencies penalties against HSBC for BSA/AML, and the DFS action against SCB are not included]

FinCEN Penalties

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
1	HSBC Bank USA NA	12/11/2012	$500 Million Civil Money Penalty	FinCEN, OCC	$500 million civil money penalty (CMP) assessed by FinCEN, concurrent with a $500 million CMP by the Office of the Comptroller of the Currency (OCC). Contemporaneously, more than $1.4 billion fines and asset forfeitures versus the Bank by other government

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
					agencies, including the U.S. Department of Justice (DOJ), the Office of Foreign Assets Control (OFAC), the Board of Governors of the Federal Reserve System (FRB), and the District Attorney of New York.
2	First Bank of Delaware	11/19/2012	$15 Million Civil Money Penalty	FinCEN, FDIC, DOJ	$15 million CMP assessed by FinCEN, concurrent with $15 million CMP by the Federal Deposit Insurance Corporation (FDIC). Contemporaneously, the Bank settled a civil fraud action with DOJ. All satisfied by $15 million paid to the U.S. Treasury.
3	Frank E. Mendoza	12/15/2011	$25,000 Civil Money Penalty	FinCEN	$25,000 CMP assessed by FinCEN for disclosure of a suspicious activity report in connection with a bribery scheme.
4	Sarith Meas	12/8/2011	$12,500 Civil Money Penalty	FinCEN	$12,500 CMP assessed by FinCEN for failure to comply with registration and anti-money laundering program requirements for money services businesses
5	Mohamed Mohamed-Abas Sheikh	9/23/2011	$25,000 Civil Money Penalty	FinCEN	FinCEN assessed a CMP in the amount of $25,000 against Mohamed Mohamed-Abas Sheikh for violating Bank Secrecy Act registration requirements and the Bank Secrecy Act prohibition against structuring.
6	Altima Inc.	9/7/2011	$5,000 Civil Money Penalty	FinCEN	FinCEN assessed a $5,000 CMP against Altima, Inc. for allowing its registration with FinCEN as a money transmitter to lapse for a period of several years.
7	Ocean Bank	8/22/2011	$10.9 Million Civil Money Penalty	FinCEN, FDIC, State of Florida Office of Financial Regulation	$10.9 million CMPs assessed by FinCEN, the FDIC, the State of Florida Office of Financial Regulation, and an $11 million forfeiture to DOJ under a deferred prosecution agreement. All satisfied by one $10.98 million payment to the U.S. Government.

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
8	Lower Sioux Indian Community DBA Jackpot Junction Casino hotel	4/21/2011	$250,000 Civil Money Penalty	FinCEN	FinCEN assessed a $250,000 CMP against the Lower Sioux Indian Community, doing business as Jackpot Junction Casino Hotel for violations of the anti-money laundering program, currency transaction reporting, and recordkeeping requirements of the Bank Secrecy Act.
9	Pacific National Bank	3/24/2011	$7 Million Civil Money Penalty	FinCEN, OCC	FinCEN assessed a CMP in the amount of $7 million concurrent with the OCC versus Pacific National Bank for violations of the requirement to implement an effective anti-money laundering program, and violations of the requirement to report suspicious transactions.
10	Victor Kaganov	3/11/2011	$25,000 Civil Money Penalty	FinCEN	FinCEN assessed a $25,000 CMP against Victor Kaganov, for violating Bank Secrecy Act requirements for money transmitters. FinCEN determined that Kaganov violated Bank Secrecy Act registration, anti-money laundering program, and suspicious activity reporting requirements while conducting an independent money transmitter business from his residence.
11	Omar Abukar Sufi DBA Halal Depot	3/2/2011	$40,000	FinCEN	FinCEN assessed CMPs totaling $40,000 against brothers Omar Abukar Sufi and Mohamed Abukar Sufi, for non-compliance with Bank Secrecy Act money transmitter registration requirements.
12	Mohamed Abukar Sufi DBA Halal Depot	3/2/2011	$40,000	FinCEN	FinCEN assessed CMPs totaling $40,000 against brothers Omar Abukar Sufi and Mohamed Abukar Sufi, for non-compliance with Bank Secrecy Act money transmitter registration requirements.
13	Zions First National Bank	2/11/2011	$8 Million Civil Money Penalty	FinCEN	FinCEN assessed a CMP in the amount of $8 million for violations of the requirement to implement an effective anti-money laundering

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
					program and violations of the requirement to report suspicious transactions.
14	Baltic Financial Services Inc.	12/16/2010	$12,000 Civil Money Penalty	FinCEN	FinCEN assessed a CMP in the amount of $12,000 against Baltic Financial Services, Inc. for non-compliance with Bank Secrecy Act registration requirements applicable to money transmitters.
15	Pinnacle Capital Markets	9/1/2010	$50,000 Civil Money Penalty	FinCEN, SEC	FinCEN assessed a CMP in the amount of $50,000 versus Pinnacle Capital Markets for failure to establish and implement an effective anti-money laundering program, and failure to timely detect and report suspicious activity. This penalty was issued concurrently with an assessment by Securities and Exchange Commission (SEC) for violations of the Securities Exchange Act of 1934.
16	Pamrapo Savings Bank	6/3/2010	$1 Million Civil Money Penalty	FinCEN, DOJ, OTS	FinCEN assessed a CMP in the amount of $1 million versus Pamrapo Savings Bank for failure to establish and implement an effective anti-money laundering program, including a lack of due diligence procedures required to identify high risk accounts, lack of adequate Bank Secrecy Act compliance personnel and deficient independent testing, necessary to file suspicious activity reports and currency transaction reports in a timely manner. This investigation was part of a coordinated effort with DOJ and the Office of Thrift Supervision, both of whom levied penalties in March, 2010.
17	Eurobank, San Juan, Puerto Rico	5/4/2010	$25,000 Civil Money Penalty	FinCEN, FDIC	FinCEN and the FDIC assessed concurrent CMPs in the amount of $25,000 for failure to implement an effective anti-money laundering program reasonably designed to

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
					monitor accounts for suspicious activity.
18	Wachovia Bank NA	3/17/2010	$110 Million Civil Money Penalty	FinCEN	$110 million CMP assessed by FinCEN was satisfied by the $110 million forfeiture pursuant to the DOJ's deferred prosecution agreement. The OCC assessed a separate $50 million CMP.
19	Doha Bank, New York, New York	4/20/2009	$5 Million Civil Money Penalty	FinCEN, OCC	$5 million CMP assessed concurrently by FinCEN and the OCC. FinCEN determined that the Bank failed to implement an adequate system of internal controls to ensure compliance with the Bank Secrecy Act and manage the risk of money laundering or other suspicious activity, or to conduct independent testing to allow for the timely identification and correction of Bank Secrecy Act compliance deficiencies. The absence of effective internal controls and independent testing at the Bank resulted in numerous violations of the requirement to timely report suspicious transactions.
20	NY Branch United Bank for Africa	4/28/2008	$15 Million Civil Money Penalty	FinCEN, OCC	$15 million CMP assessed by FinCEN, concurrent with a $15 million CMP by the OCC. FinCEN determined that the Bank failed to implement an effective anti-money laundering program reasonably designed to identify and report transactions that exhibited indicia of money laundering or other suspicious activity.
21	El Noa Noa Corporation	4/14/2008	$12,000 Civil Money Penalty	FinCEN	$12,000 CMP assessed by FinCEN versus the Money Services Business for failure to implement an effective anti-money laundering program, and file complete and timely currency transaction reports.
22	Sigue Corporation	1/28/2008	$12 Million	FinCEN, DOJ	$12 million CMP assessed by FinCEN versus the Money Services Business.

	Bank	Date	FinCEN Action / Fine	Agencies Involved	Description
	and Sigue LLC		Civil Money Penalty		Satisfied by $15 million forfeiture to DOJ under a deferred prosecution agreement. FinCEN determined that the Money Services Business failed to establish and implement an anti-money laundering program reasonably designed to ensure compliance with the Bank Secrecy Act, which led, in turn, to a failure by management at the Money Services Business to implement measures to respond to continued patterns of suspicious activity, with repeated common characteristics, at certain agent locations.

PREPARED STATEMENT OF THOMAS J. CURRY

COMPTROLLER, OFFICE OF THE COMPTROLLER OF THE CURRENCY

MARCH 7, 2013

I. Introduction

Chairman Johnson, Ranking Member Crapo, and Members of the Committee, I appreciate the opportunity to appear before you today to discuss the importance of effective Bank Secrecy Act and Anti-Money Laundering (BSA/AML) compliance programs at U.S. financial institutions and the role the OCC plays in examining financial institutions for compliance in this area.*

The OCC is committed to ensuring that the institutions under its supervision have effective controls in place to safeguard them from being used as vehicles to launder money for drug traffickers and transnational and other criminal organizations, or to facilitate the financing of terrorist acts. Together with the other Federal banking agencies and the law enforcement community, the OCC's goal is to deter money laundering, terrorist financing, and other criminal acts and prevent the misuse of our Nation's financial institutions.

National banks and Federal savings associations (hereafter referred to as "banks" or "bank") have been required to have a BSA compliance program since 1987, and to monitor, detect, and report suspicious activity since the 1970s. However, regulatory requirements and supervisory expectations under the BSA have increased significantly since that time, and most institutions have had to make substantial improvements in their compliance programs. In response, many of the largest institutions have implemented highly sophisticated programs and systems that screen transactions to identify and report suspicious activity to law enforcement, and to ensure that such transactions do not involve entities subject to Office of Foreign Assets Control (OFAC) sanctions. The suspicious activity reports (SARs) that are filed have provided law enforcement with access to critical information needed to initiate and conduct successful investigations and prosecutions. There are now more than 5.6 million SARs in the centralized database that is maintained by the Financial Crimes Enforcement Network (FinCEN). The majority of these SARs have been filed by national banks and Federal thrifts.

BSA compliance is inherently difficult, combining the challenges of sifting through large volumes of transactions to identify features that are suspicious, with the presence of criminal and possibly terrorist elements dedicated to, and expert in, concealing the true nature of the transactions they undertake. As financial institutions' BSA compliance programs have evolved and changed over time, so have the sophistication and determination of money launderers, terrorist financiers, and other criminals in finding other ways to gain access to our institutions. The technology, products, and services offered by institutions to give customers better and quicker access to financial services can also be used by criminals to instantaneously and anonymously move money throughout the world, sometimes through the simple click of a keypad or the use of a cell phone app. Risks are constantly mutating, as criminal elements alter their tactics to avoid detection. They move quickly from one base of operations to another, finding sanctuary in places where law enforcement, or sympathy for U.S. policy objectives, is weakest. Furthermore, money-laundering schemes are becoming more complex, involving entities and individuals located in numerous jurisdictions worldwide. Consequently, banks, thrifts, and other financial institutions have had to devote increasingly larger amounts of resources to maintain effective programs, and the OCC has likewise significantly increased its attention in this area.

My testimony today will cover our assessment of industry trends and concerns; the OCC's supervisory approach to BSA/AML; our process for taking supervisory and enforcement actions and a description of some of our recent actions; improvements the OCC has made or is in the process of making to our supervisory and enforcement practices; and our recommendations for regulatory and legislative improvements.

Specifically, in response to the Committee's questions in its letter of invitation, the OCC believes that corporate governance weaknesses, combined with the effects of austerity programs banks instituted during the financial crisis, are among the biggest reasons for recent BSA/AML compliance breakdowns. In response, the OCC has implemented a number of changes to our policies and internal review processes to strengthen our supervision in this critical area, and we are considering additional changes to our policy guidance, regulations, and enforcement documents to clarify

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* Statement required by 12 U.S.C. 250: The views expressed herein are those of the Office of the Comptroller of the Currency and do not necessarily represent the views of the President.

regulatory expectations and improve bank compliance in this area. For example, while we believe that our cease and desist (C&D) authority is as effective and more efficient than the use of civil injunctions, we are exploring the possibility of regulatory changes that would enhance our ability to take removal and prohibition actions against bank officers, directors, and employees that engage in violations of the BSA. Finally, we have inserted language in some of our recent enforcement documents that is designed to improve enterprise-wide compliance with AML requirements when banks engage in transactions with their overseas affiliates. All of these points are further addressed in the testimony.

II. Industry Trends and Concerns

Many of the practical problems we have seen in recent years with respect to BSA compliance can be attributed to four root causes: (i) culture of compliance within the organization, (ii) commitment of sufficient and expert resources, (iii) strength of information technology and monitoring processes, and (iv) sound risk management. These root causes have led to breakdowns in the fundamentals and mechanics of sound management of operational risks. For example, our examination and enforcement activities have identified a number of trends and concerns in the BSA/AML area that warrant continued attention by supervisors and banks:

- *Corporate Governance*—Some recent cases have involved the lack of strong corporate governance principles necessary to create a "culture of compliance" within the organization. These cases reflected an imbalance in both the independence of the compliance function and organizational incentives that emphasized revenues and growth over balanced risk management. Proper incentives across both BSA/AML compliance and the line of business ensure that there is accountability throughout the organization and employees are motivated to do the right thing through compensation structures, performance standards, promotions, and a strong compliance culture.
- *Compliance Resources*—Recent cases have identified a lack of sufficient staffing, high turnover rates, and cutbacks in the compliance area as common factors that have impeded the effectiveness of banks' BSA/AML programs. In some cases, banks have inappropriately reduced staffing and resources in the BSA area due to austerity programs initiated during the financial crisis. In other cases, banks' compliance department staff and expertise have failed to keep pace with the growth of the institution.
- *International Focus or Component*—Foreign correspondent banking, cross border funds transfers, bulk cash repatriation, remote deposit capture, and embassy banking have all been high-risk areas that some banks have not managed effectively.
- *Bulk Cash and Structured Deposits*—Bulk cash transactions continue to present significant BSA/AML challenges for banks in determining legitimate from illegitimate sources. In addition, as a result of the changes to the Mexican currency laws, we have seen an increase in suspicious activity along the southwest border flowing from funnel accounts associated with drug cartels, increased use of nonbank financial institutions, and increased structuring of cash deposits.
- *Migration to Smaller Banks*—As some large or midsize banks have attempted to lower their risk profiles, higher risk products and customers have migrated to community banks. These institutions must be mindful of the resources and personnel necessary to successfully manage higher risk activities.
- *New Technologies and Evolving Payments Activities*—When banks introduce new technologies and products, they must appreciate or understand the compliance risks. Prepaid access, mobile phone banking, smart ATM machines and kiosks, mobile wallets, and Internet cloud-based payment processes are all technologies that are developing rapidly, and senior bank compliance personnel need to be engaged in the product development processes. OFAC monitoring is especially important and challenging in this area. In addition, products that have evolved through technology need to be periodically re-evaluated (e.g., prepaid access money transfers, and payroll cards).
- *Third-Party Relationships and Payment Processors*—The OCC and the other banking agencies have been reviewing closely third-party and payment processor relationships and a number of enforcement actions have been taken in recent years. Banks need to be especially aware of the risks presented by payment processors and the extent of their franchising relationships (routing transit numbers (RTNs), bank identification numbers (BINs), and ATM machines).

The OCC will continue to identify significant trends, communicate them to the industry, and ensure that BSA/AML supervision stays current.

III. OCC BSA/AML Supervisory Policies and Practice

Legal Framework and the OCC's Risk-based Supervisory Approach

The Money Laundering Control Act of 1986 provides the framework for BSA/AML supervision and enforcement. It requires the Federal banking agencies to: (i) prescribe regulations to require banks to establish and maintain procedures that are reasonably designed to assure and monitor compliance with the BSA; (ii) review those procedures at every examination; (iii) report problems with the procedures to the bank; and (iv) issue a C&D order if the financial institution fails to establish and maintain the procedures or fails to correct a problem that was previously reported to it.[1] On January 27, 1987, the OCC and the other Federal banking agencies issued virtually identical regulations to implement this requirement. The OCC's regulation, codified at 12 CFR §21.21 for national banks and at 12 CFR §163.177 for Federal savings associations, requires every bank to have a written program, approved by the board of directors, and reflected in the minutes of the bank. The program must, at a minimum: (1) provide for a system of internal controls to assure ongoing compliance; (2) provide for independent testing for compliance; (3) designate an individual responsible for coordinating and monitoring day-to-day compliance; and (4) provide training for appropriate personnel. In addition, the implementing regulation for section 326 of the USA PATRIOT Act[2] requires that every bank adopt a customer identification program as part of its BSA compliance program.

The OCC has worked with the other Federal Financial Institutions Examination Council (FFIEC) agencies,[3] FinCEN, and OFAC to review and develop BSA examination and enforcement policies and procedures for use at every examination. The publication of the Interagency BSA/AML Examination Manual (Manual) in 2005 effectively standardized examination procedures for the Federal banking agencies. The Manual reinforces the agencies' position that sound BSA/AML risk management enables a banking organization to identify BSA/AML risks and better direct its resources, with the ultimate goal of helping safeguard its operations from money laundering, terrorist financing, and other illicit activities. The Manual has been revised three times since its initial publication so that it remains current with the latest technological and payment system innovations and emerging threats and vulnerabilities.

The OCC monitors compliance with the BSA and its implementing regulations by applying the examination procedures set forth in the Manual during a bank's examination. Community banks are examined either on a 12- or 18-month cycle, and large banks and midsize banks are examined on an annual cycle. These procedures are risk-based and direct examiners to focus examination resources on high-risk areas within banks. Examiners use the procedures to assess the implementation and effectiveness of the bank's policies, procedures, systems, and controls. Every BSA/AML examination includes, at a minimum, a review of the bank's risk assessment and its BSA/AML compliance program (focusing on internal controls, training programs, independent testing, and BSA officer independence and qualifications). We also assess the effectiveness of the bank's OFAC compliance program.

OCC examiners perform ongoing supervision and conduct targeted testing in areas that may present higher money laundering and terrorist financing risks. The Manual includes supplemental procedures that cover specific BSA requirements (e.g., currency transaction reporting, suspicious activity reporting, foreign correspondent bank, private banking, and funds transfer record keeping) and specific examination procedures covering risks from products and services and persons and entities (e.g., correspondent banking, private banking, trade finance, electronic banking, third-party payment processors, bulk shipments of currency, pouch activities, politically exposed persons, and business entities).

The OCC routinely analyzes BSA data, currency transaction reports and SARs to identify unique risks and augment our examinations. This information permits examiners to scope and plan examinations to ensure that the bank's higher risk activities are evaluated. Such activities may be reflected in accounts associated with repetitive SAR filings, significant cash activity, or activity that is inconsistent with the type of business of the customer, and are examples of the types of accounts that

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[1] 12 U.S.C. §1818(s).

[2] Uniting and Strengthening America by Providing Appropriate Tools Required To Intercept and Obstruct Terrorism, P.L. 107-56, 115 Stat. 272 (2001) (USA PATRIOT Act).

[3] The FFIEC is a formal interagency body empowered to prescribe uniform principles and standards for the Federal examination of financial institutions by the OCC, the Board of Governors of the Federal Reserve (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, and the Consumer Financial Protection Bureau. The FFIEC's primary goal is to promote uniformity in the supervision of financial institutions.

would be selected for transaction testing and further examiner review. In cases where examiners identify areas of concern, deficiencies, or violations, they typically expand the examination scope and perform transaction testing in targeted areas to ensure they identify and evaluate all pertinent issues.

In community banks, the OCC uses a risk identification and analytical tool called the Money Laundering Risk (MLR) System, which enables the OCC to identify potentially high-risk banks and activities that warrant increased scrutiny and supervisory resources. This combination of our ongoing supervision and targeted examinations allows us to determine the adequacy of a bank's BSA/AML compliance program at every exam.

Training and Internal Communications

The OCC provides comprehensive BSA training to our examiners and organizes a BSA compliance conference every 3 years to inform our examiners of emerging money laundering and terrorist financing threats and vulnerabilities. A critical component of examiner training is also provided on an interagency basis by the FFIEC and the OCC works with the FFIEC and other Federal Government agencies to develop advanced AML courses for examiners, as well as periodic internal and external seminars, conferences, and teleconferences. Representatives of the law enforcement community are regular participants in these conferences and training sessions, establishing an ongoing dialogue with our examiners concerning criminal typologies, schemes and arrangements. Such forums allow our examiners to be continually aware of the risks facing the banks, to scope examinations accordingly, and to provide timely guidance to the industry in addressing those risks. OCC examiners also attend other FFIEC training courses, external courses and industry conferences to remain abreast of the latest trends in the areas of money laundering, payments systems, fraud, and cybercrime.

The OCC Compliance Policy Department leads our National Anti-Money Laundering Group (NAMLG), which is an internal forum that serves as the focal point for BSA/AML issues within the agency. The NAMLG facilitates intra-agency communication; promotes cooperation and information sharing with national and district office AML groups; identifies emerging risks, best practices, and possible changes in anti-money laundering policies and procedures; discusses legislative proposals; and serves as a clearinghouse for ideas developed throughout the OCC. The NAMLG's resource sharing program initiative provides BSA policy expert resources to complex banks, higher risk banks, or examinations in need of specialized expertise. The resource-sharing program promotes BSA/AML knowledge transfer and examiner development, and improves the allocation of BSA resources.

Interagency Cooperation

The OCC cooperates and coordinates on an interagency basis to address BSA/AML issues. For example, we are participating in the interagency Task Force on the U.S. AML Framework, led by Under Secretary of the Treasury David Cohen, which will take a close look at the BSA and its requirements to ensure that this 40-year old statutory framework remains relevant in today's world. The OCC also participates in several interagency groups, including the Bank Secrecy Act Advisory Group (BSAAG);[4] the newly formed BSAAG Delta Team;[5] the FFIEC BSA Working Group;[6] and the National Interagency Bank Fraud Working Group.[7]

The OCC works closely with the U.S. Treasury's Office of Terrorism and Financial Intelligence (TFI), FinCEN, and OFAC to promote the implementation of sound international anti-money laundering and counterterrorist financing (AML/CFT) standards. In addition, the OCC annually hosts two AML schools to train our foreign counterparts, and we are active participants in the U.S. delegation to the Financial Action Task Force (FATF) that is led by TFI. We have participated in various State and Treasury Department missions to assist foreign Governments in their anti-money laundering efforts.

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[4] The BSAAG is chaired by FinCEN and is composed of policy, legal, and operations representatives from the major Federal and State law enforcement and regulatory agencies involved in the fight against money laundering, as well as industry representatives.

[5] The BSAAG Delta Team is cochaired by FinCEN and an industry representative. The purpose of the BSAAG Delta Team is for industry, regulators, and law enforcement to come together and examine the variance between compliance risks and illicit financing risks. The goal is to reduce the variance between the two and build a smarter, more effective, and more cost efficient regulatory framework.

[6] The FFIEC BSA Working Group, similar to the FFIEC itself, has a rotating chair and is composed of representatives of Federal and State regulatory agencies.

[7] The National Interagency Bank Fraud Working Group is chaired by the Department of Justice, and composed of representatives of the Federal law enforcement and regulatory agencies (the OCC has been an active member of this group since its founding in 1984).

The OCC has a long history of cooperation with law enforcement and we work closely with law enforcement agencies when there are ongoing parallel investigations involving a national bank or thrift by providing documents, information, and expertise that is relevant to a potential criminal violation. As described in the Appendices to this testimony, OCC examination findings have been instrumental in developing some of the most significant BSA/AML cases, and have resulted in criminal charges and convictions of bank officials.

IV. OCC's BSA/AML Supervisory and Enforcement Process

Effective bank supervision requires clear communications between the OCC and the bank's senior management and board of directors. In most cases, problems in the BSA/AML area, as well as in other areas, are corrected by bringing the problem to the attention of bank management and obtaining management's commitment to take corrective action. A Report of Examination, or Supervisory Letter (used for large or midsize banks), documents the OCC's findings and conclusions with respect to our supervisory review. Once problems or weaknesses are identified and communicated to the bank, the bank's senior management and board of directors are expected to promptly correct them. The actions that a bank takes, or agrees to take, to correct deficiencies are important factors in determining whether more forceful action is needed.

Enforcement Remedies and Process

OCC enforcement actions fall into two broad categories: informal and formal. In general, informal actions are used when the identified problems are of limited scope and magnitude and bank management is regarded as committed to and capable of correcting them. Informal actions include safety and soundness plans, commitment letters, memoranda of understanding and matters requiring board attention in examination reports. These generally are not public actions.

The OCC also uses a variety of formal enforcement actions to support its supervisory objectives. Unlike most informal actions, formal enforcement actions are authorized by statute, are generally more severe, and are disclosed to the public. Formal actions against a bank include C&D orders, formal written agreements, safety and soundness orders, and civil money penalties (CMPs). C&D orders and formal agreements may be entered into consensually by the OCC and the bank and require the bank to take certain actions to correct identified deficiencies. The OCC also may take formal action against officers, directors, and other individuals associated with an institution (institution-affiliated parties or IAPs). Possible actions against institution-affiliated parties include removal and prohibition from the banking industry, CMPs, and personal C&D orders.

As previously mentioned, when deficiencies in the BSA/AML area rise to the level of a BSA compliance program violation (12 CFR §§21.21 or 163.177), or when a bank fails to correct problems with the program that had been previously reported to the bank, we are required under 12 U.S.C. §1818(s) to use our C&D authority to correct the problem. The OCC worked with the other Federal banking agencies to develop and issue an interagency policy on citing BSA compliance program violations and taking enforcement actions, and our enforcement decisions are framed by that policy. The Interagency Statement on Enforcement of BSA/AML Requirements (Interagency Statement) was issued in 2007 and it sets forth the agencies' policy on the circumstances in which an agency will issue a C&D order to address noncompliance with certain BSA/AML requirements, particularly in light of the statutory mandate in Section 1818(s). The Interagency Statement provides that a compliance program violation occurs where either of the following conditions exists:

> The bank fails to adopt or implement a written BSA compliance program that adequately covers the required program elements: (1) internal controls (including customer due diligence, procedures for monitoring suspicious activity or appropriate risk assessment); (2) independent testing; (3) designated compliance personnel; and (4) training; or
>
> The bank has defects in its BSA compliance program in one or more program elements indicating that either the written program or its implementation is not effective. For example, program deficiencies indicate ineffectiveness where the deficiencies are coupled with other aggravating factors such as evidence of: (i) highly suspicious activity creating a significant potential for unreported money laundering or terrorist financing; (ii) patterns of structuring to evade reporting requirements; (iii) significant insider complicity; or (iv) systemic failures to file currency transaction reports, suspicious activity reports, or other required BSA reports.

A program violation may occur where customer due diligence, monitoring of suspicious activity, risk assessment, or other internal controls fail with respect to a "high risk area," or to "multiple lines of business that significantly impact the bank's overall BSA compliance." The agency will also consider the application of the bank's program across its business lines and activities. In the case of banks with multiple lines of business, deficiencies affecting only some lines of business or activities would need to be evaluated to determine if the deficiencies are so severe or significant in scope as to result in a conclusion that the bank has not implemented an effective overall program.

The Interagency Statement also specifically addresses repeat problems for purposes of the statutory mandate for a C&D order in 12 U.S.C. §1818(s). It provides that in order to be considered a "problem" within the meaning of section 1818(s), the deficiency reported to the institution would ordinarily involve a serious defect in one or more of the required components of the institution's BSA compliance program or implementation thereof. In addition, it sometimes takes a considerable period of time to correct BSA/AML deficiencies especially when large institutions merge system platforms and information technology changes are required. As a result, with regard to repeat problems, the Interagency Statement provides that a C&D is not required if the agency determines that the institution has made "acceptable substantial progress" toward correcting the problem at the time of the examination immediately following the examination where the problem was first identified and reported to the institution.

To ensure that the OCC's process for taking administrative enforcement actions based on BSA violations is measured, fair, and fully informed, in 2005, the OCC adopted a process for taking administrative enforcement actions against banks based on BSA violations, including situations where a bank fails to correct a problem that was previously brought to its attention. This process includes the following stages:

1. Preliminary assessment of the facts and discussion with bank management.
2. Additional reviews by cross-functional review groups, including the OCC's Large Bank Review Team.
3. Written findings provided to the bank and an opportunity for the bank to respond.
4. Major Matters Supervision Review Committee or Washington Supervision Review Committee review. [8]
5. Final decision by the MMSRC or an appropriate Senior Deputy Comptroller.

Recent Enforcement Actions

Since September 11, 2001, the OCC has issued over 195 public formal enforcement actions based in whole, or in part, on BSA/AML violations (including formal agreements, C&D orders, and CMP actions). Some of the more significant recent cases were actions against Wachovia Bank, N.A., HSBC Bank USA, N.A., Citibank, N.A., and JPMorgan Chase, N.A. A brief description of these actions is set forth in Appendix A to this testimony. Each of these cases have been discussed extensively at public forums and they underscore the OCC's commitment to ensuring that all national banks and Federal savings associations have a strong BSA/AML function that keeps pace with changing technologies and threats.

The OCC has also brought enforcement actions against responsible individuals for BSA/AML violations, and OCC examination findings have been instrumental in bringing successful criminal actions against bank insiders, including a Vice-President of Riggs Bank and the Chairman of the Board of Directors of Broadway National Bank. Some of the more significant BSA/AML cases involving bank insiders are discussed in Appendix B to this testimony. In addition, the OCC's Enforcement and Compliance Division has also brought countless actions against bank insiders for insider fraud and abuse over the years. While establishing the culpability of individuals in cases of institutional failures such as BSA compliance program break-

[8] The MMSRC was established by the Comptroller late last year to further strengthen and enhance the review process for significant enforcement cases, including large bank BSA/AML cases, to include the most senior staff within the OCC. The MMSRC is chaired by the OCC's Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner, and includes the Chief of Staff, the Senior Deputy Comptrollers for Midsize and Community Bank and Large Bank Supervision, as well as the Chief Counsel. The MMSRC reviews all large bank enforcement actions that include articles addressing BSA, all BSA CMPs involving large banks and all prohibitions/removals against individuals for violations of the BSA. The Washington Supervision Review Committee (WSRC) continues to review BSA enforcement actions proposed by the OCC to be taken against midsize and community banks.

downs can be challenging, the OCC is committed to taking such actions where they can be supported. To this end, the OCC conducts a review of individual misconduct as part of all significant investigations into BSA noncompliance. As further described below, the OCC is exploring possible regulatory changes that would enhance its ability to take removal and prohibition actions in appropriate cases.

V. Actions Undertaken To Improve BSA/AML Supervision and Enforcement

The OCC is committed to rigorous supervision, strong enforcement, and continuous improvement to our supervisory approach to BSA/AML compliance. While the OCC has made substantial progress in improving its supervision in the BSA/AML area, we recognize that there remains work to be done, and that BSA/AML supervision can never be static. We are committed to ongoing evaluation of our approaches to BSA/AML compliance and to appropriate revisions to our approach in light of technological developments, and the increasing sophistication of money launderers and terrorist financiers, as well as to address aspects of the process where shortcomings were evidenced. To this point, we have recently made, or are in the process of making a number of enhancements to our supervisory processes which are described below:

- We have established a MMSRC comprised of the most senior level staff within the OCC to review high profile and complex BSA/AML enforcement matters;
- We no longer reflect BSA/AML findings in the FFIEC consumer compliance rating, rather, we fully consider BSA/AML findings in a safety and soundness context as part of the management or "M" component of a bank's CAMELS rating;
- We are clarifying the operation of our BSA Large Bank Review Team to ensure we bring different perspectives to bear and react more quickly when a bank has multiple matters requiring attention (MRAs), or apparent violations of its BSA/AML program;
- We have provided more flexibility for citing BSA/AML violations for individual "pillar" violations (i.e., internal controls, BSA officer, testing, and training) and will be issuing additional guidance to the examination staff shortly;
- We are in the process of identifying steps we can take in our examinations to obtain a holistic view of a bank's BSA/AML compliance more promptly;
- We have implemented an internal bank supervision appeals program that supports the open discussion of concerns, reinforces our expectations that examiners and other supervisory staff should identify potential problems they see at the banks and thrifts we regulate, and provides the opportunity to escalate those issues when necessary;
- We are reviewing the manner in which MRAs are reported to ensure that banks with high numbers of MRAs in one particular CAMELS/ITCC area are receiving additional supervisory attention and, in the case of BSA/AML, consideration of formal enforcement action; and
- We are annually updating the OCC's community bank MLR System and considering whether similar tools should be implemented in our large bank and midsize bank portfolios. [9]

The OCC has also made, or is considering making, the following changes in the areas of corporate governance, enterprise-wide compliance, and removal and prohibition authority. In addition, there is one possible regulatory change that we believe should be considered, and the OCC supports two legislative changes in the BSA/AML area. Each is discussed below:

Corporate Governance

A number of recent BSA/AML enforcement actions involving large complex banking organizations have highlighted the need for strong internal controls and corporate governance. [10] To address this, recent OCC enforcement actions have included the following requirements:

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[9] The OCC recently requested Office of Management and Budget (OMB) approval and invited public comment for this additional MLR data collection. See Office of the Comptroller of the Currency; Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment, 77 FR 70544 (Nov. 26, 2012). An additional 30-day request for OMB approval and comment letter will be published in the Federal Register that will provide a summary of the comments received.

[10] *See,* e.g., In the Matter of JPMorgan Chase Bank, N.A., Columbus, Ohio, OCC 2013-002 AA-EC-13-04, Art. IV, p. 8 (Jan. 14, 2013); In the Matter of Citibank, N.A., Sioux Falls, South Dakota, OCC 2012-52 AA-EC-12-18, Art. IV, p. 7. (April 4, 2012)); In the Matter of HSBC Bank USA, N.A., Mclean, VA, OCC 2010-199 AA-EC-10-98, Art. VI, p. 10 (Sept. 24, 2010); In the Mat-

1. A designated BSA Officer with sufficient knowledge, funding, authority, independence, compensation, and supporting staff to perform his or her assigned responsibilities and maintain effective compliance with the BSA and its implementing regulations;
2. An effective governance structure to allow the BSA Officer and the compliance function to administer the program independently by reporting directly to the board of directors, or a committee thereof, with clear lines of responsibility beginning with senior management and including each line of business that is required to comply with the BSA;
3. Clearly defined channels for informing the board of directors, or a committee thereof, and senior management, of compliance initiatives, compliance risks, new product development, identified compliance deficiencies, and corrective actions undertaken;
4. Compliance staff with the appropriate level of authority and independence to implement the BSA/AML compliance program and, as needed, question account relationships, new products and services and business plans;
5. Policies and procedures that clearly outline the BSA/AML responsibilities of senior management and relevant business line employees, and that hold senior management and line of business management accountable for effectively implementing bank policies and procedures, and fulfilling BSA/AML obligations;
6. A well-defined succession plan for ensuring the program's continuity despite changes in management, staffing, or structure, and policies and procedures to ensure that problems with excessive turnover of compliance staff or the BSA Officer function are identified, investigated, and appropriately addressed by the board;
7. Policies and procedures to ensure that the bank's risk profile is periodically updated to reflect higher risk banking operations (products, services, customers, entities, and geographic locations) and new products and services;
8. An enterprise-wide management information system that provides reports and feedback that enables management to more effectively identify, monitor, and manage the organization's BSA risk on a timely basis; and
9. A strong BSA/AML audit function that ensures that identified deficiencies are promptly addressed and corrected.

The OCC is in the process of drafting detailed guidance to banks on sound corporate governance processes that will incorporate many of these concepts, including business line accountability for BSA/AML compliance and the independence of the compliance function.

Enterprise-wide Compliance and Limitations on Activities

Recent OCC enforcement actions have contained articles that address enterprise-wide compliance to ensure that the banking company's global AML program is commensurate with the risks and that all relevant affiliated institutions are included in the global risk assessment. Although current BSA/AML automated monitoring systems do not have the capability to ensure enterprise-wide monitoring on a real time global basis, the OCC expects banks to have strong customer due diligence processes and understand the extent that a particular customer may have accounts or transactions flowing through other segments of the organization. The OCC also expects that the extent and scope of this activity should be periodically reviewed on a risk basis by the bank's compliance staff and included within the audit.

Recent enforcement actions have also contained provisions that limited or restricted a bank's products and services due to inadequate BSA/AML controls with respect to those products and services. [11] In some cases, banks ceased engaging in a particular line of business as a result of the OCC examination (e.g., correspondent banking or bulk cash repatriation) and the OCC article required OCC approval should the bank decide to restart that particular line of business or service. In other cases, the OCC affirmatively took action to restrict certain high-risk lines of busi-

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ter of Wachovia Bank, National Association, Charlotte, NC, OCC 2010-37 AA-EC-10-17, Art. II, p. 5. (Mar. 12, 2010).

[11] *See,* e.g., In the Matter of JPMorgan Chase Bank, N.A., Columbus, Ohio, OCC 2013-002 AA-EC-13-04, Art. XI, p. 22 (Jan. 14, 2013); In the Matter of Citibank, N.A., Sioux Falls, South Dakota, OCC 2012-52 AA-EC-12-18, Art. VIII and XI, pp. 15, 21 (April 4, 2012); In the Matter of HSBC Bank USA, N.A., Mclean, VA, OCC 2010-199 AA-EC-10-98, Art. XII, p. 17 (Sept. 24, 2010); In the Matter of Wachovia Bank, National Association, Charlotte, NC, OCC 2010-37 AA-EC-10-17, Art. IX, p. 13. (Mar. 12, 2010); In the Matter of Arab Bank, PLC, New York, NY, OCC 2005-14 AA-EC-05-12, Art. III and IV, pp. 4, 9 (Feb. 24, 2005).

ness or reduce the risk profile of the institution.[12] This authority is similar to civil injunctive relief to limit bank activities for a period. The OCC will continue to use this C&D authority when warranted.

Removal and Prohibition Authority

As previously noted, the OCC has the statutory authority to issue an order of removal and prohibition from office against an IAP of a bank whenever the OCC determines that the IAP has committed a violation of the BSA and such violation was not inadvertent or unintentional, or the insider has knowledge that an IAP has violated any provision of the BSA. 12 U.S.C. §1818(e)(2)(A)(ii). In addition, the OCC may remove an officer or director of a bank who has knowledge that an IAP of the bank has violated any provision of the BSA, taking into account whether the officer or director took appropriate action to stop, or to prevent the recurrence of the violation. 12 U.S.C. §1818(e)(2)(A)(ii) and (B). The OCC is currently reviewing these provisions and exploring whether a regulation or other agency issuance interpreting these sections of the statute would be helpful in bringing such actions and providing notice to the industry regarding the type of conduct or wrongdoing that is subject to a removal or prohibition action.

Enhanced Information Sharing

Financial intelligence, criminal typologies, and information sharing between Government agencies, regulators, and financial institutions is essential to the prevention and deterrence of money laundering and other financial crimes. In particular, financial institutions can benefit from improved and consistent access to information concerning money laundering and terrorist financing schemes and typologies, vulnerabilities, and red flags to ensure that they can appropriately manage their risks. Such information is also valuable to examiners in preparing for and performing examinations. In addition, active knowledge sharing processes will discourage situations described as a possible "commodification" of BSA reporting by banks that focuses on the quantity, rather than the quality or actual risk associated with a transaction, including with respect to SAR filings.

To this end, the OCC supports efforts to enhance information sharing, including the provision of information from the Government to financial institutions. The OCC is interested in exploring all possible methods and means of accomplishing this, including changes in the way that communication channels established to implement section 314(a) of the USA PATRIOT Act are presently used.

Possible Legislative Changes—Expansion and Clarification of Safe Harbors

The OCC recognizes the importance of ensuring that the agencies' enforcement authorities remain current and relevant in this area. We think there are opportunities to modify existing BSA safe harbors to encourage institutions to share information without incurring liability, and to file SARs without running the risk that the bank will be exposed to litigation for simply complying with Federal law. The OCC would support legislation to expand the information sharing safe harbors in Section 314(b) of the USA PATRIOT Act beyond money laundering and terrorist financing, and to eliminate or modify the notice requirement to FinCEN, which may be limiting the ability of financial institutions to share information. The OCC would also strongly support legislation that clarifies that the safe harbor from liability for filing SARs is absolute and there is no good faith requirement.

VI. Conclusion

The OCC is committed to rigorous BSA/AML and OFAC supervision, strong enforcement, and continuing improvement in our supervision in this important area. While there are many challenges in this area, we will continue to work with Congress, the other financial institutions regulatory agencies, law enforcement agencies, and the banking industry to develop and implement a coordinated and comprehensive response to the threat posed to the Nation's financial system by money launderers, terrorist financiers, and criminal organizations.

Appendix A

Notable OCC BSA/AML Enforcement Actions Against Banks

Wachovia Bank, N.A., Charlotte, North Carolina (Wachovia)—In March 2010, the OCC assessed a $50 million penalty and issued a C&D order against this bank for violations of the BSA as part of a coordinated action with the Department of Justice (DOJ), FinCEN, and other Federal agencies. Wachovia also entered into a deferred

[12] In the Matter of Arab Bank, PLC, New York, NY, OCC 2005-14 AA-EC-05-12, Art. VII, p. 15 (Feb. 24, 2005)(Federal branch conversion to an agency).

prosecution agreement with the U.S. Attorney's Office in the Southern District of Florida and the DOJ Asset Forfeiture and Money Laundering Section (AFMLS) and agreed to a $110 million forfeiture to the U.S. Government. Additionally, FinCEN assessed a $110 million civil money penalty that was deemed satisfied by the forfeiture. The OCC's enforcement action focused attention on the bulk cash repatriation money-laundering scheme. The OCC played a lead role in this case and linked remote cash letter instrument processing to the bulk cash scheme. Because of the Wachovia investigation and findings, the OCC took the lead in integrating bulk cash processing and the RDC implications into the Manual and commenced horizontal reviews of bulk cash activity and RDC at all national banks in the OCC's Large Bank supervision program, including HSBC's banknote activity. There were also significant corporate governance issues identified at Wachovia that prompted the OCC to include several corporate governance provisions in the C&D order.

Shortly after the Wachovia case, the Government of Mexico implemented significant restrictions on U.S. dollar transactions at Mexican financial institutions and made significant changes to its AML laws and regulatory processes. In response, the drug cartels have adjusted their money-laundering schemes and techniques to adapt to this change, and the OCC continues to work with law enforcement to identify new areas of vulnerability.

HSBC Bank USA, N.A., Mclean, VA (HSBC)—In October 2010, the OCC issued a C&D order against HSBC for compliance program and BSA violations. This was followed in December 2012 with a $500 million penalty against the bank—the largest penalty the OCC, or any other Federal banking agency, has ever assessed. In addition, the DOJ entered into a deferred prosecution agreement with the bank, which admitted to criminal violations of the BSA. The DOJ imposed a $1.256 billion forfeiture action against the bank and HSBC Holdings plc (London) (HSBC Group); and the Federal Reserve assessed a $160 million penalty against the bank's parent company, HSBC North American Holdings Inc. (HNAH), and HSBC Group. The assessed penalties and forfeiture amounts totaled $1.92 billion. FinCEN, the New York County District Attorney's Office, and OFAC also assessed penalties that were satisfied by the monetary sanctions levied by the OCC and DOJ. Additionally, the Financial Services Authority in the United Kingdom entered into an agreement with HSBC Group to enhance its BSA/AML compliance and will assist the DOJ and the Federal Reserve in monitoring HSBC Group's compliance with the deferred prosecution agreement and the Federal Reserve's order.

In mid-2009, because of the bulk cash findings in the Wachovia investigation, the OCC launched horizontal examinations of banknote operations in other large national banks supervised by the OCC that included HSBC and its transactions with HSBC Mexico. After meeting with law enforcement and obtaining additional information on this activity, the OCC developed a detailed action plan to expand the scope of the ongoing examination of banknote customers. As a part of the examination, the OCC notified the bank in March 2010 that it had violated OCC regulations due to a significant backlog of unprocessed alerts. The bank's compliance program and its implementation were found to be ineffective and the OCC issued a C&D order against the bank in October 2010.[13] Concurrent with the OCC's enforcement action, the Federal Reserve issued a C&D order upon consent with HNAH to ensure the adequacy of the parent company's firm-wide compliance risk management program. The OCC and the Federal Reserve coordinated closely in drafting the respective orders. The OCC's C&D order required the bank to submit a comprehensive BSA/AML action plan to achieve full compliance, ensure that the bank has sufficient processes, personnel, and control systems to implement and adhere to the order. The order also contains restrictions on growth, new products, and high-risk lines of business, and it requires OCC approval to reenter the bulk cash repatriation business.

Citibank, N.A., Sioux Falls, South Dakota (Citibank)—In April 2012, the OCC entered into a C&D order with Citibank, N.A., to address BSA deficiencies involving internal controls, customer due diligence, audit, monitoring of its RDC and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reporting relating to that monitoring. These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file SARs, and conduct appropriate due diligence on foreign correspondent accounts. Among its requirements, the order

[13] Some of the critical deficiencies in the Bank's BSA/AML compliance program cited in the OCC's order included the following: (i) lack of effective monitoring of wire activity; (ii) failure to perform any BSA/AML monitoring for banknote (or "bulk cash") transactions with Group Entities (affiliates) or maintain customer due diligence information on Group Entities; and (iii) serious weaknesses in Bank's systems and controls constituting violations of 12 CFR 21.21 (program), 21.11 (SAR), and 31 CFR 103.176 (correspondent banking).

directs the bank to: (i) ensure the independence of the bank's compliance staff; (ii) require new products and services be subject to high level compliance review; (iii) ensure that all customer due diligence processes are automated and accessible; and (iv) conduct a look back review of the RDC cash letter activity.

JPMC Bank, N.A., Columbus, Ohio (JPMC)—In January 2013, the OCC entered into a C&D order with JPMC Bank, N.A., and two of its affiliates, to address deficiencies involving internal controls, independent testing, customer due diligence, risk assessment, and SAR processes (monitoring, investigating and decision making). The bank also did not have enterprise-wide policies and procedures to ensure that foreign branch suspicious activity involving customers of other bank branches is effectively communicated to other affected branch locations and applicable anti-money laundering operations staff. Additionally, the bank did not have enterprise-wide policies and procedures to ensure that, on a risk basis, customer transactions at foreign branch locations can be assessed, aggregated, and monitored. OFAC deficiencies were also identified. These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file SARs, and conduct appropriate due diligence on foreign correspondent accounts. Among its requirements, the consent order directs the bank to: (i) ensure the independence of the bank's compliance staff; (ii) ensure that there are clear lines of authority and responsibility for BSA/AML and OFAC compliance with respect to lines of business and corporate functions; (iii) require new products and services be subject to high level compliance review; (iii) ensure that all customer due diligence processes are automated and accessible; and (iv) conduct a look back review of certain account/transaction activity and SAR filings.

Appendix B

Notable OCC BSA/AML Enforcement Actions Against IAPs

Jefferson National Bank, Watertown, New York (Jefferson)—During the examination of this bank, the OCC learned from the Federal Reserve Bank of New York that the bank was engaging in cash transactions that were not commensurate with its size. OCC examiners subsequently discovered that several bank customers were depositing large amounts of cash that did not appear to be supported by the purported underlying business, with the funds being wired offshore. The OCC filed reports with law enforcement pertaining to this cash activity and insider abuse and fraud at the bank. The OCC also briefed several domestic and Canadian law enforcement agencies alerting them to the significant sums of money flowing through these accounts at the bank. Additionally, the OCC brought a removal action against a director and issued a personal C&D order against the President. Based upon this information, law enforcement commenced an investigation of these large deposits. The investigation resulted in one of the most successful money-laundering prosecutions in U.S. Government history. The significant sums of money flowing through the bank were derived from cigarette and liquor smuggling through the Akwesasne Indian Reservation in northern New York. The ring smuggled $687 million worth of tobacco and alcohol into Canada between 1991 and 1997. The case resulted in 21 indictments that also sought the recovery of assets totaling $557 million. It also resulted in the December 1999 guilty plea by a subsidiary of R.J. Reynolds Tobacco Company and the payment of a $15 million criminal fine. Seven bank officers and directors were ultimately convicted of crimes.

Broadway National Bank, New York, New York (Broadway)—The OCC received a tip from law enforcement that this bank may be involved in money laundering. The OCC immediately opened an examination that identified a number of accounts at the bank that were either being used to structure transactions, or were receiving large amounts of cash with wire transfers to countries known as money laundering and drug havens. Shortly thereafter, the OCC issued a C&D order that shut down the money laundering and required the bank to adopt stringent controls. The OCC also initiated prohibition and CMP cases against bank insiders. In referring the matter to law enforcement, we provided relevant information including the timing of deposits that enabled law enforcement to seize approximately $4 million and arrest a dozen individuals involved in this scheme, and the former Chairman of the Board of the bank pled guilty to structuring transactions through the bank using an import/export company that he owned. The subsequent OCC investigation resulted in the filing of additional SARs, the seizure of approximately $2.6 million in additional funds, more arrests by law enforcement, and a referral by the OCC to FinCEN. In November 2002, the bank pled guilty to a three-count felony information that charged it with failing to maintain an AML program, failing to report approximately $123 million in suspicious bulk cash and structured cash deposits, and aiding and assisting customers to structure approximately $76 million in transactions to avoid the CTR requirements. The bank was required to pay a $4 million

criminal fine. In 2003, the OCC assessed civil money penalties against the former President and the former Chief Executive Officer.

Riggs Bank, N.A., Washington, DC (Riggs)—In April 2002, the OCC conducted a review of Riggs' International Private Banking Department and discovered that the bank had established personal and private investment company accounts for deposed Chilean dictator Augusto Pinochet. The OCC review and subsequent investigation revealed that, among other things, the Pinochets and their private investment companies received approximately $1.9 million in funds. Shortly after these issues were discovered, the OCC brought the Pinochet accounts to the attention of the DOJ and the Department of the Treasury, conducted additional examination work and issued a C&D order against the Bank in July 2003. The OCC also discovered that the bank's vice president and relationship manager for these accounts had signature authority over two accounts within the relationship, failed to follow bank SAR processes concerning suspicious transactions on a timely basis, and did not properly monitor the accounts as high-risk accounts. The OCC reported these findings to law enforcement and the relationship manager and his wife were ultimately convicted of bank fraud and money laundering. As a result of the conviction, the OCC issued a notice to the relationship manager advising him that he was prohibited from banking under 12 U.S.C. §1829. The OCC also assessed a $25 million CMP against the bank, as did FinCEN (FinCEN's penalty was satisfied by a single $25 million payment to the Department of the Treasury). The bank also pled guilty to one felony count of failure to file suspicious activity reports and agreed to pay a $16 million criminal penalty.

Pacific Bank, N.A., Miami, Florida (Pacific)—In March 2011, the OCC and FinCEN assessed $7 million civil money penalties against Pacific National Bank, Miami, Florida, for violations of the BSA as part of a coordinated action. The OCC conducted two examinations of the Bank in 2009 and 2010 and determined that the Bank: (i) continued to be in noncompliance with an OCC C&D Order that was issued in December 2005 and which contained specific articles requiring enhancement to the bank's BSA compliance program, and (ii) continued to violate the requirements of the BSA and OCC regulations. The OCC shared its examination findings with FinCEN and issued a revised C&D Order against the Bank on December 15, 2010. In March 2011, the OCC issued civil money penalties against four Pacific National Bank board members and the bank's former CEO. The penalties were assessed for the failure of these responsible directors and officers to take the necessary actions to ensure the bank's compliance with the C&D order issued by the OCC in 2005.

Security Bank, N.A., North Lauderdale, Florida (Security)—In August 2010 the OCC initiated an investigation into the affairs of this bank after issuing a C&D order against the bank in May 2010. The Order related to safety and soundness concerns as well as BSA deficiencies, including a violation of the compliance program regulation and the SAR regulation. The investigation revealed that, among other things, former officers and directors of the bank failed to ensure that the bank complied with BSA/AML requirements and failed to comply with the C&D order issued by the OCC. In addition, the former Chief Executive Officer played a significant role in bringing high-risk business to the bank starting in 2007 even though he knew or should have known that the bank was ill equipped to monitor and control such accounts. In January 2013, the OCC assessed civil money penalties and personal C&D orders against five former directors and officers of the bank, including the former CEO. The personal C&D orders addressed, among other things, the Bank's BSA deficiencies, and required each respondent to: (i) fully comply with all laws, regulations and policies applicable to any insured depository institution which employs him; (ii) exercise safe and sound banking practices; (iii) observe fiduciary duties of loyalty and care; (iv) adhere to written policies and procedures of any insured depository institution to which he may become affiliated; (v) obtain appropriate BSA/AML training; and (vi) provide appropriate BSA/AML training for bank officers and directors within his supervision and control.

PREPARED STATEMENT OF JEROME H. POWELL

MEMBER, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

MARCH 7, 2013

Chairman Johnson, Ranking Member Crapo, and other Members of the Committee, thank you for inviting me to discuss the important role the Federal Reserve plays in the U.S. Government's effort to combat money laundering and terrorist financing. I will begin by describing our efforts to ensure banking industry compli-

ance with the requirements of the Bank Secrecy Act (BSA) and the economic sanctions authorized by the President and Congress. I will also highlight some of the important actions we have taken to enforce the law and to promote safe and sound practices in this area.

Background

Congress enacted the BSA in 1970 to help safeguard the U.S. financial system and our financial institutions from the abuses of financial crime, and has revised and strengthened the act many times since. The Federal Reserve has issued regulations to implement the BSA, including regulations that require the institutions we supervise to establish a BSA compliance program, and has integrated BSA examinations into our supervisory program. The Federal Reserve also works closely with Treasury's Financial Crimes Enforcement Network (FinCEN) to ensure that the institutions we supervise provide law enforcement with the reports prosecutors need to investigate suspicious activity.

The particular steps a banking organization must take to develop a BSA compliance program have been documented extensively. The foundation for such a program begins with a well-developed and documented risk assessment that identifies and limits the risk exposures of the banking organization's products, services, customers, and geographic locations. Monitoring systems should be in place to identify and report suspicious activity, in particular any account or transaction activity that is not consistent with the bank's expectations. These systems should be accompanied by a strong training program to ensure that personnel, including those in offshore offices, are familiar with U.S. regulatory requirements and bank policies. The BSA compliance program should be reviewed by management, subjected to periodic independent tests that measure whether the program is functioning properly, and improved as needed. Finally, a qualified bank officer should be given sufficient authority to ensure that regulatory requirements and bank policies are being followed on a day-to-day basis.

Banking organizations are also expected to maintain a program for ensuring compliance with U.S. economic sanctions administered by the Treasury's Office of Foreign Assets Control (OFAC). The OFAC program should identify higher-risk areas within a bank's operations, and implement appropriate internal controls for screening and reporting prohibited transactions. Banks are expected to perform independent testing for compliance, designate a bank employee or employees that are specifically responsible for OFAC compliance, and create training programs for appropriate personnel in all relevant areas of the bank. A bank's OFAC compliance program should be commensurate with its activities and its risk profile.

The Supervisory Process

The Federal Reserve conducts a BSA and OFAC compliance program review as part of its regular safety-and-soundness examination program for the approximately 1,060 State-member banks; State chartered branches and agencies of foreign banking organizations; and Edge Act and agreement corporations we supervise. The frequency of the on-site examination is normally every 12 to 18 months, depending upon the banking organization's condition, asset size, and rating. On average, we conduct approximately 960 BSA and OFAC reviews each year.

The Federal Reserve's BSA and OFAC reviews are risk-focused. In other words, supervisors have the flexibility to apply the appropriate level of scrutiny to higher-risk business lines. To ensure consistency in the design and execution of our BSA and OFAC examinations, we use procedures developed jointly with the member agencies of the Federal Financial Institutions Examination Council (FFIEC),[1] FinCEN, and OFAC. The findings of our BSA and OFAC reviews are taken into account in determining the institution's examination ratings, either as part of the management component rating for domestic institutions, or as part of the risk management and compliance component ratings used to evaluate the U.S. operations of foreign bank branches and agencies we supervise.

The Federal Reserve reinforces its supervisory program by conducting targeted examinations of financial institutions that show signs of being vulnerable to illicit financing. Banks are selected for such examinations based on, among other things, our analysis of the institution's payments activity, suspicious activity reports, currency transaction reports, and law enforcement leads.

[1] The FFIEC member agencies include the Federal Deposit Insurance Corporation (FDIC), National Credit Union Administration (NCUA), Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB), as well as the Board of Governors of the Federal Reserve System.

The Federal Reserve devotes substantial resources to BSA compliance. Each Federal Reserve Bank has a BSA specialist and coordinator on staff, and, since the late 1980s, the Board's Division of Banking Supervision and Regulation has included an anti-money laundering section, overseen by a senior official, to help coordinate these efforts.

Coordination Efforts

Effective implementation and enforcement of the BSA and U.S. economic sanctions requires the participation of, and coordination among, several agencies and international groups. Let me be specific about the steps we are taking to coordinate.

First, to ensure that the banking industry has clear understanding of regulatory expectations, the Federal Reserve has actively participated in supervisory forums, such as the FFIEC, which has an expansive BSA working group that promotes high standards for bank examinations and compliance. In addition, we participate in the Bank Secrecy Act Advisory Group, a public-private partnership established for the purpose of soliciting advice on the administration of the BSA. The Federal Reserve also joined the U.S. Treasury's Interagency Task Force on Strengthening and Clarifying the BSA/AML Framework (Task Force), which includes representatives from the Department of Justice, OFAC, FinCEN, the Federal banking agencies, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. The primary focus of the Task Force is to review the BSA, its implementation, and its enforcement with respect to U.S. financial institutions that are subject to these requirements, and to develop recommendations for ensuring the continued effectiveness of the BSA and efficiency in agency efforts to monitor compliance.

Second, to make the supervision of internationally active banking organizations more effective, we are engaged as a member of the U.S. delegation to the Financial Action Task Force, an international policymaking and standard-setting body dedicated to combating money laundering and terrorist financing globally. Further, as a member of the Basel Committee on Banking Supervision (BCBS), we have been involved in various efforts to prevent criminal use of the international banking system. For example, in 2009, as a complement to BCBS efforts to promote transparency in cross-border payments, the Federal Reserve issued guidance with other Federal banking agencies that clarifies U.S. regulatory expectations for U.S. banks engaged in correspondent banking activities.

Finally, we are working cooperatively with other Federal banking agencies, State regulators, the Department of Justice, the Department of Treasury, and foreign regulators to ensure comprehensive enforcement of the law. We have participated in many of the largest, most complex enforcement cases in the BSA and U.S. sanctions area. Collectively, these cases have focused attention on potential misuse of the financial system for financial crimes, strengthened compliance programs at banking organizations (both in the U.S. and abroad), and generated billions of dollars in fines paid to the U.S. Treasury.

Our coordination efforts begin at an early stage in the supervisory process. For example, the Federal Reserve brings every instance of an anti-money laundering deficiency or violation to the attention of FinCEN so that FinCEN may consider assessing a penalty for violations of the BSA. We also notify OFAC of any apparent, unreported sanctions violations discovered in the course of an examination, and direct the banking organization we supervise to provide information directly to OFAC as required by regulation. In addition, we share information and coordinate with the Department of Justice, State law enforcement, the Federal banking agencies, and State regulators, as appropriate, as part of our enforcement program.

The Enforcement Process

It has been our experience that the majority of institutions supervised by the Federal Reserve have well-administered and effective BSA and OFAC compliance programs. Nevertheless, there have been instances where concerns have been raised by our examiners. Importantly, the Federal Reserve does not have authority from Congress to conduct criminal investigations or to prosecute criminal cases. The decision to prosecute a financial institution for money-laundering offenses and criminal violations of the BSA and U.S. sanctions laws is made by the Department of Justice.

Most of these problems are resolved promptly after they are brought to the attention of a bank's management and directors. In some instances, problems are of more serious concern and use of the Federal Reserve's enforcement authority is deemed appropriate. In these cases, an informal supervisory action may be taken, such as requiring an institution's board of directors to adopt an appropriate resolution or executing a memorandum of understanding between an institution and a Reserve Bank.

In the most serious cases, the Federal Reserve may take a formal enforcement action against an institution. These actions may include a written agreement, a cease and desist order, or a civil money penalty. Congress has also given the Federal Reserve the authority to terminate the operations of certain entities operating in the U.S. upon the conviction of a money-laundering offense by the Department of Justice, and to prohibit insiders who intentionally commit such offenses from participating in the banking industry. The type of enforcement action pursued by the Federal Reserve against an institution is directly related to the severity of the offense, the type of failure that led to the offense, and management's willingness and ability to implement corrective action.

In the last 5 years, the Federal Reserve has issued 113 enforcement actions relating to BSA and OFAC compliance, including 25 public cease and desist orders and written agreements. Together with these recent actions, the Federal Reserve has assessed hundreds of millions of dollars in penalties. The institutions that have been subject to these actions are large and small, domestic and foreign. In each case, the Federal Reserve has required the institution to take corrective measures to ensure their programs are brought into compliance.

Enforcement of U.S. Economic Sanctions

Many of the recent U.S. sanctions cases the Federal Reserve has pursued involve foreign banks with operations that extend across many different countries around the world. These cases have attracted significant attention and involve a particular type of activity worthy of special attention.

The misconduct in these cases relates primarily to the manner in which these firms handle cross-border payments. Cross-border payments can be broadly defined as transactions between banking entities that are located in different countries, but there are many different permutations of cross-border payments. For example, cross-border payments can be carried out as a wire transfer where the originator and beneficiary are located in different countries; a wire transfer where the originator and beneficiary are in the same country, but where one or more correspondents in a second country are used; or as a chain of wire transfers that has at least one international element. Cross-border payments typically occur when the originator and beneficiary, or their banks, are located in different countries or where the currency used for the payments is not the currency of the country where the transaction originates. For example, U.S. dollars may be used to make a payment between parties each located in a different foreign country.

Structurally, there are usually two components to these cross-border payments: (1) the instructions, which contain information about the originator and beneficiary of the funds, and (2) the actual funds transfer. The payment instructions for cross-border payments typically are sent to an intermediary bank using industry financial telecommunications systems, such as the Society for Worldwide Interbank Financial Telecommunication (SWIFT). The actual funds transfer occurs separately, typically through the domestic funds transfer system of the originator, via a book transfer of an intermediary with a presence on both sides of the border, and through the domestic funds transfer system of the beneficiary.

Foreign banks often operate in jurisdictions that do not impose the same economic sanctions on foreign customers as the United States. Transactions involving these sanctioned customers are nonetheless subject to U.S. law if the transaction is routed through the U.S., as is typical for transactions conducted in U.S. dollars. Foreign banks that operate in countries without sanctions similar to those imposed by the United States have not always had in place the mechanisms to ensure transactions routed through the U.S. comply with U.S. law. Many of the Federal Reserve's enforcement activities are directed at remedying these situations.

One of the Federal Reserve's most important sanctions enforcement cases involved ABN AMRO. In response to corrective measures the Federal Reserve imposed on the firm's New York branch in 2004,[2] which required the bank to review certain historical transactions, ABN AMRO discovered numerous payment messages that were sent through its U.S. branch or a U.S. correspondent in a manner designed to circumvent the filters used by the U.S. institution to detect transactions involving sanctioned parties. In particular, the information that identified a U.S. sanctioned party was omitted from the SWIFT payment sent through the U.S., while a complementary payment instruction with sanctioned party information was deliberately routed outside the United States. The Federal Reserve responded by escalating our enforcement action to a cease and desist order and imposing a substantial penalty

[2] Board of Governors of the Federal Reserve System (2004), "Written Agreement With ABN AMRO Bank", press release, July 26, *www.federalreserve.gov/boarddocs/press/enforcement/2004/20040726/default.htm*.

on ABN AMRO.[3] The Federal Reserve's order required ABN AMRO to implement a global compliance program and take specific steps to prevent circumvention of the required U.S. sanctions filters. We coordinated this action with other U.S. and foreign regulators, including the home country supervisor for ABN AMRO.

The Federal Reserve's enforcement action against ABN AMRO triggered important changes in cross-border payment practices. The Federal Reserve played a key role in this debate and in developing the standards that have since been adopted to improve transparency in cross-border payment messages—including the standards adopted by the Basel Committee on Banking Supervision and SWIFT. These standards require the expanded disclosure of the originator and beneficiary on payment instructions sent as part of cover payments.

In the years since the ABN AMRO case, the Federal Reserve and other U.S. authorities have taken action against international banks that had been engaged in similar evasive misconduct. Most recently, the Federal Reserve has imposed cease and desist orders on Credit Suisse, Barclays, Standard Chartered, and HSBC.[4] In each case, the bank's home country supervisor has agreed to help monitor compliance with the Federal Reserve's order. These enforcement cases reflect our continued view that international banks have an obligation to ensure that they do not interfere with the ability of U.S. financial institutions to comply with the sanctions laws.

Enforcement of the Bank Secrecy Act

The Federal Reserve has also taken a number of recent enforcement actions to require depository institutions to improve their BSA programs and comply with other anti-money laundering obligations, including the reporting requirements that exist under the BSA. While bank holding companies are not statutorily mandated to have the same program requirements as depository institutions, we have also taken action against bank holding companies to require them to improve their oversight of the subsidiary bank's BSA programs and compliance. For example, in 2010, we issued a cease and desist order against HSBC requiring the U.S. holding company to improve its oversight of the compliance program at HSBC's national bank subsidiary.[5] HSBC's failure to address our concerns in a timely manner was part of the reason for imposing a substantial penalty on HSBC and its U.S. holding company last year.[6]

The Federal Reserve takes seriously its responsibility to pursue formal, public action in cases of BSA noncompliance. For example, in January, the Federal Reserve issued a cease and desist order requiring JPMorgan Chase to take corrective action to enhance its program for compliance with the BSA and other anti-money laundering requirements at the firm's various subsidiaries.[7] In June 2012, we issued a public enforcement action against Commerzbank AG and its U.S. branch for its failure to comply with certain BSA reporting obligations.[8]

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[3] Board of Governors of the Federal Reserve System (2005), "Agencies Release Bank Supervisory and Penalty Actions Against ABN AMRO Bank, N.V.", press release, December 19, *www.federalreserve.gov/boarddocs/press/enforcement/2005/20051219/default.htm.*

[4] Board of Governors of the Federal Reserve System (2009), "Consent Order To Cease and Desist Against Credit Suisse", press release, December 16, *www.federalreserve.gov/newsevents/press/enforcement/20091216a.htm*; Board of Governors of the Federal Reserve System (2010), "Cease and Desist Order Against Barclays Bank and Barclays Bank New York Branch", press release, August 18, *www.federalreserve.gov/newsevents/press/enforcement/20100818b.htm*; Board of Governors of the Federal Reserve System (2012), "Federal Reserve Board Issues Consent Cease and Desist Order, and Assesses Civil Money Penalty Against Standard Chartered", press release, December 10, *www.federalreserve.gov/newsevents/press/enforcement/20121210a.htm;* and Board of Governors of the Federal Reserve System (2012), "Federal Reserve Board Issues Consent Cease and Desist Order, and Assesses Civil Money Penalty Against HSBC Holdings PLC and HSBC North America Holdings, Inc.", press release, December 11, *www.federalreserve.gov/newsevents/press/enforcement/20121211b.htm.*

[5] Board of Governors of the Federal Reserve System (2010), "Cease and Desist Order Against HSBC North America Holdings", press release, October 7, *www.federalreserve.gov/newsevents/press/enforcement/20101007a.htm.*

[6] Board of Governors of the Federal Reserve System (2012), "Federal Reserve Board Issues Consent Cease and Desist Order, and Assesses Civil Money Penalty Against HSBC Holdings PLC and HSBC North America Holdings, Inc.", press release, December 11, *www.federalreserve.gov/newsevents/press/enforcement/20121211b.htm.*

[7] Board of Governors of the Federal Reserve System (2013), "Federal Reserve Board Issues Two Consent Cease and Desist Orders Against JPMorgan Chase & Co.", press release, January 14, *www.federalreserve.gov/newsevents/press/enforcement/20130114a.htm.*

[8] Board of Governors of the Federal Reserve System (2012), "Federal Reserve Board Issues Enforcement Actions With Calvert Financial Corporation and Mainstreet Bank, Commerzbank AG, First Security Bank of Malta, Grant Park Bancshares, Inc., and Robertson Holding Com-

Continued

Conclusion

The Federal Reserve places great importance on ensuring that the institutions we supervise comply with the BSA and U.S. economic sanctions. When we find problems at a supervised institution, we demand specific corrective measures, by specific dates, and we take strong enforcement actions when necessary. We will continue these efforts and work cooperatively with law enforcement and other financial regulators to ensure a coordinated response to the threat posed by illicit financing to the U.S. financial system.

Thank you very much for your attention. I would be pleased to answer any questions you may have.

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pany, L.P.", press release, June 14, *www.federalreserve.gov/newsevents/press/enforcement/20120614a.htm.*

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM DAVID S. COHEN

Q.1. The major AML–BSA cases discussed at the hearing all illustrate various forms of breakdown in the bank compliance systems on which the BSA/AML and economic sanctions rules depend. Would you favor a requirement that the CEOs of large banks certify the effectiveness of their BSA/AML/sanctions compliance systems annually? If not, why not?

A.1. Recent enforcement actions taken against some of the largest and most sophisticated financial institutions in the world demonstrate the need for us to take additional steps to ensure that financial institutions are able to effectively implement anti-money laundering and countering the financing of terrorism requirements. Understanding the circumstances of the failures and preventing their recurrence is a top priority for me and for Treasury. As such, I recently convened an interagency group, the AML Task Force, which is comprised of senior representatives from all the Federal regulatory agencies with responsibility for combating money laundering, as well as the Department of Justice. The Task Force is conducting a comprehensive review of our anti-money laundering (AML)/countering the financing of terrorism (CFT) framework to assess its effectiveness with the goal of finding solutions to address any gaps, redundancies, or inefficiencies, and to ensure that effective AML/CFT is made a priority within financial institutions. The Task Force is committed to reviewing all practical options to improve the effectiveness of our regime, including a potential annual BSA/AML attestation requirement for the CEOs of financial institutions, which would be in addition to the existing Title 12 requirements for boards of directors to approve AML programs under banking agency rules.

Q.2. I understand that you are not prosecutors, but you are responsible for oversight of the Nation's largest financial institutions. Are there reasons that it is especially difficult to adequately discipline individuals with civil fines, industry removals, use of injunctions, limits on certain categories of bank activities, or other sanctions, in connection with seemingly significant BSA/AML violations?

A.2. Treasury is committed to protecting our financial system from money laundering, promoting effective compliance with the law, and minimizing unnecessary burdens on industry. For every case, we scrupulously review the facts and circumstances of the violation and determine the appropriate response. I personally am fully committed to enhancing our enforcement posture to the full extent of our authorities, including more aggressive injunctive action with respect to individuals that may involve barring them from the industry for BSA/AML violations. Although recent sanctions enforcement cases involving financial institutions have typically concluded with civil penalties at the corporate level, individuals can and do face liability under the International Emergency Economic Powers Act when they are personally responsible for sanctions violations.

Q.3. How does the seriousness with which foreign Governments take compliance in this area affect U.S. regulatory efforts and bank compliance? Why didn't foreign regulators, especially in the EU, pick up on the correspondent banking and cross-border problems,

and the wire stripping activity, sooner? Are there other particular areas of concern that you think must be addressed in your current discussions with foreign regulators?

A.3. Treasury, along with others in the Federal Government, works closely with international counterparts through a combination of direct bilateral engagements and international organizations, such as the Financial Action Task Force, to strengthen the global AML/CFT framework and promote implementation and enforcement of effective AML/CFT measures in all jurisdictions around the world. In every engagement, we stress with our partners the importance of regulatory enforcement to our shared security. While it is true that Europe's diffuse legal and regulatory systems present a challenge for us and our European partners in building a unified system for combating global threats, we have made important progress in highlighting specific weaknesses. In one example of our specific engagement, we contribute to the Basel Committee on Banking Supervision's AML/CFT Experts Group that discusses supervisory issues with respect to AML/CFT, and communicates publicly about the role of supervisors with respect to these issues. We remain concerned that international regulators and legal systems have difficulty addressing challenges posed by cross border cash movements, clearing transactions and nonbank financial institutions such as exchange houses and hawaladars.

Q.4. In the last decade, major new innovative technologies and products have come onto the market, including prepaid access cards, mobile phone banking, smart ATM machines and kiosks, mobile wallets, Internet cloud-based payment processes, and others—and they are evolving rapidly. While they provide huge benefits to consumers, they can also pose major AML risks, including by making it easier to move large amounts of money on stored value cards. What are you doing to mitigate those risks now, and what should banks be doing to mitigate those risks on their own, even as they develop these products?

A.4. We have been closely following the rapidly evolving technological landscape over the past several years to ensure that our AML/CFT regulatory system keeps pace with new risks brought about by new technologies. For example, when we developed rules for prepaid access products, the objective was to allow the regulation to evolve in concert with, and anticipate, technological advancements so that we do not have to return to Congress to request additional authorities every time a new technology-driven product enters the prepaid access marketplace. We also work collectively with our regulatory counterparts on the Federal Financial Institutions Examination Council (FFIEC) to ensure evolving technologies are constantly reviewed and addressed as needed through updates to the FFIEC Bank Secrecy Act (BSA) exam manual, which is used by bank examiners and made available as a reference guide to industry. Moreover, we provide guidance to banks to ensure that they are appropriately informed of these developments in order to be vigilant in their compliance obligations. The most recent example of this is March 2013 guidance issued by the Financial Crimes Enforcement Network (FinCEN) on the application of regulations on Virtual Currencies. My office is also helping to lead work in the Fi-

nancial Action Task Force on developing and implementing an international standard that requires both countries and financial institutions to identify and address money laundering and terrorist financing risks associated with new payment methods before the products are launched.

Q.5. A few months ago, you announced that the Government would be carrying out a multi-agency review of AML policies, procedures and enforcement, and you described it in detail in your testimony. Can you outline for the Committee who is leading this review, your objectives, and the expected work product? What is the timetable for this work? What's been accomplished so far? How do you think another review, which to some might sound much like prior similar Government-industry reviews, will assist you in tightening enforcement and improving industry compliance?

A.5. Treasury convened the AML Task Force last fall to take an in-depth look at the entire anti-money laundering (AML)/counter-terrorist financing (CFT) framework. Along with Treasury, the AML Task Force is comprised of senior representatives from each of the regulators with responsibility for combating money laundering—that is, FinCEN, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the Internal Revenue Service, along with the Justice Department's Criminal Division. Collectively, we are taking stock of those components of the framework that are working well and those that require improvement. The goal is to find solutions to address any gaps, redundancies, or inefficiencies, and to ensure that effective AML/CFT compliance is made a priority within financial institutions. The AML Task Force is an ongoing priority for my office, and we would be happy to brief your staff as appropriate as our work progresses.

Q.6. Over the last several years there has been increasing cooperation in enforcing and tightening sanctions against Iran within the financial community here and in Europe. However, as we have seen, some banks have resisted that effort. What are you doing to ensure that we continue to have the support of the European financial sector in enforcing financial sanctions against Iran and that the sorts of sanctions evasion these cases involve doesn't recur?

A.6. Treasury has been highly successful in enlisting the support of the financial sector worldwide, including in Europe, to promote compliance with and enforce our sanctions against Iran. We regularly work with banks to strengthen controls and investigate persons who are attempting to evade our sanctions. We also publish special alerts and advisories for the financial community, reach out to industries both domestically and abroad that could be impacted by Iran's manipulation and subterfuges, and elicit cooperation in our investigations. The degree of international collaboration on these issues, both with our overseas partners and the private sector, has been very strong. These efforts are vital to our ability to enforce our sanctions, and they play a central role in realizing our total commitment to identifying and taking effective action against sanctions evasion.

Q.7. And, what are you doing to ensure that banks in other areas of the world—including in Asia—do not become safe havens for illicit Iranian transactions? And that clearing and settlement processes are fully covered by our multilateral sanctions regime on Iran?

A.7. Treasury regularly engages with authorities and banks worldwide to inform them of the exposure to U.S. sanctions they face if they conduct certain transactions with Iran. And when necessary, we have taken action against them. For instance, in July 2012, we sanctioned two banks, including the Bank of Kunlun in China, for facilitating significant transactions for Iranian banks designated in connection with Iran's support for international terrorism and proliferation of weapons of mass destruction. As a result, the great majority of the world's banks, in Asia and elsewhere, refrain from business activities with Iran. Under the U.S. sanctions regime, foreign financial institutions that engage in certain clearing and settlement activities for U.S.-designated Iranian persons could be cut off from the U.S. financial system. We have undertaken extensive engagement to see that other jurisdictions also extend their financial restrictions on Iran to clearing and settlement activities.

Q.8. The BSA regulations about wire transfers (at 31 CFR 1010(f)(2)) allow a U.S. bank to accept and process a wire transfer from overseas even if the "transmitter" field is blank. That may have been understandable 15 years ago when the regulations were written. But why has the rule not been changed, in light of the sanctions abuses illustrated by these cases and the possibility of other attempts to avoid our sanctions rules in the future? The changes in the SWIFT regulations to require completion of all fields, which you mentioned in your testimony, do not appear to have the force of law. In a world in which banking institutions operate globally, effective money laundering control is extremely difficult without uniform and uniformly enforced cross-border standards within banks and under applicable law.

A.8. Treasury's aggressive pursuit of some of the world's largest financial institutions for the systematic removal of references or names of U.S.-sanctioned entities, banks, or other parties in violation of U.S. sanctions has led to changes in SWIFT messaging formats and advancements in financial institutions' filters to ensure compliance with the sanctions programs administered by the Office of Foreign Assets Control (OFAC). U.S. banks, particularly the clearinghouse banks that handle the majority of dollar clearing, do not want to risk processing international wires without originator information due to concerns about violating U.S. sanctions laws. For purposes of the Bank Secrecy Act (BSA), 31 CFR 1010.410(f)(2) requires a receiving financial institution that acts as an intermediary financial institution to include the name and account number of the transmitter (as well as other information) in a corresponding transmittal order if that information is received from the sender. As such, it may not be a technical violation of the BSA to process international wires with missing originator information in many circumstances. Nevertheless, an institution should take the lack of transparency, and potential motivation for not including the information, into account as part of its risk-based approach to

compliance. We are currently exploring whether and how evolution of communications in payment systems may support more stringent information and record keeping requirements in this context to best prevent U.S. financial institutions from serving as conduits for laundered funds transfers, assist law enforcement, and conform with international standards.

Q.9. Various international activities of these major banks, especially foreign correspondent banking and other means for cross-border funds transfer, have been recognized by Congress as special risk areas since at least 2001. What further steps should be taken to prevent the movement of illicit funds into and out of the U.S. through banks' non-U.S. branches in violation of U.S. law? What are your agencies doing specifically to address the myriad problems that have arisen in these areas, including by strengthening cooperation with foreign regulators who may be in a position to flag problem banks earlier for U.S. regulators?

A.9. To address the illicit finance risks associated with correspondent banking and transactions with non-U.S. financial institutions, the Bank Secrecy Act appropriately requires specific AML safeguards for financial institutions that engage in these activities. Moreover, FinCEN in September 2010 issued a Notice of Proposed Rulemaking proposing that certain U.S. banks and money transmitters would be required to report cross border electronic fund transfers to FinCEN. Implementation of the proposed rule would facilitate the reporting of cross-border electronic funds transfer information, which could greatly assist law enforcement. In addition, we are working to strengthen international information sharing arrangements, including directly with foreign regulators and through ongoing discussions at the Financial Action Task Force. With respect to specific cross-border risk associated with drug trafficking and money movements across the Mexican border, we have partnered with the Government of Mexico to form the Bilateral Illicit Finance Working Group, which has created a mechanism for information exchange, joint training, and cooperation against money laundering organizations.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO FROM DAVID S. COHEN

Q.1. *Coordination:* At what point in time is the Director of the Financial Crimes Enforcement Network (FinCEN), as the Administrator of the Bank Secrecy Act, informed of BSA violations and what does FinCEN do with that information?

A.1. FinCEN has Memoranda of Understanding (MOUs) with the Federal banking agencies, the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Internal Revenue Service, as well as 63 State regulatory agencies (as of April 5, 2013), that provide for exchange of information regarding BSA compliance. These MOUs require regulatory agencies to notify FinCEN in writing as soon as practicable, but no later than 30 days after the agency cites a financial institution, for a significant BSA violation or deficiency. FinCEN reviews the provided information regarding significant BSA violations or deficiencies by assess-

ing noncompliance, and considers use of enforcement authorities as appropriate. As warranted, FinCEN will conduct further investigation of potential violations as part of its enforcement review.

Q.2. In large bank examinations, is any office there collecting and collating program and other deficiency information?

A.2. Yes, as part of the MOUs, FinCEN receives aggregate quarterly data on BSA examinations, violations, and enforcement actions by regulatory agencies. This information is not restricted to large banks, but is in aggregate form and does not identify specific institutions. FinCEN shares consolidated quarterly data with the Federal banking agencies.

Q.3. Is that office also in position to connect all the dots to determine that an institution is actually in the midst of an enterprise-wide failure, as opposed to just a series of seemingly disconnected matters requiring attention?

A.3. While Federal financial regulatory agencies are in a better position to determine that an institution is in the midst of an enterprise-wide failure, FinCEN works very closely with these agencies to ensure BSA compliance. FinCEN administers the BSA data and receives information on BSA violations or deficiencies from Federal banking agencies.

Q.4. What can your offices contribute, possibly through FinCEN as the Administrator of the Bank Secrecy Act, and compiler of anti-money laundering trend data, to assist each of the Federal banking regulators with the exam process, to promptly recognize the high risk nature of a bank's enterprise-wide business activities?

A.4. On a quarterly basis FinCEN compiles and shares with the Federal banking regulators a consolidated trend report of the aggregate compliance data that FinCEN receives from each agency. In addition, FinCEN provides regulatory agencies with information concerning potential BSA violations, either as identified by proactive FinCEN internal analysis (such as identifying deficiencies in an institution's reporting to FinCEN) or where such potential violations are brought to FinCEN's attention by law enforcement agencies. Moreover, FinCEN also issues, in partnership with law enforcement, numerous advisories to financial institutions on current threats and red flag indicators to the financial system.

Q.5. *Bulk Cash Smuggling:* As a result of recent enforcement actions, and maybe for other reasons, several banks have exited the lucrative bulk cash business.

What types of firms are stepping into the market to handle this business, now and do they have better compliance systems and records than the banks?

A.5. While some banks have exited the bulk cash business following recent enforcement actions, repatriation of U.S. dollars from abroad continues to occur through U.S. banks and nonbank financial institutions. Effective guidance to, and supervision of, these financial institutions is essential to ensuring that they comply with their obligations under the Bank Secrecy Act when receiving cash. Treasury has also been working with law enforcement, regulatory, and international partners to facilitate greater implementation of

relevant controls to guard against the risks associated with the bulk cash business.

Q.6. Are you seeing bulk cash connections to Hezbollah and drug trafficking in any particular Nations or regions?

A.6. Treasury has exposed linkages between Hizballah and those connected with drug trafficking and has taken strong action to target this activity using all available authorities. Treasury designated a key Colombia-based Hizballah facilitator (Ali Mohamad Saleh) under our counterterrorism authority (Executive Order 13224) in June 2012 for acting for or on behalf of and providing financial, material, or technological support to Hizballah, including raising funds in Maicao, Colombia. Saleh was previously designated under the Foreign Narcotics Kingpin Designation Act (Kingpin Act) on December 29, 2011, for his role as a Maicao, Colombia-based money launderer for the Cheaitelly/El Khansa criminal organization. This organization is linked to the Ayman Joumaa network, which Treasury also designated under the Kingpin Act in January of 2011. Ayman Joumaa has coordinated the transportation, distribution, and sale of multiton shipments of cocaine from South America and has laundered the proceeds from the sale of cocaine in Europe and the Middle East, according to investigations led by the Drug Enforcement Administration. Operating in Lebanon, West Africa, Panama, and Colombia, Joumaa and his organization launder proceeds from their illicit activities—as much as $200 million per month—through various channels, including bulk cash smuggling operations and Lebanese exchange houses. Treasury has also taken action under Section 311 of the USA PATRIOT Act identifying Lebanese Canadian Bank (2011), and Rmeiti Exchange and Halawi Exchange (April 2013) as foreign financial institutions of primary money laundering concern for their role in facilitating the money laundering operations of the Joumaa network from which Hizballah derived financial benefit. Regulatory action can be taken under Section 311 to protect the U.S. financial system from the risks posed by global narcotics money laundering networks and terrorist financiers. Treasury will continue to take action when we have information of this type of activity.

Q.7. *International Coordination:* The dangers of illicit global money must receive adequate and effective attention at the G20, IMF, World Bank, and foreign national levels.

Do each of you, together with the Comptroller, at your particular levels of office, ever meet together to discuss and review BSA programs and policies, both domestically and abroad?

A.7. In addition to the close coordination taking place within the recently established AML Task Force discussed in my written and oral statements, FinCEN, along with its Federal financial regulatory counterparts, meet regularly through the Federal Financial Institutions Examination Council to discuss current and future BSA policies, prescribe principles for promoting uniformity in the BSA oversight of financial institutions, and ensure that our examination procedures are carefully adapting to the changes in marketplace threats and vulnerabilities both domestically and internationally.

Q.8. How effective is the international compliance structure and how exposed are our financial system and individual institutions to cross border enforcement challenges?

A.8. The U.S. financial system and individual institutions are exposed to cross-border enforcement challenges because of the preeminence of the U.S. financial system and because of the dominant role of the U.S. dollar in cross-border trade and investment. To address this exposure, Treasury and our interagency partners have developed a global AML/CFT framework through the Financial Action Task Force (FATF). The FATF (i) maintains a universally accepted list of AML and CFT criteria, or Recommendations, for the public and private sectors, (ii) coordinates a global peer review process to assess compliance with those Recommendations, and (iii) achieves success in encouraging remedial action by drawing public attention to country-specific AML/CFT deficiencies. Treasury is working within this framework to address cross-border enforcement challenges, while also pursuing unilateral action under domestic authorities when appropriate.

Q.9. It appears that BSA regulations permit wire transfers to enter the U.S. with an incomplete originator field. Since that situation can potentially harm a U.S. bank—what should be done to address this issue?

A.9. Treasury's aggressive pursuit of some of the world's largest financial institutions for the systematic removal of references or names of U.S.-sanctioned entities, banks, or other parties in violation of U.S. sanctions has led to changes in SWIFT messaging formats and advancements in financial institutions' filters to ensure compliance with the sanctions programs administered by the Treasury's Office of Foreign Assets Control (OFAC). U.S. banks, particularly the clearinghouse banks that handle the majority of dollar clearing, do not want to risk processing international wires without originator information due to concerns about violating U.S. sanctions laws. For purposes of the Bank Secrecy Act (BSA), 31 CFR 1010.410(f)(2) requires a receiving financial institution that acts as an intermediary financial institution to include the name and account number of the transmitter (as well as other information) in a corresponding transmittal order if that information is received from the sender. As such, it may not be a technical violation of the BSA to process international wires with missing originator information in many circumstances. Nevertheless, an institution should take the lack of transparency, and potential motivation for not including the information, into account as part of its risk-based approach to compliance. We are currently exploring whether and how evolution of communications in payment systems may support more stringent information and record keeping requirements in this context to best prevent U.S. financial institutions from serving as conduits for laundered funds transfers, assist law enforcement, and conform with international standards.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED FROM DAVID S. COHEN

Q.1. Studies have demonstrated an increase in money laundering and terrorist financing being done through securities transactions. What are the steps you have recently taken to support efforts at preventing money laundering and terrorist financing through the conduit of securities transactions? How are you working with regulators domestically and abroad to ensure that financial market intermediaries are appropriately applying existing rules and being made aware of new trends in the industry that are indicative of money laundering via securities transactions? Are there specific recommendations of the Financial Action Task Force that you are hoping to implement domestically in this area? Please explain.

A.1. My office organized a working group with interagency colleagues, including staff at the Securities and Exchange Commission and the Commodity Futures Trading Commission, to focus specifically on understanding and mitigating the money laundering and terrorist financing risks in the securities and futures markets. The work of the group includes a systemic analysis by FinCEN staff of suspicious activity reports related to these industries to determine trends and typologies that can be useful in identifying and addressing risks. FinCEN is also working on a proposal to impose AML program and suspicious activity reporting requirements on investment advisors, which will further protect our securities markets from abuse and address a regulatory deficiency that was identified by the Financial Action Task Force.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM DAVID S. COHEN

Q.1. The United States Government takes money laundering very seriously. A bank that launders drug money or terrorists' money can be shut down,[1] and individuals in the bank can be banned from banking.[2] In December, HSBC admitted to laundering at least $881 million for Colombian and Mexican drug cartels, and violating U.S. sanctions against Iran, Cuba, Libya, Sudan, and Burma.[3] These were not one-time actions. The bank was warned over and over and told to fix the problem, and it didn't. It just kept making money by laundering money for drug dealers.[4]

In the hearing, you noted that the threshold determination for revoking a bank's charter is dependent on prosecution and conviction, and you testified that the Justice Department makes determinations about when it is appropriate to prosecute. However, there are other tools available to hold accountable banks and bankers who engage in illegal activity, such as banning individuals from the banking industry. Could you please describe:

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[1] *See,* e.g., Annunzio-Wylie Anti-Money Laundering Act of 1992, §§1501–1507, Pub. L. 102-550, 106 Stat. 3680 (1992).

[2] 12 U.S.C. 1818(e) and (g).

[3] Dept. of Justice, Press Release, Dec. 11, 2012, available at: *http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html.*

[4] Senate Permanent Subcommittee on Investigations, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History", July 16, 2012, available at: *http://www.levin.senate.gov/download/?id=90fe8998-dfc4-4a8c-90ed-704bcce990d4.*

Whether your agency has any regulation, guidance, policies, formal or informal, that guide when individuals should be banned from banking under 12 U.S.C. §§1818(e) and (g). If so, please provide those documents.

A.1. The procedures established in 12 U.S.C. §§1818(e) and (g) for removing an "institution-affiliated party" from office at a depository institution, or prohibiting such person from further participation in the conduct of such institution's affairs, are powers that may be exercised by the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, depending on the type of depository institution involved. The Treasury Department has no authority to exercise removal or prohibition powers under these provisions. The Financial Crimes Enforcement Network (FinCEN), however, has authority under 31 U.S.C. §5320 to bring an action in district court against a person it believes has violated, is violating, or will violate the Bank Secrecy Act (BSA) or its regulations, to enjoin the violation or to enforce compliance with the requirement. (The OCC is a bureau of Treasury, but it operates independently of Treasury in its role as a financial regulator.)

Q.2. Under what circumstances your agency has used 12 U.S.C. §§1818(e) and (g) in the past, including any actions taken against bankers in the largest financial institutions.

A.2. As described in response to [Question 1] above, Treasury has no authority to utilize these provisions.

Q.3. The process your agency does or would follow to use its authority under 12 U.S.C. §§1818(e) and (g).

A.3. As described in response to [Question 1] above, Treasury has no authority to utilize these provisions.

Q.4. Attorney General Holder testified before the Judiciary Committee that he is "concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when, . . . if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy."

Can you explain how your efforts to ensure compliance with money laundering laws are affected when so many people—even the Attorney General of the United States—think it is "difficult to prosecute" the biggest banks?

A.4. The Treasury Department supports vigorous enforcement of the law and believes that no individual or institution is above the law regardless of size or any other characteristic. Attorney General Holder has testified recently that the Justice Department shares this view. Although Treasury does not have statutory authority to impose criminal penalties—that authority rests exclusively with the Department of Justice—Treasury does have authority to investigate potential violations of U.S. economic sanctions, as well as certain anti-money laundering laws and regulations, and to impose civil penalties. Treasury has a clear record of aggressively pursuing investigations and enforcement actions against both U.S. and foreign financial institutions that violate those laws and regulations.

Q.5. Are you worried that the size and interconnectedness of our Nation's largest financial institutions negatively affects your ability to enforce the law and reduces your leverage?

A.5. No. Treasury has a clear record of aggressively pursuing investigations and enforcement actions against both U.S. and foreign financial institutions that violate the laws and regulations administered by Treasury, regardless of the size of the financial institutions involved.

Q.6. At the hearing, Under Secretary Cohen and Governor Powell both testified that the Justice Department was in contact with their institutions regarding the HSBC case. Without reference to any particular case, can you describe the general or usual process for cooperation between your institution and the Justice Department regarding money laundering and Bank Secrecy Act issues? In particular:

Which office or offices in the Justice Department contact your institution?

A.6. The Treasury Department bureau responsible for enforcing the money laundering regulations promulgated under the Bank Secrecy Act—the Financial Crimes Enforcement Network (FinCEN)—typically cooperates with the Justice Department on anti-money laundering investigations. Although the offices in the Department of Justice vary from case to case, these matters are typically coordinated with the Criminal Division (particularly the Asset Forfeiture and Money Laundering Section) and the National Security Division (particularly the Counterespionage Section) and relevant U.S. Attorneys offices.

Q.7. Which office or offices in your institution are contacted?

A.7. On matters involving anti-money laundering and U.S. economic sanctions laws and regulations, the Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC), respectively, serve as the primary points of contact within Treasury.

Q.8. At what points in the enforcement process is your institution contacted?

A.8. Although the facts vary from matter to matter, initial contact is typically made early in the investigative stages after one agency has assessed that there is a potential violation of law and that another agency is likely to have an interest in the conduct underlying the case.

Q.9. What information is usually requested?

A.9. Treasury and the Department of Justice share information that would facilitate the development of a common understanding of the facts underlying the potential violations.

Q.10. Are there are any formal or informal guidelines that are used for interagency cooperation on Bank Secrecy Act or Anti-Money Laundering issues?

A.10. Treasury has established a number of formal and informal mechanisms to facilitate such interagency cooperation. Consistent with its responsibilities under the Bank Secrecy Act (BSA), FinCEN maintains a Government-wide BSA data service, and pro-

vides access to this data and related analytic products to Federal, State, and local law enforcement and regulatory agencies, in accordance with applicable legal requirements. Frequently, this data-sharing takes place pursuant to memoranda of understanding that provide for the exchange of information (including advance notification by FinCEN that enforcement action may be warranted by another regulator). OFAC has executed memoranda of understanding regarding the sharing of information with every functional Federal financial regulator. OFAC's *Economic Sanctions Enforcement Guidelines,* which are published in Treasury's regulations at 31 CFR part 501, App. A, provide additional information about the circumstances under which potential sanctions violations are referred for criminal investigation.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP FROM DAVID S. COHEN

Q.1. As all of you mentioned, the sophistication and determination of money launderers, terrorist financiers, and other criminals has evolved and changed as they find ways to gain access to our institutions. How can we support smaller institutions that cannot afford to put the same programs in place as the large banks? In your examinations, have you noticed vulnerabilities on a large scale?

A.1. Given the wide array of institutions that comprise the financial system, many anti-money laundering (AML) obligations imposed under the Bank Secrecy Act are predicated on the risk-based approach. In general, financial institutions with lower risk customer bases or product lines may not require the same AML procedures as institutions that engage in higher risk activity. Moreover, as highlighted in my testimony, a primary focus of recent initiatives to improve the AML/counterterrorist financing (CFT) framework, is to ensure that compliance efforts at financial institutions are commensurate with actual illicit finance risk. FinCEN recently organized a group dubbed the "Delta Team" under the auspices of the Bank Secrecy Act Advisory Group (BSAAG). This group includes representatives from the financial services industry, financial regulators, and law enforcement, with the mission of examining any gaps between illicit finance risks and compliance efforts. Treasury also recently convened a broad interagency group known as the AML Task Force, to look in depth at the existing anti-money laundering and counterterrorist-financing framework—from the legal and regulatory foundation, to the compliance and examination function, to the enforcement efforts. These initiatives provide greater clarity on implementing the risk-based approach will benefit all financial institutions, including smaller ones that engage in lower risk activities.

Q.2. Some smaller financial institutions are concerned about the cost of adopting a customer due diligence program (to verify the identity of members when opening accounts, understand the purpose and intended nature of the account, etc.). Are the objectives of this program already being reached through compliance with existing FinCEN guidelines, including the agency's BSA/AML exam manual?

A.2. Treasury has embarked on a rule-making process to consider whether to impose an explicit customer due diligence rule that includes a broad requirement to identify beneficial owners. Such a rule would put financial institutions in a better position to assess risks and protect themselves from illicit finance. Moreover, a broad beneficial ownership requirement would support law enforcement, intelligence, and tax authorities in their efforts to combat financial crime and advance national security interests. Explicitly imposing clear customer due diligence requirements would also address Treasury's concern that there is a lack of uniformity and consistency in the way financial institutions currently conduct diligence under existing requirements. In furthering the rule-making process to advance these objectives, we will continue to work towards achieving clear and harmonized customer due diligence expectations, leveraging best practices to minimize burden and maintaining a risk-based approach.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM THOMAS J. CURRY

Q.1. The major AML–BSA cases discussed at the hearing all illustrate various forms of breakdown in the bank compliance systems on which the BSA/AML and economic sanctions rules depend. Would you favor a requirement that the CEOs of large banks certify the effectiveness of their BSA/AML/sanctions compliance systems annually? If not, why not?

A.1. The OCC is currently considering issuing a regulation or guidance on corporate governance accountability with respect to banks' BSA/AML programs and activities. As part of that effort, we will consider whether it would be appropriate to include a certification requirement by some or all banks as to the effectiveness of the bank's BSA/AML controls.

Q.2. I understand that you are not prosecutors, but you are responsible for oversight of the Nation's largest financial institutions. Are there reasons that it is especially difficult to adequately discipline individuals with civil fines, industry removals, use of injunctions, limits on certain categories of bank activities, or other sanctions, in connection with seemingly significant BSA/AML violations?

A.2. Establishing the culpability of specific individuals in cases of institutional failures such as BSA/AML compliance program breakdowns can be challenging, especially in larger institutions, because responsibility for the program is widely shared within the organization, and often results from a poor compliance culture. Contributing causes of BSA/AML compliance program breakdowns include deficiencies in corporate governance, business strategy, use of technology, payment system monitoring, staffing resources, communication breakdowns, gaps in technology, and delays in the evolution of standard industry practices. These are all institutional problems that can be addressed through the use of a remedial document such as a cease-and-desist order. But these types of cases do not lend themselves readily to actions against specific individuals because of the stringent legal standards we must meet to bring such actions,

and because of the multitude of factors that typically cause the compliance program breakdowns.

Notwithstanding that, the OCC has successfully brought enforcement actions against individuals responsible for BSA/AML violations, and OCC examination findings have been instrumental in successful criminal prosecutions against bank insiders. These include Simon Kareri, a Vice President of Riggs Bank, and Wen Chu Huang, a Director and former Chairman of the Board of Directors of Broadway National Bank. These cases were brought because the OCC or the prosecuting agency was able to establish that the individuals were directly involved in money laundering or fraud being conducted through a bank, as opposed to compliance breakdowns.

The OCC is committed to taking actions whenever they are legally supportable. To this end, the OCC conducts a review of individual misconduct as part of all significant investigations into BSA/AML noncompliance. We are also exploring ways to enhance our ability to take removal and prohibition actions in appropriate cases. For example, we are including articles in our enforcement actions against institutions that require the institution to establish responsibility and accountability for BSA compliance at senior management levels of the institution, including in the institution's business lines. We are also developing industry-wide standards in this area that can be issued in the form of a regulation or guidance. And we are reviewing the statutory standards for removal and prohibition actions in order to determine whether issuing a regulation or agency guidance would facilitate bringing removal and prohibition actions under the statute.

Q.3. How does the seriousness with which foreign Governments take compliance in this area affect U.S. regulatory efforts and bank compliance?

A.3. During OCC regulatory reviews in foreign countries, we make it a practice to meet with local regulators to discuss findings and concerns allowed by country law. We also hold supervisory colleges where we share information. Finally, OCC gives consideration to Financial Action Task Force findings when scoping and conducting AML examinations.

Q.4. Why didn't foreign regulators, especially in the EU, pick up on the correspondent banking and cross-border problems, and the wire stripping activity, sooner?

A.4. We are unable to address the question. This is a matter that should be asked of those foreign regulatory bodies in question.

Q.5. Are there other particular areas of concern that you think must be addressed in your current discussions with foreign regulators?

A.5. We will continue to meet with foreign regulators to further discuss our regulatory posture and we welcome the sharing of information when allowed by country privacy laws. Such a meeting was held recently on April 19 with the new U.K. Financial Conduct Authority.

Q.6. In the last decade, major new innovative technologies and products have come onto the market, including prepaid access cards, mobile phone banking, smart ATM machines and kiosks, mo-

bile wallets, Internet cloud-based payment processes, and others—and they are evolving rapidly. While they provide huge benefits to consumers, they can also pose major AML risks, including by making it easier to move large amounts of money on stored value cards. What are you doing to mitigate those risks now, and what should banks be doing to mitigate those risks on their own, even as they develop these products?

A.6. The OCC, along with the other Federal banking agencies, is involved in the Task Force on the U.S. AML Framework. This task force was assembled to review the administration, implementation, and enforcement of the U.S. AML framework. In addition, the OCC regularly works with the other Federal banking agencies and FinCEN on industry guidance related to emerging AML risks, including risks arising from new products and services. For example, in 2011, the OCC issued guidance to national banks on assessing and managing the risks associated with prepaid access programs, including BSA/AML and OFAC-related risks. More recently, in January, the OCC in collaboration with other members of the Federal Financial Institutions Examination Council issued for comment proposed risk management guidance on the use of social media that highlights BSA/AML issues that can arise with the use of such media.

Before offering new products or services, the OCC expects banks to conduct thorough due diligence to assess the potential risks and to determine how those risks can be mitigated. Banks should have in-place commensurate controls and should perform ongoing evaluations of the adequacy of processes devised to manage or mitigate risks arising from higher-risk products, services; customers and geographies. Banks should ensure they have in place appropriate risk assessment, customer due diligence, and suspicious activity monitoring processes. As part of the examination process, the OCC verifies that these processes are in place.

Q.7. Comptroller Curry, you mentioned in a recent speech that you are concerned about the possibility that problematic transactions with third parties may begin to migrate from large financial institutions to smaller institutions as large banks exit high-risk business areas. To what extent can smaller banks become substitutes for larger more compliant banks, since most of them cannot directly clear dollar transactions internationally? What can smaller institutions do to protect themselves and how can regulators aid them in their efforts?

A.7. To be clear, problematic transactions encompass more than just those with international implications. For example, we have seen higher-risk customers such as money services businesses (MSBs), ATM owners, third-party payment processors, etc., migrate to smaller institutions. Also, smaller banks can assume risk by providing banking services for high-risk businesses outside of just clearing dollar transactions. The banks can offer a variety of products and services that involve international exposure, such as international ACH, international wire transfers, and remote deposit capture, or the banks may have international customers. The OCC has consistently discussed with community banks, during examinations and through outreach efforts, the risks involved with these

products and services and has cautioned the bankers about the need to carefully monitor customer transactions. The OCC has made it clear that it is vital that community banks understand the nature of their customers' businesses and transactions, including how they do what they do, why they do it, and for whom they do it, and that the banks appropriately and carefully monitor customer transaction activity. An important way a small bank can protect itself is to resist accepting customer relationships that are in business sectors with which the bank is unfamiliar or that are so large and complex the bank cannot properly administer the relationship (i.e., properly monitor transaction activity). OCC portfolio managers assigned to community banks perform quarterly reviews that include questions about what new products the bank is offering to help identify activities that could signal a change in a bank's BSA/AML risk profile. Additionally, the OCC conducts a Money Laundering Risk survey annually for all community banks, which is targeted at identifying products that pose higher levels of BSA/AML risk.

Q.8. Your testimony reasonably cites cutback of compliance staffs during the financial crisis as one element of the recent spate of cases. Why didn't regulators act more decisively as they saw compliance staffs being cut back, since those staffs are critical for an adequate AML system under the BSA?

A.8. Compliance management metrics failed to point out the risk of declining staff, and banks often cut staff while making the case that system enhancements permit efficiencies. That can be true and it sometimes takes time to see a negative effect of reduction in personnel. It is something we now pay closer attention to and expect the banks to have better MIS to provide early warning internally when staff cannot keep pace with workload or quality. Our heightened expectations around risk management and audit are directed at these functions doing better to identify such issues.

Q.9. You have noted that there is now a growing belief that—for the first time in recent memory, operational risks—including those related to AML issues—rather than credit risk pose the greatest potential for loss for many banks and thrifts. How do banks and thrifts ensure that operational risk, including that in regards to BSA issues, does not undermine safety and soundness? What are bank regulators doing to ensure these steps are being taken?

A.9. As I mentioned in my March 4, 2013, speech before the Institute of International Bankers, operational risk is at the top of our safety and soundness concerns for the large banks we supervise. In order to properly manage this risk, senior bank compliance personnel need to be involved in product development. This is especially true when banks are contemplating whether to offer higher-risk products and services that may require robust controls. The critical ingredients for a sound BSA/AML program include the strength of an institution's compliance culture, its willingness to commit sufficient resources, the strength of its information technology and monitoring processes and the adequacy of risk management protocols. The OCC regularly examines banks to determine the adequacy of policies, procedures, and processes devised to manage or mitigate risks. We expect banks to have risk management

processes commensurate with the quantity of risk arising from products and services offered and customers and geographies served.

Q.10. Under current law, what statutory provisions would apply to limit the business activities of a bank if that bank was convicted of a violation of the BSA, but its charter was not terminated?

A.10. There is no statutory provision that specifically limits the business activities of a bank that has been convicted of a criminal BSA or money laundering violation, but whose charter has not been revoked under 12 U.S.C. §93(d). However, the OCC has the authority to limit the business activities of a bank under its general cease-and-desist authority set forth in 12 U.S.C. §1818(b). The OCC has exercised this authority in its BSA/AML enforcement orders. In merger transactions, the USA PATRIOT Act further requires the OCC to consider the effectiveness of a bank or savings association, including its overseas branches, in combating money laundering activities. 12 U.S.C. §1828(c).

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO FROM THOMAS J. CURRY

Q.1. *Deferred Prosecution Agreements:* The use of a Deferred Prosecution Agreement, or DPA, represents the continuation of a trend in enforcement matters in economic sanctions, export controls, and other matters. In opting for a DPA, companies may avoid criminal prosecution; in exchange, they assume ongoing responsibilities and risks. The DPA is open, on average, for about 18 months.

If it sometimes takes years to uncover BSA violations and other bad behavior, how useful is the DPA as an enforcement tool?

What is an example of the lowest trigger for a violation of a DPA?

How long have DPAs been in place on financial institutions and has any resulted in a violated? What was the end result?

A.1. A DPA is an agreement between the Department of Justice (DOJ) and a bank or savings association. Consequently, the DOJ is in a better position to assess the usefulness of DPAs as an enforcement tool than the OCC is. The triggers for determining a DPA violation are solely within the DOJ's jurisdiction, although the DOJ will normally consult with the OCC prior to terminating a DPA against a national bank or Federal savings association. If the OCC identifies a breach of a DPA by a financial institution, or if the OCC identifies continuing problems with an institution's BSA compliance program after it has entered into a DPA, the OCC would notify the DOJ of the breach or problems. No such instances have occurred.

Q.2. *Referrals and Examinations:* Has either OCC or the Federal Reserve made any criminal referrals to Federal or other law enforcement officials as a result of examinations and, if so, what were the results?

A.2. Yes. Suspicious transactions and potential criminal violations are usually reported to law enforcement through the filing of a Suspicious Activity Report (SAR) with the Financial Crimes Enforcement Network (FinCEN). Federal and State law enforcement agen-

cies have direct, online access to the SAR database. Depending on the significance of the SAR filing, the OCC may contact the DOJ to direct its attention to particular suspicious activity at financial institutions. In some cases, the OCC may file a SAR itself, direct an institution to file a SAR, or refer the matter through other means.

While the OCC does not have information concerning the disposition of most of these SARs, one example of a SAR that resulted in successful prosecutions was at Jefferson National Bank. Here, the OCC identified money laundering transactions, filed reports with law enforcement, and took the lead in scheduling several meetings with Federal, State, and Canadian law enforcement personnel alerting them to the significance of the OCC's findings and the large sums of illicit funds flowing through accounts at this bank. Additionally, the OCC brought a removal action against a director and issued a personal cease-and-desist order against the president. Based upon this information, law enforcement began an investigation that resulted in one of the most successful money laundering prosecutions in U.S. Government history. The case resulted in 21 indictments, and law enforcement's seeking the recovery of $557 million. It also resulted in a December 1999 guilty plea by a subsidiary of R.J. Reynolds Tobacco Company and the payment of a $15 million criminal fine. Seven bank officers and directors were ultimately convicted of crimes.

In addition to filing SARs, the OCC provides extensive support to law enforcement in criminal cases. For example, we regularly provide documents and information, make our staff available for interviews or to assist an investigation, and provide expert witnesses to testify at trial. Over the years, the OCC has been involved in several high profile BSA/AML investigations and penalty actions involving large national banks that also involved a parallel criminal investigation, including Union Bank of California, Wachovia Bank, N.A., and HSBC Bank USA, N.A. The OCC's findings and contributions in these cases were instrumental in bringing those cases to closure.

Q.3. Have the results of any BSA examinations had any negative impact on a bank's CAMEL rating?

A.3. OCC issued internal guidance, "Consideration of Bank Secrecy Act/Anti-Money Laundering Examination Findings in the Uniform Interagency Rating Systems and OCC's Risk Assessment System" in 2012. The guidance was effective beginning July 18, 2012. As part of that guidance, staff were reminded that in keeping with current policy, examiners must consider BSA/AML examination findings in a safety and soundness context as a part of the management component of a bank's FFIEC Uniform Financial Institutions Rating System (CAMELS ratings). Since then, the results of BSA examinations have had a negative impact on certain banks' management components. For Federal branches and agencies, BSA/AML examination findings must be considered as part of the risk management component of the ROCA rating system. Examination procedures used to evaluate the adequacy of a bank's BSA/AML compliance remain unchanged.

Q.4. *Exam Consistency:* The Committee understands that, in the interests of exam consistency, all of the Federal regulators now use the Federal Financial Institutions Examination Council or FFIEC manual for Bank Secrecy Act examinations.

Are there differences in the manner of which each agency conducts its examinations? Particularly, is there a substantial difference in the manner so-called pillar violations or program violations are treated before there is movement to a formal enforcement action. If so, why?

A.4. In 2005, the members of the FFIEC developed a comprehensive "FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual". The FFIEC BSA/AML Examination Manual has been revised a number of times and was most recently published in 2010. While the manual provides a consistent examination framework across the agencies for evaluating BSA/AML compliance, each agency may supplement the framework with additional tools or guidance. For example, the OCC has developed and deployed a Money Laundering Risk System that collects risk information from the banks the OCC supervises and factors the information into each bank's examination strategy development. OCC examiners use this information to help determine appropriate areas to select for transaction testing during an examination.

In August of 2007, the FFIEC issued the Interagency Statement on Enforcement of Bank Secrecy Act/Anti-Money Laundering Requirements, which is the guiding enforcement policy for all of the Federal banking agencies. As noted in our written testimony, we have amended our approach for citing pillar violations to provide more flexibility for citing BSN/AML violations for individual "pillar" violations (i.e., internal controls, BSA officer, testing, and training) and to make our approach consistent with the other Federal banking agencies. The OCC has communicated this change to our examination staff and now expects examiners to cite pillar violations when warranted. The OCC has drafted and will soon issue formal internal guidance for examiners to follow when considering such violations.

Q.5. *OCC and Federal Reserve Practice:* What is the practice of the OCC and Federal Reserve on prevention and resolution of deficiencies within its supervisory framework?

A.5. The OCC has a range of supervisory responses depending on the severity of individual examination findings. The OCC makes use of informal actions, including: matters requiring attention (MRAs), commitment letters, and memorandums of understanding (MOUs). The OCC can also take formal actions, including: formal agreements, cease-and-desist orders, and civil money penalties, as well as actions to remove individuals from banking.

Q.6. In the course of resolving deficiencies, has a member bank, or other entity, ever opted to leave either the national banking system or the Federal Reserve System rather than accept an enforcement document?

A.6. While the OCC does not keep records of banks that have converted from the national banking system because of an OCC enforcement action, anecdotal information and informal interactions with bankers suggest that there have been banks that have

switched charters because of an OCC enforcement action or because of a desire to be subject to less rigorous supervision. One such bank is Colonial Bank, N.A., which converted to a State charter and subsequently failed. Section 612 of the Dodd-Frank Act specifically addresses this issue by restricting the ability of a national bank, state-chartered bank, or Federal or State savings association to convert charters if they are subject to a cease-and-desist order or other formal enforcement action.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR REED FROM THOMAS J. CURRY

Q.1. Earlier this year, the Office of the Comptroller of the Currency (OCC), along with the Federal Reserve and 13 mortgage servicers, reached a $9.3 billion settlement to dispense with the Independent Foreclosure Review process. As part of the settlement, banks were ordered to identify military members and other borrowers who were evicted in violation of Federal law. It was reported by the *New York Times* in early March that over 700 military families were identified through this process as victims of wrongful foreclosure. This article notes that "the people with direct knowledge cautioned that the numbers were not precise and could underestimate the extent of the problems . . . ."

Given the reports that roughly 700 foreclosures could be an underestimation, are there efforts underway to ensure that all impacted military families are identified and provided relief? Can you assure me that these military families will get the relief that they deserve?

A.1. At the outset of the Independent Foreclosure Review, independent consultants were required to identify 100 percent of SCRA eligible borrowers. These borrowers were identified through a process by which the entire in-scope population for each of the servicers (all 4.2 million borrowers) was checked against the DoD database. As part of the settlement, the servicers were required to either: (1) assume an SCRA violation for all identified SCRA eligible borrowers and pay the maximum financial injury, or (2) to have the independent consultant complete a review to determine if there was an SCRA violation with respect to the identified SCRA eligible borrowers. For this reason, we are confident that there was not an underestimation of the number of SCRA violations. If anything, the SCRA numbers would be over-reported due to the number of SCRA borrowers whose errors were assumed.

Q.2. This same *New York Times* article reports: "Under the settlement, banks receive credit for the size of the outstanding loan balance, rather than the amount of actual assistance provided. For example, if a bank cut a borrower's $100,000 mortgage debt by $10,000, the lender could then reduce its commitment under the settlement by $100,000. In a previous foreclosure settlement, the banks received credit only for the $10,000."

Please confirm whether this characterization is accurate. If true, please explain why banks are now being given extra credit.

A.2. The Amendments to the Consent Orders, which implemented the Independent Foreclosure Review settlement, are specific about

the standards the regulators will use to measure the servicers' performance on loss mitigation and foreclosure prevention. They emphasize sustainable and meaningful home preservation actions for qualified borrowers and that preference should be given to activities designed to keep borrowers in their homes.

The unpaid principal balance (UPB) is straightforward, transparent, and an easily measurable barometer of the value of the foreclosure that was prevented. It does not measure the expense of the action taken or the economic benefit for the consumer, but simply measures the foreclosure that was prevented based on what the borrower owes, which therefore reflects the amount of assistance received. Complicated crediting formulas are not transparent, and people tend to find ways to manipulate complicated formulas, which can often have unintended consequences. Further, sustainable modifications come in numerous forms, not only through principal reductions, but also through, for example, reduced interest rates.

Finally, the OCC will focus on the overall efforts and results of the loss mitigation and foreclosure prevention programs of each servicer as we evaluate compliance with the remainder of our original Consent Orders. In doing so, we will evaluate the effectiveness of all the loss mitigation and foreclosure prevention activities, not just those they request credit for under the Amendments to the Consent Orders. We intend to ensure that loss mitigation efforts will be done in a manner consistent with the principles we described in the Amendments to the Consent Orders.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM THOMAS J. CURRY

Q.1. The United States Government takes money laundering very seriously. A bank that launders drug money or terrorists' money can be shut down,[1] and individuals in the bank can be banned from banking.[2] In December, HSBC admitted to laundering at least $881 million for Colombian and Mexican drug cartels, and violating U.S. sanctions against Iran, Cuba, Libya, Sudan, and Burma.[3] These were not one-time actions. The bank was warned over and over and told to fix the problem, and it didn't. It just kept making money by laundering money for drug dealers.[4]

In the hearing, you noted that the threshold determination for revoking a bank's charter is dependent on prosecution and conviction, and you testified that the Justice Department makes determinations about when it is appropriate to prosecute. However, there are other tools available to hold accountable banks and bankers who engage in illegal activity, such as banning individuals from the banking industry. Could you please describe:

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[1] *See,* e.g., Annunzio-Wylie Anti Money Laundering Act of 1992, §§1501–1507, Pub. L. 102-550, 106 Stat. 3680 (1992).

[2] 12 U.S.C. 1818(e) and (g).

[3] Dept. of Justice, Press Release, Dec. 11, 2012, available at: *http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html.*

[4] Senate Permanent Subcommittee on Investigations, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History", July 16, 2012, available at: *http://www.levin.senate.gov/download/?id=90fe8998-dfc4-4a8c-90ed-704bcce990d4.*

Whether your agency has any regulation, guidance, policies, formal or informal, that guide when individuals should be banned from banking under 12 U.S.C. §§1818(e) and (g). If so, please provide those documents.

A.1. The standards for removal and prohibition actions are set forth in the applicable statutes, 12 U.S.C. §§1818(e) and (g). In addition, individuals who are convicted of certain criminal violations are prohibited from banking by operation of law under 12 U.S.C. §1829. The following OCC guidance and policies address when individuals should be banned from banking under those sections:

A. OCC Policies and Procedures Manual (PPM) 5310-8;
B. Fast Track Enforcement Program Procedures Manual;
C. Charters for Washington Supervision Review Committee and Major Matters Supervision Review Committee; and
D. Delegations of Authority for Major Matters, Large Bank Supervision, and Midsize and Community Bank Supervision.

The OCC will provide copies of these documents. *[See below]*

PPM 5310-8 (REV)

POLICIES & PROCEDURES MANUAL

Comptroller of the Currency
Administrator of National Banks

Section: Enforcement and Compliance Subject: Fast Track Enforcement Program

TO: All Department and Division Heads and All Examining Personnel

PURPOSE

This issuance revises the Office of the Comptroller of the Currency's (OCC) PPM 5310-8 (REV), Fast Track Enforcement Program, dated September 23, 2003. This program does not replace or supersede existing policies and procedures for enforcement actions that arise from other circumstances. The guidelines in this PPM are for use by OCC staff only and do not create any substantive or procedural rights enforceable at law in any judicial or administrative proceeding.

REFERENCE

- PPM 5310-8, Fast Track Enforcement Program, dated September 23, 2003
- 12 CFR 21.11
- 12 USC 1818
- 12 USC 1829
- 12 USC 1813(u)

BACKGROUND AND SCOPE

Twelve CFR 21.11(c) requires national banks to report certain known or suspected federal criminal violations or other suspicious activities committed or attempted by an institution-affiliated party (known as an " IAP," which includes a bank officer, director, principal shareholder, employee, or agent) against the bank by filing a Suspicious Activity Report (SAR) with the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The SAR details the facts about the activity that may serve as the basis for criminal investigation and prosecution by law enforcement agencies (*e.g.,* Federal Bureau of Investigation, Secret Service (Homeland Security), United States Attorneys, and local law enforcement agencies). The Fast Track Enforcement Program uses this SAR information to develop certain OCC enforcement cases against individuals.

POLICY

It is the OCC's policy to support and enforce the requirements of 12 CFR 21.11(c) as well as applicable enforcement statutes, including 12 USC 1818 and 12 USC 1829, aimed at keeping the banking industry safe and sound. The Fast Track Enforcement Program was established to implement this policy.

The Fast Track Enforcement Program implements streamlined enforcement procedures to be used in specific situations in which there is a conviction of, an admission by, or clear evidence that an IAP has committed a criminal act(s) or other significant act(s) of wrongdoing involving an insured depository institution that are actionable under the agency's enforcement authority. Streamlined enforcement procedures for the Fast Track Enforcement Program are also included in the agency's delegation matrices.

PROCEDURES

Quarterly, the OCC loads selected SAR information of national banks into the OCC's SAR Fast Track Database (SAR F/T DB). Each SAR in the database contains information, such as bank name, contact information, name and address of the IAP(s), narrative description of the suspicious activity(ies), and information about law enforcement contacts.

The OCC uses this SAR information to identify and pursue appropriate enforcement relief under 12 USC 1818 or 12 USC 1829 against the IAP as follows:

1818 Prohibition Order

Under 12 USC 1818, if certain legal standards are met, the OCC may issue an order of removal or prohibition[1] to ensure that the IAP does not again become employed by an insured depository institution.[2]

While prohibition orders are a primary objective of the Fast Track Enforcement Program, the OCC also may issue, in appropriate cases, an order to cease and desist (C&D)[3] that

[1] Under 12 USC 1818(e), a prohibition order requires the agency to establish that: (i) the IAP violated a law, regulation, cease and desist order, formal agreement, or condition imposed in writing *or* participated in an unsafe or unsound banking practice *or* committed a breach of fiduciary duty; (ii) such conduct resulted or will probably result in a loss to the bank, resulted in financial gain or other benefit to the IAP, *or* has prejudiced the interests of the depositors; *and* (iii) such conduct evidences dishonesty *or* a continuing or willful disregard for the safety and soundness of the bank.

[2] An insured depository institution includes all institutions insured by the Federal Deposit Insurance Corporation, including national banks, state banks, thrifts, and saving and loans. A prohibition also prevents an IAP from acting as agent to an insured depository institution as well as, among other things, participating in the affairs of a credit union, an insured depository institution or its holding company, or transferring or voting the stock of such companies.

[3] Under 12 USC 1818(b), a C&D requires the agency to establish that the IAP has: (i) violated a law, rule, regulation, formal written agreement, or a condition imposed in writing; *or* (ii) participated in an unsafe or unsound practice. In addition, if the C&D requires an IAP to take certain affirmative action, make restitution, or provide a guarantee against loss, the agency must show that the IAP was unjustly enriched *or* recklessly disregarded the law.

requires the IAP to, among other things, take certain affirmative action, make restitution, or provide a guarantee against loss. In addition, the OCC has authority to assess a civil money penalty (CMP)[4] in appropriate cases.

All of the above actions can be based on an IAP's consent or based on an order issued by the Comptroller following a hearing before an administrative law judge.

1829 Prohibition Letter

Under 12 USC 1829, an IAP who has been convicted of, or entered into a pre-trial diversion program[5] for, a crime involving dishonesty or breach of trust is effectively prohibited from being employed at an insured depository institution by operation of law.

Under the Fast Track Enforcement Program, the OCC obtains the judgment and conviction documents from the state or federal court records and issues a letter informing the IAP of the automatic prohibition.

The purpose of an "1829 letter" is to put the person on notice that he or she has been prohibited by operation of law. As a result, if after receiving such a letter the person reenters the banking industry in violation of 12 USC 1829, he or she does so "knowingly" and may, therefore, be subject to criminal fines and penalties.

With narrow exception, the OCC is required by statute, 12 USC 1818(u), to make all prohibition orders public. All such orders issued by the OCC since 1989 are listed on the OCC's Web site, as are all 12 USC 1829 prohibition letters.

In federal criminal cases, U.S. Attorneys sometimes include various versions of model prohibition language in a defendant's plea agreement.[6] Regardless of the plea agreement language used, the OCC must follow up by issuing a 12 USC 1818 prohibition order *or* (at a minimum) by processing an 1829 letter in order to make the matter public on the OCC's Web site and available to banks performing pre-employment due diligence on new hires.

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[4] Under 12 USC 1818(i), an order to assess a first tier CMP requires the agency to establish that the IAP has violated a law, regulation, formal written agreement, C&D, or condition imposed in writing. An order to assess a second tier CMP requires the agency to establish that: (i) the IAP has committed a first tier violation, recklessly engaged in an unsafe or unsound practice, *or* breached a fiduciary duty; *and* (ii) such conduct is part of a pattern of misconduct, caused (or is likely to cause) more than minimal loss to the bank, *or* resulted in pecuniary gain or other benefit to such party.

[5] Under a typical federal pre-trial diversion agreement, an offender enters into a program of supervised probation, and upon successful completion the U.S. Attorney will decline prosecution and the charges will be dismissed. Similar programs at state level have various names, including deferred prosecution agreements. They will be referred to hereafter, collectively, as pre-trial diversion programs.

[6] The current model language, which may be accessed by U.S. Attorneys on the Department of Justice's intranet site, states that the defendant agrees not to become an officer, director, employee, or IAP of an insured depository institution without the prior written permission of the appropriate federal financial institutions regulator. Additional optional language states that the defendant "will cooperate" with the relevant regulatory agency in an administrative prohibition proceeding instituted against the defendant under 1818(e). Model plea agreement language preferred by the OCC states more directly that the defendant "agrees to consent" to any 12 USC 1818 prohibition action taken by a federal financial institutions regulatory agency.

The Enforcement and Compliance Division will maintain a detailed procedures manual for processing Fast Track Enforcement Program cases that are assigned pursuant to this PPM.

GENERAL CRITERIA FOR THE PROGRAM

This section sets forth *general* criteria for the program but is not meant to limit the agency's discretion to pursue, case by case, enforcement actions that do not meet these criteria.

For 12 USC 1829 prohibitions, an IAP who is the subject of one or more SARs will be included in the program if the IAP is discovered to have been convicted of, or entered into a pre-trial diversion program, regarding a crime involving dishonesty or breach of trust *and* the dollar amount of the transaction(s) at issue in the SAR(s) equals or exceeds $5,000. In the case of an IAP who has entered into a pre-trial diversion program, which permits a dismissal of charges upon successful completion, an 1829 letter may be sent, provided the public record has not been expunged when the letter is issued and there is no indication that it will be expunged.[7]

For 12 USC 1818 prohibitions, the OCC generally will consider an IAP who is the subject of one or more SARs for inclusion in the program if the following general criteria are met:

- Prosecution of the IAP has been declined by law enforcement authorities[8] *or* prosecution has been initiated but not yet completed and there is no written objection to the OCC pursuing enforcement relief.[9]

- The subject of the SAR has confessed or facts and circumstances of the case otherwise clearly indicate that the subject of the SAR has committed a criminal act or has engaged in an act of significant wrongdoing that meet the standards for an OCC enforcement action (*see* footnotes 1, 3, and 4 above);

- The subject of the SAR was an IAP of a national bank as defined by 12 USC 1813(u) at the time of the criminal act or significant wrongdoing and the criminal act or wrongdoing occurred within the preceding five years; and

[7] Expungements are the exception, not the rule. However, under the FDIC's Statement of Policy governing 12 USC 1829, if and when an IAP's criminal record is completely expunged, the 12 USC 1829 prohibition no longer applies. Therefore, fast track processors should carefully review the court documents to determine whether expungement is contemplated (*e.g.*, as part of the pre-trial diversion or deferred prosecution agreement). If expungement is contemplated, then the case should be processed for an 1818 prohibition. Consistent with this approach, 1829 letters should inform the IAP that if his/her criminal record is expunged in the future, the IAP may send the Director of Enforcement & Compliance evidence of the expungement, so the agency can determine if it is appropriate to remove the 1829 letter from the OCC's web site. *See* 63 *Federal Register* 66177 (December 1, 1998).

[8] In some instances, law enforcement agencies may decline to prosecute banking officials and employees for their activities. For example, the criminal act(s) may not meet prosecutorial guidelines (*e.g.*, dollar amount of loss), or an IAP's actions may not constitute a violation of criminal law. In such cases, the IAP's actions may still constitute an act of significant wrongdoing that may serve as a basis for an OCC administrative enforcement action against the IAP.

[9] The OCC generally will not pursue fast track cases if the matter is being *actively* investigated or prosecuted by law enforcement. However, the agency reserves the discretion to do so and -- once a decision is made to proceed with a case -- will normally do so, unless law enforcement asks the OCC in writing, and the OCC agrees, to defer activity on a case.

- The dollar amount of the transaction(s) at issue in the SAR equals or exceeds $5,000 (subject to priorities set forth immediately below). This standard also will be satisfied if more than one insured depository institution files SARs on the IAP and the aggregate transaction amount meets or exceeds the $5,000 minimum.

For those SARs in the SAR F/T DB that meet the above-mentioned general criteria, the Enforcement & Compliance Division will take into account the following priority factors in selecting cases for assignment under the fast track program:

- SARs filed within the previous two years;
- IAPs who are officers and/or directors;
- A large dollar amount of the transaction(s) at issue (*e.g.*, $25,000 and above);
- IAPs on whom multiple SARs are filed;
- Special areas of current interest (*e.g.*, mortgage fraud, identity theft, computer intrusion).

RESPONSIBILITIES

The Enforcement and Compliance Division has primary responsibility for the program and for securing appropriate enforcement relief.

FURTHER INFORMATION

For further information, contact the Fast Track Counselor or the Director of the Enforcement and Compliance Division at (202) 874-4800.

/signed/
Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Fast Track Enforcement Program
Procedures Manual

June 18, 2012
Updated Versions on
Law Dept O Drive (under "Fast Track Program")

Table of Contents

Overview of Fast Track Program

I. Purpose of the OCC's Fast Track Program

The OCC takes enforcement actions, in appropriate cases, to prohibit current or former bank employees (otherwise known as "Institution Affiliate Parties," IAPs) from working at insured depository institutions. The OCC generally obtains cases leading to prohibitions from two primary sources: (i) through the examination process (i.e., whereby examiners uncover wrongdoing); or (ii) through Suspicious Activity Reports (SARs) filed by banks.[1]

The Fast Track (FT) program uses SAR information to identify and pursue prohibition cases under 12 U.S.C. 1818 against individuals that meet the following program criteria: (i) there is an admission of wrongdoing or the OCC has obtained clear evidence of wrongdoing; and (ii) the amount of the loss or transaction is at least $5,000. In addition, for cases involving certain kinds of criminal prosecutions, the OCC is able to rely upon 12 U.S.C. 1829 (in which the prohibition is by operation of law) and more streamlined procedures as discussed below.

As noted above, there are two primary actions that can be taken under the OCC's FT program:

1) "1818 prohibition order." An OCC prohibition order is an industry-wide ban that remains in effect indefinitely, unless terminated by the OCC. An 1818 prohibition order may be issued based on certain evidence demonstrating wrongdoing;[2] and

2) "1829 prohibition letter." Under 12 U.S.C. 1829, an individual is effectively prohibited by operation of law once he or she has been convicted of (or entered into a pre-trial diversion program regarding) a crime *involving dishonesty or breach of trust*. In

[1] In general, a national bank is required to file a SAR that provides information on certain known or suspected federal law violations (or attempted law violations) and/or suspicious transactions related to potential money laundering activity.

[2] In general, a prohibition order may be issued: (i) when such individual has violated the law, engaged in an unsafe or unsound banking practice, or breached a fiduciary duty; *that* (ii) has resulted (or will probably result) in loss to the bank, gain to the individual, or prejudice to depositors' interests; *and that* (iii) evidences dishonesty or a continuing or willful disregard for the safety and soundness of the bank. 12 U.S.C. 1818 (e).

such cases, the OCC obtains the judgment or conviction documents from the court and sends the individual a letter informing him or her of the automatic prohibition.[3]

The OCC is required by statute, 12 U.S.C. § 1818(u), to make all prohibition orders public. All prohibitions -- both 1818 prohibition orders and 1829 prohibition letters -- are listed on the OCC's Web site at www.occ.treas.gov. Through this means, the OCC is able to inform the public (including banks making employment decisions) that certain individuals are prohibited from working in the banking industry.

II. Fast Track (FT) Program Operation

The FT program is primarily a Law Department-supported program, with leadership and coordination of the program housed within the Enforcement & Compliance (E&C) Division. E&C staffs both a FT Coordinator (who, among other things, trains and provides guidance to FT processors) as well as a FT Counsel (a senior E&C attorney).

Assignment of FT Cases. On a quarterly basis, the OCC downloads all national bank SARs that relate to IAPs into its Lotus Notes SAR Database. Each SAR in the database includes information reported by the Bank on a SAR (*i.e.,* bank name, contact information, name and address of IAP, narrative describing the suspicious activity). From this database, E&C makes case assignments to Law Department support staff who have been designated as Fast Track processors.[4]

Criteria for Selection of FT Cases. SARs are screened and selected for processing based on the following criteria, among others: (i) wrongdoing involves an officer, director, or employee, *but* priority will be given to officers/directors and individuals that are the subject of multiple SARs; (ii) amount involved is at least $5,000,[5] *but* priority will be given to cases involving $25,000 and above; and (iii) date of SAR filing is within the previous two years. From time to time, there may be a focus on cases in a special area of interest (*e.g.*, identity theft, privacy of customer records, mortgage fraud).

Initial Work Up / 1829 Prohibition Letter. Once a case is assigned, the FT processor determines (*e.g.*, by checking the PACER system for federal criminal cases and by contacting state/local officials if there is a known criminal case at that level) whether the

[3] The purpose of letter is to put the individual on notice that he or she has been prohibited by operation of law. As a result, if the individual reenters the banking industry in violation of 12 U.S.C. 1829, he or she does so "knowingly" and may be subject to criminal fines and penalties.

[4] A FT processor can be either a Fast Track Processor I (FTP I) or a Fast Track Processor II (FTP II). The duties of each position are summarized on page 7.

[5] This standard is satisfied if more than one SAR is filed on an IAP and the aggregate amount involved is at least $5,000.

individual has been successfully prosecuted (*i.e.*, convicted or pled guilty to a crime involving dishonesty/breach of trust) *OR* has entered a pre-trial diversion program (*i.e.*, deferred prosecution, deferred sentencing, or deferred adjudication that avoids conviction if the person successfully completes a probationary period). If so, the initial processor obtains the necessary judgment or conviction documents and arranges to send the individual an 1829 prohibition letter to inform the person of the automatic prohibition. As part of the close out of the case, the processor will send appropriate materials to OCC Communications to ensure the 1829 prohibition is searchable by name on the OCC web site. The E&C Director and each of the District Counsels have authority to issue 1829 prohibition letters.

Development of 1818 Prohibition Order Cases. If the case does not qualify for an 1829 letter, a prohibition case may be pursued, provided that: (i) the individual has admitted to -- *or* there is clear evidence of -- participation in the wrongdoing; and (ii) prosecution of the individual has been declined[6] *or* is otherwise not being actively pursued by criminal law enforcement. As a first step in developing an 1818 prohibition case, FT processors will contact the Bank (in writing, with possible phone follow-ups) to gather documentation to support the allegations in the SAR.

Once supporting bank documentation is obtained: (i) a FTP I will send the case file to E&C's FT Coordinator for further processing; or (ii) a FTP II will be authorized to contact the individual (in writing) to obtain additional information, formulate a proposed enforcement recommendation, and draft an initial Washington Supervision Review Committee (WSRC) memo before sending the case file to E&C's FT Coordinator for further processing. E&C's FT Coordinator will then further process the case and also provide quality control oversight function before such cases are referred to the E&C FT Counselor for review and possible assignment to an E&C attorney. Ultimately, 1818 prohibition cases need to be presented by an E&C attorney to WSRC before a prohibition action is authorized and pursued (*i.e.*, either via consent or litigation). Cases leading to 1818 prohibition orders are non-delegated, assigned (or at least co-assigned) to an E&C attorney, and must be presented to the WSRC.

The OCC will generally pursue fast track prohibition cases, unless law enforcement asks the OCC (in writing), and the OCC agrees, to defer activity on a case. Therefore, initial processors will document the case file for eventual assignment to an E&C attorney, even if law enforcement has not yet declined prosecution. Finally, if at any point during the

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[6] Law enforcement agencies may decline to prosecute banking officials and employees for their activities if the case does not meet prosecutorial guidelines (*e.g.*, dollar amount of loss), or restitution has been made, or an IAP's actions does not constitute a strong case of criminal law violation. In such cases, the IAP's actions may still constitute an act of significant wrongdoing that may serve as a basis for an administrative enforcement action by the OCC against an IAP.

processing of an 1818 prohibition case, information becomes available that the individual has been convicted of a crime involving dishonesty or breach of trust, then an 1829 prohibition letter may be issued and the case processed for closure.

No Action Cases. A FT case *may* qualify for closure if: (i) there is no admission and no clear evidence of wrongdoing; (ii) several unsuccessful attempts have been made to contact the individual, (iii) the five-year statute of limitations has run.[7] In such cases, a FT Processor II may write and submit a short "no action" memo (along with the case file) to E&C's FT Coordinator. Final decisions on "no action" cases will be made by E&C, which will determine, for example: (i) whether a case should be pursued even when the initial evidence is not clear – such cases may be developed through further investigation, including (in rare cases) an order of investigation; or (ii) in cases where the five-year statute of limitations has run, whether an enforcement action short of a prohibition should be pursued (*e.g.*, a personal cease and desist order), after taking into account litigation risks.

III. Fast Track Processor I and II

Interested Law Department support staff (in both HQs and the Districts) undergo FT training followed by time to demonstrate competence to perform the work satisfactorily, which will lead to certification as a FT Processor I and (later, if appropriate) FT Processor II. Once certified, the FT function is added to the performance plan of the staff member. Thereafter, the staff member's fast track duties and performance are (like any other primary or secondary objective) factored into that person's overall performance for purposes of evaluations and compensation-related matters. E&C will communicate an individual's performance in processing FT cases to that individual's supervisor.

The general duties of FT Processor I and FT Processor II are set forth in the next page. A more detailed description of FT processor duties begins on page 10.

[7] 1818 prohibitions are subject to a five year statute of limitations. In general, to avoid statute of limitations issues, the OCC has five years from the date of the IAP's bad act to settle the case or file a notice of charges. A case may also be closed if the subject of the SAR is a foreign national who has committed a criminal act or significant wrongdoing in a foreign country where no U.S. domestic accounts were involved.

FT Processor I and II Duties

FT Processor I

--Receive assignments from the FT Counselor
--Make entry on FT Assignment Sheet (i.e., a Word document in table format used to input the name of IAP, the bank, date assignment received)
--Check PACER (federal court database) to determine whether there has been a criminal action involving the individual that would qualify the case for an 1829 prohibition letter
--If an 1829 letter is appropriate, then:
- -obtain from court or PACER system judgment and conviction documents
- -prepare an 1829 worksheet & obtain the IAP's address
- -prepare an 1829 prohibition letter for signature by E&C Director (or District Counsel)
- -make entries in Lotus Notes SAR data base
- -make entry in EV (for mid-size/community banks) or LB-ID (for large banks)
- -make entry into Enforcement Action Reporting System (EARS)
- -fill out and submit worksheet to Communications (for OCC website)
- -send completed file to E&C's FT Coordinator

--If an 1829 letter is not appropriate (and an 1818 case must be developed), then:
- -send letter to Bank requesting documentation supporting the SAR to be signed by E&C's Fast Track Counselor *or* District Counsel / designated District attorney
- -send copy of letter request to appropriate Assistant Deputy Comptroller (ADC), if small/mid-size bank
- -communicate as necessary with Bank investigator to obtain relevant documentation
- -once documentation is obtained, send case file to E&C's Fast Track Coordinator

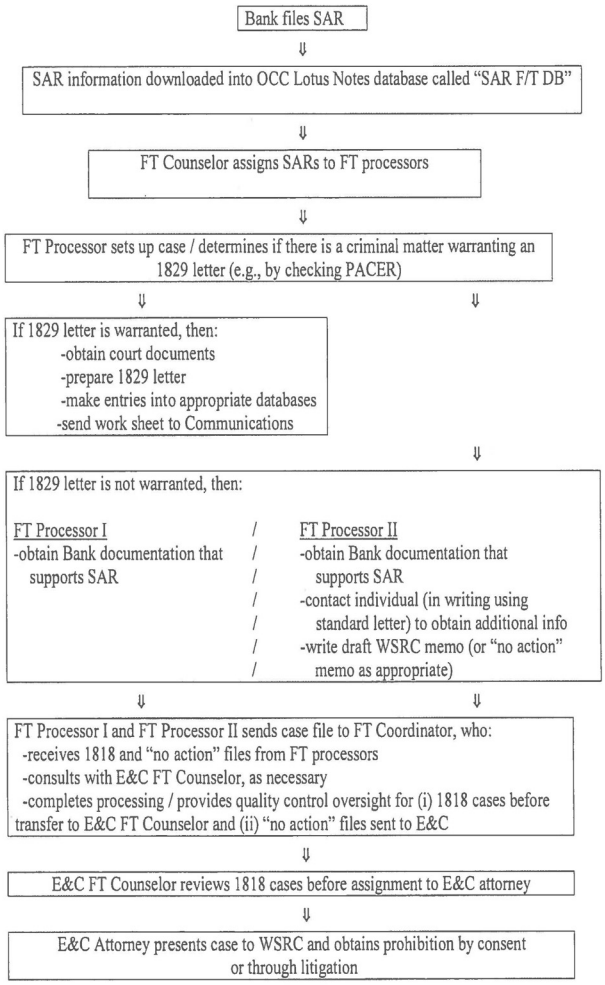
FT Processor II

--performs all of the above-described functions as well as the following:
--Perform Lexis search as required to locate individual's current address
--once 1818 prohibition case documents are obtained, send standard letter to individual to obtain his/her input (letter to be signed by E&C's FT Counselor *or* District Counsel / designated District attorney)
--write draft Washington Supervisory Review Committee (WSRC) memo
--send completed 1818 file to Fast Track Coordinator
--write "no action" memos, as necessary

IV. E&C Attorney Involvement

An E&C attorney will complete the final processing of an 1818 prohibition case. As noted above, after the FT processor completes work on a case, the case file is sent to E&C's FT Coordinator for further processing and to provide quality control oversight function before such cases are referred to the FT Counselor for review and possible assignment to an E&C attorney. Once the 1818 case is assigned to an E&C attorney, it is treated as any other enforcement case in that the E&C attorney will finalized the WSRC memo, present the case to WSRC to received authorization to pursue the enforcement case, and then prosecute the case to obtain an 1818 prohibition (*i.e.*, either via consent or litigation, if necessary). A more detailed description of fast track procedures for E&C attorneys may be found at page 22.

V. Condensed Flow Chart of FT Program



FT Processor -- Detailed Instructions

I. SAR Assignments

Assignment of Cases. E&C will assign cases to FT processors, who will be informed of new case assignments by email.

Determining Which Cases Are Assigned to You. To determine or review which cases are assigned to you, go into the Lotus Notes SAR Fast Track Database (SAR F/T DB).

--For officer/director SARs, once in the database, click on "I. Priority SARs," "A. Open," "1. Officers," "c. By Assignee" for all open officer, director and shareholder SARs.

--For employee (*e.g.*, non-officer/director) SARs, the process is the same, except instead of clicking on "1. Officers," click on "2. Employees and then "c. Assignee."

--Under these views, all open SARs assigned to you will be listed, as well as the date they were assigned. Be sure to look under both views for your assigned cases.

--An alternative method of finding cases assigned to you, click on "II. All IAP SARs," choose "F. By Last Assignee," and look under your name for all open SARs by date assigned to you.

II. Beginning to Work on a Case

A FT processor should do the following:

--Enter the assignment on your FT Assignment Sheet. ***See Tab # 1 for the FT Assignment Sheet (electronic version located at "Templates on My Computer", Fast Track Tab).***

--Ensure your name is entered into the Lotus Notes SAR FT Database.

--Set up a case file and organization for case assignments:

- Create a separate manila folder for each individual case.
- Write the IAP's name on the folder tab. The bank's name & charter number may also be written on the folder tab.
- Staple SAR on the right hand side of file folder.

--Place file folders in a box or in an organization system by alphabetical order by IAP.

--Develop a "tickler" system that you are comfortable with to know when to do follow-up on a case file or move it to the next stage in the process.

--Take notes of every phone call along with the phone number either on the file folder itself or on a piece of paper securely kept in the case file.

--After the establishment of the file, review the SAR to verify that the case qualifies for the Fast Track Program (*see* "Criteria for Selection of FT Cases" on page 4).

III. Locating an IAP

In order for a FT processor to send an 1829 letter or to fully process an 1818 prohibition (for FT Processor IIs), the IAP's current address is needed. To locate the IAP's current address, try the Internet at www.Lexis.com (person locator) or Law Enforcement Solutions or CLEAR (https://clear.thomsonreuters.com/clear_home/index.jsp). These databases must only be used for work-related tasks (*e.g.*, working on an assigned FT case). If the IAP is currently serving time in a federal prison, you may find their address through the Internet at http://www.bop.gov/. Click on "Inmate Locator." The Inmate Locator will show the Inmate Register Number and the address where mail is to be sent. Note: States also have similar websites.

If you cannot locate an IAP after several attempts, try searching again in 2-3 months to see if a different or newer address is available. Otherwise, contact the FT Coordinator, who may be able to help you perform a more detailed search.

IV. Determining if an 1829 Letter is Appropriate

--An 1829 Letter is appropriate if either: (i) the IAP has either been prosecuted (*i.e.*, convicted by a jury or pled guilty and sentenced) OR (ii) the IAP has entered into a pre-trial diversion (PTD) program for a criminal violation involving dishonesty, breach of trust, or money laundering.

-PTD program. Under a typical PTD program, an offender enters into a program of supervised probation, and upon successful completion the U.S Attorney will decline prosecution and the charges will be dismissed. Similar programs at the state level have various names, including deferred prosecution agreements. They will be referred to hereafter, collectively, at PTD programs.

-Exception When Record May Be Expunged. You should carefully review the court/judgment documents to determine whether expungement of the criminal record is contemplated (*e.g.,* the document might state that the record will be expunged sometime after successful completion of the PTD program). If so, then you should consult with the Fast Track Coordinator to determine whether an 1818 prohibition case should be pursued instead. The reason for this is that an 1829 prohibition is no longer effective once the criminal record has been completely expunged.

When to Issue and 1829 Letter. An 1829 letter should not be issued until after sentencing and the time for appealing all pleas has passed. As a general rule, wait at least 30 days after sentencing before mailing an 1829 letter.

V. Steps for Processing An 1829 Letter

--FT Processors should obtain account and password information to access the Public Access to Court Electronic Records ("Pacer") **http://pacer.gov/findcase.html**. Each case assignment should be checked for convictions or PTD programs in Pacer. Pacer is the applicable internet site for federal cases. *Note*: For state cases, you can check the state court listed on the internet or county courts. Several state and counties have the documents available without charge on their websites.

--Once you have accessed Pacer:

- Enter the Criminal Courts
- Type in IAP name, last name first (*ie.,* Smith, Edward)
- Pacer will come up with a list, if applicable
- Find IAP's name, for common names cross check the state in which the crime occurred. When in doubt an e-mail may be sent to the AUSA to confirm the identity or check the indictment or information statement document located in Pacer. The indictment may list the date of birth or other helpful identifying information. ***See Tab #2 for sample e-mail to AUSA.***

--Print the Pacer court docket report along with the judgment & conviction document (the judgment document will be near then end of the Pacer court docket report). If the case is a PTD, make sure to review the document carefully to determine if expungement of the criminal record is contemplated -- if so, consult with the Fast Track Coordinator as noted above.

--Staple the court documents on the left-hand page of the manila folder case file that you prepared (as noted on page 10).

--Complete the 1829 Worksheet. ***See Tab #3 for 1829 Worksheet (electronic version located at: "Templates on My Computer", Fast Track Tab)***

--Perform a search for the IAP's recent address to send the 1829 letter. *See* section on "Locating an IAP."

--Fill out the required information on the 1829 letter template. ***See Tab # 4 for the 1829 Letter Template (electronic version located at: "Templates on My Computer", Fast Track Tab).*** The 1829 Letter Template includes several documents as follows: the 1829 Letter to the IAP, The Notice to Other Agencies of Conviction ("agency notice letter"), the Completed Enforcement Action Form for Communications, EARS form, and EV/LB-ID database form.

Note: In the 1829 Letter to the IAP and "The Notice to Other Agencies," the contact person entered into the 1829 Letter should be either the Fast Track Coordinator or the Fast Track Counsel. *See* page 26 for FT Personnel Chart.

--Make all entries in the databases, EV/LB-ID, EARS and SAR database

--In EV or LB-ID, identify the IAP action as an 1829 Letter. Be sure to enter the appropriate information -- the "Initiated Date" is the date of the final court judgment, and the "Completed Date" is the date of the 1829 letter.

- Once in EV or LB-ID, enter a narrative identifying whether the IAP was convicted by a jury or pled guilty, the crime(s) at issue, the court and state in which the sentencing took place. Also, include the date the 1829 Letter was sent (date of letter), your name and division. An example of the narrative is as follows: "As part of the Fast Track program, OCC found that the IAP pled guilty to one count of bank embezzlement in U.S. District Court of Maryland, the 1829 letter was sent February 19, 2003. J. Doe, SPSU." Also include sentencing information. **Note:** The same type of language may be entered into the SAR Data base in the Comment Section.

--Print out the 1829 Letter documents and print a copy of the EV/LB-ID entries. Place all print outs in the case file.

--Enter the SAR Fast Track Database and enter the IAP's SAR. Enter the following information on the SAR in the appropriate areas

- Indicate whether the conviction was in local, state, or federal court,
- Change the Status field to Prosecuted,
- Enter the date of the 1829 Letter,

- Change the case to "Closed," and enter the "Closed Date."
- Enter in the Comment Section the docket number, the court and sentencing information

VI. Distribution of the 1829 Letter

Once the 1829 Letter is signed, distribute the documents as follows:

1. Send the signed 1829 Letter to the IAP by certified mail-return receipt.
2. Send the Completed Enforcement Action form with a copy of the 1829 Letter to Communications, Attn: Jackie England (Mail Stop 3-3).
3. Place the EARS, EV/LB-ID forms and the Completed Enforcement Action form in the case file. (Make sure all information has been placed in the applicable databases)
4. Send a copy of the 1829 Letter to the other agencies (FED, FDIC, OTS and NCUA), along with the agency notice letter.
5. Initial the top of the completed Fast Track case file and send to the FT Coordinator for indexing and subsequent shipment to the Federal Records Center, in accordance with OCC record-retention policy.

VI. Steps for Developing An 1818 Prohibition Case

--If an 1829 case is not appropriate, then the processor should take the steps outlined below toward developing an 1818 prohibition case.

--First check Institution Database Lookup in Lotus Notes to make sure the Bank is still a national bank. You may also check with Central Records for this information (202-874-5050).

--Then the FT Processor should make a written request to the Bank (*e.g.*, the individual who filed the SAR or the Bank's investigator) for all documentation that supports the SAR. ***See Tab #5 for letter requesting Bank documents (electronic version located at: "Templates on My Computer", Fast Track Tab).*** Regarding the specific contact at the Bank, use the contact person listed on the SAR for Mid-size/community Banks. For Large Banks, use the Large Bank Contact List is on page 31.

-The OCC's letter requests a hard copy of the SAR, documentation to support the SAR, employment application/resume (used for multiple SAR filings), law enforcement status and contact person, loss figures and any restitution payments made.

--Once the Bank responds with the documentation supporting the SAR, the FT Processor should review the bank documentation supplied per the OCC's request to ensure all necessary documents have been obtained.

Fast Track Processor I Steps

--If all documentation has been received, Processor I will forward the case file and all related documents to the Fast Track Coordinator in the Enforcement & Compliance Division. At that time, Processor I will make an entry in both the FT Assignment Sheet and in the Lotus Notes fast track database (called SAR F/T DB) to reflect the transfer of the case file.

Fast Track Processor II Steps

--FT Processor II will review the documentation to determine if there appears to be sufficient evidence to support an 1818 prohibition action (*see* footnote 2 on page 3). Questions may be directed to the Fast Track Coordinator.

Introduction Letter. If there appears to be sufficient evidence to support an 1818 prohibition action, FT Processor II should then contact the IAP by letter to notify him or her that the OCC may commence an enforcement action.

--See Tab# 6 for IAP introduction letter or "Intro Letter" (electronic version located at: "Templates on My Computer", Fast Track Tab). The Intro Letter should be sent to the IAP via UPS with signature required.

--The Intro Letter should provide the IAP with a 10 to 15 day time frame to contact the FT Processor II.

If the IAP Responds by Phone to the Intro Letter. If the IAP (or the IAP's attorney) responds to the Intro Letter by making a phone call to Processor II, then please adhere to the following guidance (*see also* "Do's and Don'ts for Communicating with IAPs" on page 18):

-tell them you are investigating the case.
-ask IAP to explain the allegations and present their side of the story.
-take detailed notes of the telephone conversation(s).
-do **not mention the existence of the SAR.**
-use the telephone conversation as an opportunity to acquire additional evidence or get written documentation from the IAP. Take notes. You may be able to determine

whether the IAP would consent to an enforcement action or be inclined to litigate the case.

-ask the IAP to confirm their contact information.

-if appropriate, inform IAP of their right to seek counsel.

-if appropriate, ask the IAP confirm conversation by a letter or by e-mail. Provide your e-mail address in addition to your physical address. It is extremely helpful to obtain a physical address and phone number of the IAP. Ask for cell phone number. Note: The IAP may be apprehensive to provide you with the information but try to obtain a place where you can contact them.

-if the IAP asks what happens next, you may briefly describe the internal process that the OCC will use to determine whether to pursue an enforcement action (*i.e.*, the case is still in the investigation stage; once the investigation is complete, it will be referred to the Enforcement & Compliance Division of the Law Department; if appropriate, the case will be presented to a committee that hears enforcement cases; and if the agency determines that an enforcement action is appropriate, then an enforcement attorney will contact them directly with the decision).

If the IAP Responds in Writing to the OCC Intro Letter. If the IAP responds in writing to the Intro Letter, you may still want to contact the IAP by phone to obtain clarifications.

Final Review of Case File Before Drafting WSRC Memo. After the IAP responds to the OCC Intro Letter, review the entire case file, including the Bank's documentation again, to ensure that all necessary documents have been received and that the evidence supports an 1818 prohibition case. Follow up with the Bank investigator, if necessary, to obtain additional documentation.

Draft WSRC Memo. The next step is to prepare a draft WSCR memo. Use the Fast Track WSRC memo template to draft the memo. ***See Tab # 7 for WSRC Memo (electronic version located at: "Templates on My Computer", Fast Track Tab).*** In the draft memo, provide a clear and concise description of the facts along with your recommendation. Once completed, send a hard copy of the draft WSRC memo along with the entire case file to the FT Coordinator for additional processing. Send an email to the FT Coordinator indicating that the file is being sent, along with an electronic version of the draft WSRC memo.

--Once the case file and draft WSRC memo is forwarded to the FT Coordinator, make the appropriate entries in both the FT Assignment Sheet and in the SAR FT Database showing the transfer of the case to the FT Coordinator.

--The FT Coordinator will further review and process the case before passing the case file on to the Fast Track Counsel for possible assignment to an E&C attorney. The FT Counsel will advise the FT Coordinator of the assigned attorney. FT Coordinator will

enter the appropriate data into Chief Counsel's Lotus Notes Project Tracking System (PTS) and in the SAR FT Database. The FT Processor II may be contacted by the assigned E&C attorney if questions should arise.

V. No Action Procedures

If at any time during the processing of a fast track case, it becomes clear that: (i) the case does not meet the FT program criteria (*i.e.*, no written admission and no clear evidence of wrongdoing), (ii) several unsuccessful attempts have been made to contact the individual (*see* "Locating an IAP" on page 11), or (iii) the five-year statute of limitations has run (*see* footnote 7 on page 6), a short "no action" memo may be written and submitted (along with the case file) to E&C's FT Coordinator. ***See Tab #8 for No Action Memo (electronic version located at "Templates on My Computer", Fast Track Tab).***

--No Action memos may be written after evaluating the documentation received from the Bank. For example, there may be circumstances where the documentation does not support an OCC's enforcement action i.e., lack of evidence of IAP's responsibility for the bank's loss.

--FT Processor IIs will prepare a draft No Action memo addressed and forwarded to the FT Coordinator. Send the case file to the FT Coordinator, along with a hard copy as well as an electronic version of the memo.

--Also, remember that when a case assignment leaves the Processor's desk, an entry should be made on the FT Assignment Sheet and in the comment section of the SAR.

--If appropriate, the FT Coordinator will present the case to the FT Counsel and/or E&C Director for disposition.

. --No Action Memos should briefly discuss facts as needed and state the reason(s) why the FT case should be closed.

-- Final decisions on no action cases will be made by the E&C Director, who will determine, for example: (i) whether a case should be pursued even when the initial evidence is not clear – such cases may be developed through further investigation, including (in rare cases) an order of investigation; or (ii) in cases where the five-year statute of limitations has run, whether an enforcement action short of a prohibition should be pursued (*e.g.*, a personal cease and desist order), after taking into account litigation risks.

--If appropriate, the FT Coordinator will close the case in the SAR FT Database and will retain the case file for indexing and subsequent shipment to Federal Records Center, in accordance with OCC records-retention policy.

"Do's" and "Don'ts" for Communicating with IAPs

When communicating with IAPs, it may be appropriate to…	When communicating with IAPs, do not…
Explain who you are and why you are calling, without disclosing the existence of an SAR. Have all available Bank documents while talking to the individual.	
Before receiving any substantive information from the IAP regarding the case, ask the IAP whether he/she is represented by an attorney.	
If the IAP does have an attorney, ask for counsel's name and phone number and communicate only through IAP's attorney.	Do not communicate directly with the IAP (particularly regarding any substantive matter in the case) once you have been informed that she/he is represented by counsel.
If the IAP does not have an attorney, inform the IAP that he has the right to be represented (at any point in the process) by an attorney.	
If asked, tell the IAP that the issue of whether to seek the advice of counsel is his/her decision.	Do not give advice as to whether the IAP should seek the help of an attorney.
Emphasize that the OCC is still in the information-gathering mode – the agency has not yet decided whether to pursue a particular action in the case.	
Inform the IAP that you are investigating whether to recommend an action – you may let them know that you are not the ultimate decision maker.	
Get the IAP's version of the story if she/he is inclined to give it. Request or accept any information that would contradict or tend to disprove the facts as suggested by the file contents (*i.e.*, SAR, other documents). If there is an admission/confession, ask what the individual's current view is regarding the admission/confession.	Do not necessarily assume that the information in the SAR is accurate.
Ask whether the individual is currently employed in the banking industry. If not in the banking industry, ask whether the individual has any intention of working in the industry again.	

Ask whether there has been any other action (particularly criminal action) against the individual for his/her activity and, if so, in which court.	
If asked, you may provide a general overview of the process leading up to an OCC decision to pursue the case (*i.e.*, currently investigating, evidence and recommendations will be presented to a committee, who will help determine what, if any, action OCC will take).	Do not inform the IAP what action you or any one else at the OCC will (or are likely to) recommend.
You may inform the IAP that the OCC only has the authority to pursue civil administrative actions (*e.g.*, prohibition from working for an insured depository institution, restitution, and/or CMPs) -- not criminal actions. You may explain the type of actions under 12 USC 1818: Prohibition Order, Personal Cease & Desist Order, Restitution Order and Civil Money Penalties. *See* footnotes 13, 15, and 16 of FT PPM on pages 39 and 40.	
You may let the IAP know the general scope of a prohibition (*i.e.*, he/she would not be permitted to work for or otherwise participate in the conduct of the affairs of any insured depository institution, including national banks, state banks, thrifts, S&Ls, or credit unions).	
If asked, you may provide a very general description of the litigation process (*i.e.*, OCC files charges with administrative law judge, there is an opportunity for document discovery and depositions, there is a hearing/trial before an Administrative Law Judge (ALJ), briefs are written, a decision is made by the OCC, and there is the opportunity for appealing the decision in Federal Appeals Courts). At a minimum, you may want to inform them that if the OCC decides to take action and if the case is not settled, the IAP has the right to a full hearing before an ALJ.	
If asked how the OCC became aware of the IAP's actions, explain that the OCC regulates national banks (including the Bank involved) and became aware of his/her actions due to the OCC's regular supervisory activities.	Do not mention a SAR and do not, under any circumstances, give out any information as to whether a SAR has been filed.

While the general rule would be to not share evidence before the case goes into litigation, it may be appropriate to share (*e.g.*, a strong written confession by the IAP) one piece of evidence that would tend to make the case a slam-dunk to promote settlement. Discuss with the FT Coordinator before sharing any evidence.	Do not provide the IAP with either a description (or copy) of all the evidence that we have against him/her.
If appropriate, you may ask the IAP whether he is prepared to resolve the OCC's concerns by consenting to an order (*e.g.*, prohibition order).	
If relevant, ask whether the IAP has made restitution and, if not, whether she/he would be willing to make restitution.	
If it comes up, it is appropriate to inform the IAP that – should the OCC decide to take an enforcement action – there will be an opportunity to settle the case.	Do not speculate as to what the OCC may agree to as part of a settlement.
If it comes up, it may be appropriate to inform the IAP that – with regard to cases that settle – the only public document is the consent order itself.	
If it comes up, it may be appropriate to inform the IAP that – regarding litigated cases before an administrative law judge – the presumption is that all evidence entered by either side will be available to the public.	
If appropriate, qualify your answer by encouraging the IAP – for an authoritative, complete answer -- to consult the appropriate statutory references (*e.g.*, 12 U.S.C. § 1818, 12 U.S.C. § 1813) *and* to seek the advice of an attorney.	

Fast Track Procedures for E&C Attorneys

I. Creation of the OCC's Fast Track (FT) SAR Database

- In accordance with 12 C.F.R. § 21.11, all banks must file suspicious activity reports (SARs) with the Treasury Department's Financial Crimes Enforcement Network (otherwise known as FinCen). The reports are initially compiled by the Detroit Computing Center of the IRS. The OCC, which has direct access to the database, downloads national bank-related SARs quarterly into a Lotus Notes database, called SAR F/T DB.

- The Fast Track IT Administrator oversees the creation of the SAR F/T DB. Each file in the database includes information from the SAR (*i.e.*, bank name and contact information, name and address of IAP, narrative describing the suspicious activity) plus some added information (*i.e.*, investigation/prosecution status from FBI reports, etc).

II. Initial Assignment to Fast Track Processors

- E &C selects cases from the SAR F/T DB to assign to Law Department FT Processors (in both Headquarters as well as in the Districts).[8] SARs are generally selected based on the following criteria, among others: (i) wrongdoing involves an officer, director, or employee, but priority will be given to officers/directors and individuals that are the subject of multiple SARs; (ii) amount involved is at least $5,000,[9] but priority is given to cases involving $25,000 and above; and (iii) date of SAR filing is within the previous two years. From time to time, there may be a focus on cases in a special area of interest (*e.g.*, identity theft, privacy of customer records, computer intrusion, mortgage fraud).

- The FT Processors first determine (*e.g.*, by checking the federal court PACER system) whether the IAP has been prosecuted (i.e., convicted or pleaded guilty to a criminal violation involving dishonesty) or has entered a pre-trial diversion (PTD) agreement. If so, the initial processor arranges to send the IAP an 1829 prohibition letter. All prohibitions, including 1829 prohibitions, are listed on the

[8] As noted on pages 6 and 7 (Overview of Fast Track Program), FT Processors undergo training and are certified as either a FT Processor I or a FT Processor II.

[9] This standard is satisfied if more than one SAR is filed on an IAP and the aggregate amount involved is at least $5,000.

OCC's Web site at www.occ.treas.gov, to inform the public (including banks making employment decisions) that certain individuals are prohibited from working in the banking industry.

- If the IAP has *not* been convicted and has *not* entered into a PTD agreement, the FT Processor will pursue the case as a potential 1818 prohibition action. The FT Processor will make a request for Bank documents that support the SAR allegations. Once supporting bank documentation is obtained: (i) a FT Processor I will send the case file to E&C's FT Coordinator for further processing; or (ii) a FTP II will be authorized to contact the individual (in writing) to obtain additional information, formulate a proposed enforcement recommendation, and draft an initial WSRC memo before sending the case file to E&C's FT Coordinator for further processing.

III. E&C Processing of FT Case / Assignment to E&C Attorney

- The FT Coordinator will process cases and also provide quality control oversight function before such cases are referred to the FT Counsel for review and possible assignment to an E&C attorney.

- After checking with the E&C Assistant Directors, the FT Counsel will periodically assign FT cases to E&C attorneys. Upon assignment of a case, the E&C Attorney will receive the case file as well as an electronic version of the draft WSRC memo.

- PTS. Once a FT case is assigned to an E&C Attorney, the FT Coordinator will create a project entry in the Chief Counsel's Project Tracking System (PTS) reflecting the new FT assignment. Thereafter, the E&C attorney will be responsible for all further updates/edits in PTS.

- SAR F/T Database. Once a FT case is assigned to an E&C Attorney, the FT Coordinator will also update the SAR F/T DB to reflect the new FT assignment. The E&C attorney will not be responsible for updating this database. However, once the FT assignment is completed or closed out, the E&C Attorney must email the FT Coordinator with a short note on the final disposition of the case (with a cc to the FT Counsel). The FT Coordinator will then make a final entry and close out the case in the SAR F/T Database.

- The Fast Track Counsel will keep a record of attorney assignments (*i.e.*, to include the date assigned, to whom, date case brought to WSRC, statute of limitations time period and date/nature of final disposition).

IV. Final Processing of Fast Track Case by E&C Attorney

- The E&C attorney should submit a final draft WSRC memo (along with the case file) to the relevant E&C assistant director. Once signed off by the assistant director, the case can be scheduled for WSRC consideration.

- While prohibition orders are a primary objective of the FT Program, the OCC also may issue, in appropriate cases, an order to cease and desist (C&D) that requires the IAP to, among other things, take certain affirmative action, make restitution, or provide a guarantee against loss. In addition, the OCC has authority to assess a civil money penalty (CMP) in appropriate cases.

- The final WSRC memo should be a memo from the assigned attorney (as well as the FT Coordinator or FT Processor, if either is still involved in the case). The assigned attorney will present the case. If still involved in the case, the FT Coordinator or FT Processor may attend the WSRC meeting. If appropriate, the E&C attorney may specifically request the FT Processor or FT Coordinator's attendance.

- Once WSRC/Deputy Comptroller authority is given to pursue an action, the E&C attorney should use the "Fast Track Stipulation" template to produce the appropriate documents (includes an IAP letter, a stipulation/consent order, forms for initiating and completing the action, and applicable instructions). For additional guidance, please refer to applicable post-WSRC instructions in the "Procedures for Enforcement Actions" section of the E&C Attorney Handbook. Although any Director of Special Supervision (SPSU) has authority under the delegation matrix (including for Large Banks) to sign fast track prohibition consent orders, Deputy Controller for SPSU Kris Whittaker has been signing these.

- Upon completion of the enforcement action, the close out of a FT case is identical to any other case (*see* "Procedures for Enforcement Actions" section of the E&C Attorney Handbook) -- with one exception: Upon completion or close out, the E&C Attorney must email the FT Coordinator a short note on the final disposition of the case (with a cc to the FT Counsel). The FT Coordinator will then make a final entry and close out the case in the SAR F/T Database.

V. Parallel Actions

- The OCC will generally pursue fast track prohibition cases, unless law enforcement asks the OCC (in writing), and the OCC agrees, to defer activity on a case. Once a written request is received, the OCC will generally agree to defer

activity the case for a short period of time (*e.g.*, four months), provided the matter is being *actively* investigated or prosecuted by law enforcement. However, if the OCC is facing a statute of limitations issue, it may not agree to the requested deferral.

- Plea Agreement Language. If law enforcement is *actively* prosecuting a case, there may be an opportunity to ask the AUSA to include prohibition language in the defendant's plea agreement. There is currently model prohibition / plea agreement language in the U.S. Attorney's USA book, which AUSA's are able to access on the Department of Justice's intranet site.[10] However, you may advise the AUSA that the OCC prefers the following language:

  "Defendant agrees to consent to any regulatory action taken by a Federal financial institution regulatory agency to permanently remove defendant from office and/or prohibit defendant from participating, whether as an institution-affiliated party or otherwise, in the conduct of the affairs of any insured depository institution or depository institution holding company, or any other organization or entity provided in Section 8(e) of the Federal Deposit Insurance Act, 12 USC 1818(e)."

- 1818 Prohibition vs. 1829 Prohibition. Recent legislation[11] has expanded the scope of an 1829 prohibition, making its coverage very similar to an 1818 prohibition order. The OCC may rely, when appropriate, on the relatively more streamlined, less resource-intensive 1829 prohibition letter process, which will conserve limited resources. However, it will continue to be appropriate in some cases (*e.g.*, if model prohibition language is in the plea agreement or for significant cases involving officers/directors or large dollar amounts) to pursue a full 1818 prohibition order. If an 1829 Prohibition is deemed appropriate, the E&C Attorney may give the case to E&C support staff or the FT Coordinator to process the 1829 letter.

- Expedited WSRC Approval Process for Certain 1818 Prohibition Cases. In cases

[10] The DOJ intranet site provides two suggested alternative models: "Defendant agrees not to become or continue servicing as an officer, director, employee, or institution-affiliated party ... or participate in any manner in the conduct of the affairs of any institution or agency specified in 12 USC 1818(e)(7)(A) without the prior written approval of the appropriate federal financial institution regulatory agency ... Defendant agrees to provide an executed copy of this agreement to the [relevant federal financial institution regulatory agency] within forty-five days of the public filing of the plea agreement" OR "Defendant will cooperate with [the relevant regulatory agency] in administrative removal/prohibition proceedings instituted against the defendant pursuant to 12 USC 1818(e).

[11] *See* Section 710, Public Law 109-351, The Financial Services Regulatory Relief Act (October 13, 2006); 12 USC 1829.

where prohibition language has been included in the criminal defendant's plea agreement, authority to pursue an 1818 prohibition consent order may be obtained by sending an email to the Director of Enforcement & Compliance for forwarding to the Deputy Comptroller for Special Supervision. The email should include a brief description of the criminal acts that led to the plea agreement as well as a brief analysis of why it meets the prohibition standard. The Deputy Comptroller will then obtain concurrence from WSRC (by notation vote) followed by authority from the appropriate Senior Deputy Comptroller to pursue the case without the need to write a formal WSRC memo or formally present the case to WSRC.

VII. No Actions

- Once a case is assigned to an E&C Attorney, the case file will include evidence of wrongdoing. In some cases, however, the E&C Attorney may decide it is necessary to take some additional investigative steps to shore up the evidence before the case is ready for WSRC presentation.

- A FT case may be closed if: (i) several unsuccessful attempts have been made to contact the individual (*see* "Locating an IAP" on page 11) or (ii) the evidence does not support an enforcement action, taking into account the evidence obtained (or that may be reasonably obtained). In such cases, a short no action memo should be written and submitted to E&C's Director (through your Assistant Director).

- Keep in mind that even if the five year statute of limitations is an issue, it may be possible to pursue restitution or an enforcement action short of a prohibition (*e.g.*, a personal cease and desist order), after taking into account litigation risks.

Fast Track Enforcement Program Personnel Chart As of March 1, 2008			
Position	**Person**	**Mailing Address**	**Telephone Number**
Fast Track Coordinator	Crystal McLaughlin	OCC 250 E Street, SW Mail Drop: 7-1 Washington, DC 20219-0001	202-874-7427
Fast Track Counsel	Jeffery Abrahamson	OCC 250 E Street, SW Mail Drop: 7-1 Washington, DC 20219-0001	202-874-5522
Director, E&C	Richard Stearns	OCC 250 E Street, SW Mail Drop: 7-1 Washington, DC 20219-0001	202-874-4800
Assistant Director, E&C	Gerard Sexton Monica Freas Ellen Warwick James Hendriksen	OCC 250 E Street, SW Mail Drop: 7-1 Washington, DC 20219-0001	202-874-4800
Fast Track IT Administrator	Michael Opiela (until 7/31/12); George Nhu (after 7/31/12)	OCC 250 E Street, SW Mail Drop: 5-3 Washington, DC 20219-0001	Mike: 202-874-4658 George: 202-874-3157

Questions & Answers

Q: Before requesting documents from a bank in order to begin developing an 1818 prohibition case, why is it important to check the Institutional Database in Lotus Notes or to call Central Records to confirm that the institution is still a national bank?

A: If, after the filing of the SAR, the bank has switched charters to either a state bank or a thrift institution, the OCC would no longer be the institution's federal supervisor. Therefore, if the OCC were to request and obtain documents from such an institution, it may raise significant issues under the Right to Financial Privacy Act (RFPA). It may be possible, after checking with OCC counsel, to avoid significant RFPA issues in such a case by having the institution's primary federal supervisor (*i.e.*, the Federal Reserve, FDIC, or OTS) obtain the documents for us. That said, if a bank has switched charters after filing the SAR, you should contact the FT Coordinator, who may have you return the case to E&C for disposition.

Q: What if a FT processor is assigned a case and the SAR mentions the name of one or more other employees, in addition to the IAP who is the primary subject of the SAR. None of the named parties have been prosecuted. How should these other IAPs be handled? Should cases be worked up on each of them or only the person listed as the IAP?

A: If the other persons mentioned are or were IAPs and each meet the criteria of the Fast Track Program, bring this to the attention of the FT Coordinator, so a decision can be made as to if, and how, to pursue the other IAPs

Q: I have five SARs filed on an IAP by two banks where the IAP previously had worked. One of the SARs in the SAR F/T DB indicates that it (the SAR) has been cancelled by FinCEN. The IAP was convicted for his criminal wrongdoing at only one of the banks. Do I make close out entries in the SAR F/T DB for all five?

A. Yes, all five, including the one cancelled by FinCEN (most likely a duplicate), should be closed out in the SAR F/T DB as an 1829 case. In the "OCC Comments" section of the SARs filed by the bank where prosecution was not pursued, reference should be made of the conviction for the wrongdoing at the other bank and that an 1829 letter was issued.

Q. I received a call from an attorney claiming he represents the IAP to whom I recently sent an IAP Introduction Letter. In addition to wanting to discuss the details of the case with me, he asked for copies of all the evidence we have linking his client to the wrongdoing. I told the attorney I will get back to him as to what I may share with him. What information and documents should I give him?

A: The documents and case file should be forwarded to the Fast Track Coordinator to fu Ask the attorney to provide you with a letter representing that he is counsel for the IAP. This way you will be sure you are dealing with the authorized representative of the IAP. Once confirmation is received, discuss the request with FT Counsel. A determination will be made as to whether to share any documentary evidence with counsel at this or a later stage of the investigation.

Q: How do I handle a case that, after receipt of all the documentation from the Bank does not meet the Fast Track Program criteria, but appears to meet the interest of the OCC in pursuing because the loss is a large dollar amount and might be in an area of interest?

A: The documents and case file should be forwarded to the Fast Track Coordinator to further evaluate. The Fast Track Coordinator will prepare a memo to the Director of E&C outlining the facts of the case and recommending assignment outside of the FT Program. The Director of E&C will determine whether the OCC has resources to pursue the case, make assignments or make a recommendation on the course of action.

Q: What happens to FT assignment when the FT Processor has completed his or her portion of the procedures?

A: When the Processor I has completed gathering the documentation to support the SAR, the complete file will be transferred to the FT Coordinator, who will review the file and draft a recommended WSRC memo or a No Action memo. If a Processor II drafts a WRSC memo, the draft will be forwarded to the FT Coordinator for review. The FT Coordinator will deliver to the FT Counsel cases for assignment to the E&C staff attorneys. FT Counsel will notify FT Coordinator of assignment, at which time the FT Coordinator will make appropriate assignment entries into the Chief Counsel Project Tracking System (PTS) and into the Lotus Notes SAR database. All PTS entries will indicate that the enforcement action was derived from the FT Program. The FT Processor's name will be entered into the PTS assignment as a secondary person.

Q: Before processing an 1829 letter, why do FT processors need to carefully review the judgment and conviction documents of the IAP to determine whether it says anything about a potential expungement of the criminal records?

A: If it is clear, on the face of the judgment and conviction documents, that expungement of the criminal records is contemplated (*i.e.,* if it says something like "the record will be expunged in three years after successful completion of the program"), then you should consult with the FT Coordinator because the case should probably be processed as an 1818 prohibition. The reason for this is that under the FDIC's policy statement on 12 USC 1829, once a conviction has been expunged, the IAP is no longer prohibited by operation of law.

Q: The FT Program is run primarily by the Law Department. How is it coordinated with Supervision?

A: The OCC's FT program primarily involves prohibition cases brought as a result of SAR filings that otherwise would not be handled in the normal supervisory process. Thus, it is important to point out that this program is not meant to supplant examiner SAR reviews or other SAR-related initiatives at the OCC. All FT prohibition cases are required to be presented to WSRC, thus providing an ongoing opportunity for Supervision to review every such case before an agency enforcement decision is made. There may be instances where it is appropriate to involve examiners in the development of a case before it reaches WSRC. When appropriate, actions that involve complex or novel issues, or otherwise necessitate extensive case development, should be handled jointly with Supervision and processed outside of the FT program under normal procedures, including the possible use of a formal investigation. Additionally, cases in which SARs come to the attention of the Supervisory Office or District Legal and are identified as significant or time critical matters may be handled as more traditional 1818 actions. In all cases involving SARs, a coordinated approach is necessary to avoid duplication of efforts.

Q: I have a fast track case that is approaching the five-year statute of limitations and the FBI Special Agent in-charge of the criminal investigation is saying this is an open case that is still under investigation. What should I do?

A: The OCC will generally pursue fast track prohibition cases, unless law enforcement asks the OCC (in writing), and the OCC agrees, to defer activity on a case. If you are a FT processor, you should discuss this immediately with FT Counsel. E&C attorneys should follow procedures on this point under "Parallel Actions" (page 23).

Q: In cases where criminal prosecution is *actively* being pursued by the Assistant U.S. Attorney (AUSA), should the FT processor advise the AUSA of the OCC preferred prohibition language (*see* page 24, "Plea Agreement Language") to be inserted into plea agreements?

A: The FT Counsel or the assigned E&C attorney should discuss the plea agreement language with the AUSA.

Q: How will I obtain updated versions of the FT procedures manual?

A: Going forward, the FT procedures manual will be updated, as necessary, and you may obtain the most recent version of the manual by going into the Law Department O drive and looking under "Fast Track Program." The first page of the document will indicate when it was last updated. You should use the most recent version of the document to guide your processing of FT cases.

Fast Track Large Bank Contact List
(as of 3/11/2008)

LaSalle Bank NA **(Now part of Bank of America)** Les Olson, Vice President, Corporate Investigations LaSalle Bank NA 5250 North Harlem Ave Chicago, Illinois 60603 (773) 594-3351 (773-594-3369 (fax) **Standard Federal Bank NA** **(Now part of Bank of America)** Mr. Jeff Rolph, Senior Vice President Director, Corporate Investigations 2600 West Big Beaver, M900-570 Troy, Michigan 48084 (248) 637-2543 (phone #) (248) 637-2711 (fax)	**Bank of America Corporation** **Bank of America NA** **(main OCC contact for BofA)** Ms. Linda Bei Regional Investigations Manager 14555 Market Street, 10th Floor Mail Code BA 5-707-10-0 San Francisco, CA 64103 (415) 436-5681 (phone) 1-800-900-9044 toll free number Richard Parker MidAltantic, Investigative Services (410) 605-1057 (DC, MD & NC)o
Bank of America Sue Finney (Northern California) Mail Stop CA4-1080-03-3 20220 Willowpass Road Concord, CA 94520	**Bank of America** Jeff Bottenfield (Southern California) CA5 8-152-01-01 23929 Valencia Blvd. Valencia, CA 91355
Bank of America Cindy Howell (Florida) F19-300-01-10 9000 Southside Boulevard, Bldg. 300 Jacksonville, Fla. 32256	**Bank of America** Susan Morgan (GA) Mail Code GA6-007-01-01 5295 Buffinton Road College Park, GA 30349 Susan.A.Morgan@bankofamerica.com

Bank of America Lonnie Dalrymple (Nevada) Mail Code AZ1-200-02-02 201 East Washington Street Phoenix, AZ 85004	**Bank of America** Elizabeth Bass Senior Vice President Corporate Security, Investigative Services Bank of America CA9-520-40-04 444 South Flower Street, 40th floor Los Angeles, Ca 90071-2901 (213) 345-9327 (213) 345-5500 (fax) elizabeth.bass@bankofamerica.com
Bank of New York Mellon Corp **Mellon Bank NA** Mr. Daniel Doyle Vice President, Manager Corporate Crimes Group One Mellon Center 500 Grant Street, 19th floor Pittsburgh, PA 15258 (412) 234-7426 (phone) (412) 234-8775(fax)	**Citigroup** Mr. J. Fortnier Imbert (back up) Legal Counsel Citicorp Security and Investigative Services 399 Park Avenue, 3rd floor New York, New York 10022 (212) 559-0825 (direct line) (212)793-0125 (fax) imbertj@citigroup.com
Citibank Mr. Chalres Sgro General Counsel Citicorp Security and Investigative Services 399 Park Avenue, 3rd floor New York, New York 10022 (212) 793-5436 (phone) (212) 793-0025 (fax) sgroc@citigroup.com	**Capital One Financial Corporation** **(formerly Hibernia)** **Capital One NA** Tom Holland Senior Director, Security 15030 Capital One Drive Richmond, VA 23238 (804) 284-3581 tomholland@capitalone.com

Citizens Financial Group **Charter One Bank NA** **Rbs National Bank** **Citizens Bank NA** Patricia (Tricia) Maloney, Vice President – Corporate Security Citizens Financial Group 20 Cabot Road MMF350 Medford, MA 02155 (781)-655-4028 (phone)	**First Horizon National Corporation.** **First Tennessee Bank NA** **First Horizon Home Loans** Ms. Sheila Bramlitt, Vice President Manager Corporate Security Department 300 Court Street Memphis, TN 38101-8459 (901) 523-5335 (phone) (901) 523-5672 (fax)
Harris Bankcorp Inc. **Harris NA** Mary E. Biron Vice President/Senior Manager Corporate Security (312)-461-5717 (phone) (312) 461-2115 (fax) Mary.Biron@harrisbank.com	**First Horizon National Corporation** **First Tennessee Bank NA** Mr. David Scaff Investigator (Texas region only) 4000 Horizon Way Mail Code 1340 Irving, Texas 75080 (214) 441-5709
HSBC **HSBC Bank USA NA** Ms. Anne Liddy Senior Vice President, Group Director AML Oversight and Control 452 Fifth Avenue, 7th Floor New York, New York 10018 (212) 525-5906	**Huntington Bancshares** **The Huntington National Bank** Mr. Richard Harp Security Director 41 South High Street Columbus, Ohio (614) 331-9438 (phone)
JP Morgan Chase & Company **JP Morgan Chase Bank NA** Mr. Ed W. Cook 10S. Dearborn, 4th Floor Mail Code IL 1-0385 Chicago, Illinois 60603-5506 (312) 325-6835 (phone) Ed.W.Cook@jpmchase.com	**JP Morgan Chase Bank NA** Michael Harmon (TX, OK, LA) Mail Code 1-2509 P.O. Box 660197 Dallas, Texas 75266-0197

KeyCorp **Keybank NA** Mr. Sean M. Covert Director, Corporate Investigations 2025 Ontario Street Mail Code OH- 01-00-0405 Cleveland, Ohio 44115 (216) 813-0116 (phone) (216) 813-4079 (fax)	**National City Corporation** **National City Bank** Mr. Stephen Wells Senior Vice President, Corporate Director Loss Avoidance and Investigations 2300 Millcreek Blvd, Locator 7541 Cleveland, Ohio 44122 (216) 488-7901 (phone)
PNC Financial Services Group Inc. **PNC Bank NA** Mr. Bruce Wiegand Internal Investigations 620 Liberty Avenue Pittsburgh, PA 15222 (412) 762-8493 (phone) (412) 762-1882 (fax)	**TD Banknorth** **TD Banknorth NA** Edward Schreiber Executive Vice President, Chief Risk Officer & Regulatory Liaison Two Portland Square P.O. Box 9540 Mail Stop ME -089-71 Portland, Maine 04112-9540 (207) 828-7057 Edward.Schreiber@TDBanknorth.com
UnionBanCal Corporation **Union Bank of California NA** Joy Bagnall SVP – Manager Loss Prevention & Investigations 3151 East Imperial Highway Brea, CA (323) 278-4381 (phone) joy.bagnall@uboc.com	**Union Bank of California NA** Mr. Willam Ward (BSA/AML Matters) SVP, Financial Intelligence Unit 400 California Street San Francisco, CA 94104 (415) 765-2057 (phone) (415) 314-8884 (cell) bill.ward@uboc.com Henry Espinoza (BSA/AML Matters) VP, Manager- Investigations Unit 400 California Street San Francisco, CA 94104 (415) 765-2061 (phone) (562) 252-2652 (cell) henry.espoinoza@uboc.com

Wachovia Corporation **Wachovia Bank AN** Mr. William E. Perry (primary contact) Senior Vice President, Corporate Fraud Investigative Services 1525 West W.T. Harris Blvd. Mail code NC5417 Charlotte, NC 28288 (704) 590-0542 (office) (704) 590-0567 (cell)	**Wachovia Corporation** Mr. Walter J. Moser Vice President, Corporate Fraud Investigative Services Wachovia Corporation 1525 West W.T. Harris Blvd. Mail Code NC5417 Charlotte, NC 28262-5417
US Bancorp **U.S. Bank NA** Ms. Patricia Burk Vice President, Assistant Director of Investigations P.O. Box 1038 CN-OH-W14C Cincinnati, Ohio 4501-1038 (513) 639-6550 (phone) (513) 639–6558 (fax)	**Wells Fargo & Co.** **Wells Fargo Bank NA** Loretta Sperle Investigations Manager 6th and Marquette, 12th floor Mail Code N9305-121 Minneapolis, MN 55479
Wells Fargo & Company Mr. Michael Bacon Director, Investigations (415) 396-2547 (phone)	**Zions Bancorporation** **Zions First National Bank** Mr. Frank Fisher Director, Corporate Security 255 N. Admiral Byrd Road, Suite 108 Salt Lake City, UT 84116 (801) 326-5732 (phone) (801)326-5736 (fax) Francis.Fisher@zionsbancorp.com

Other investigators:

Mr. Steve Cansler Bank of America Mail code 1-023-02-02 525 N. Tryon Street Charlotte, NC 28255 (704) 386-1862 (phone) (704)-388-0190 (fax)	Brandson Hewson Lead International Investigator Bank of America (Florida) (704) 386-1292 (phone)

Teresa Merick Investigator Bank of America (Texas) (704) 388-4216 (phone)	Paula Tritschter Bank of America Investigator – International – Florida (813) 805-3407 (phone)
Roma Conley, Investigator National City Bank (937) 910-3020 (phone)	Terry Gearhart Citigroup Investigative Services 6460 Las Colinas Blvd. Irving, Texas
Linda Urban Bruce Johnson Investigators – National City Bank (216)222-3034 (phone)	Scott Hamby, Investigator US Bancorp (816) 460-3505 (phone)
Tommy Smith Wells Fargo Bank NA Investigator (518) 733-9467 (phone)	Missy Mills, Investigator Colonial Bank (205) 402-8032 (phone)
Don Dailey Wachovia Mail Code PA 4295 401 Market Street Philadelphia, PA 19106-7618 (267)321-3361 (phone)	Bryan Mayhem, Investigations Wachovia (954) 784-5893 (phone)

Revised 12/7/07 PPM 5310-8 (REV)

POLICIES & PROCEDURES MANUAL

Comptroller of the Currency
Administrator of National Banks

Section:	Enforcement and Compliance	Subject:	Fast Track Enforcement Program

TO: All Department and Division Heads and All Examining Personnel

PURPOSE

This issuance revises the Office of the Comptroller of the Currency's (OCC) PPM 5310-8 (REV), Fast Track Enforcement Program, dated September 23, 2003. This program does not replace or supersede existing policies and procedures for enforcement actions that arise from other circumstances. The guidelines in this PPM are for use by OCC staff only and do not create any substantive or procedural rights enforceable at law in any judicial or administrative proceeding.

REFERENCE

- PPM 5310-8, Fast Track Enforcement Program, dated September 23, 2003
- 12 CFR 21.11
- 12 USC 1818
- 12 USC 1829
- 12 USC 1813(u)

BACKGROUND AND SCOPE

Twelve CFR 21.11(c) requires national banks to report certain known or suspected federal criminal violations or other suspicious activities committed or attempted by an institution-affiliated party (known as an " IAP," which includes a bank officer, director, principal shareholder, employee, or agent) against the bank by filing a Suspicious Activity Report (SAR) with the Treasury Department's Financial Crimes Enforcement Network (FinCEN). The SAR details the facts about the activity that may serve as the basis for criminal investigation and prosecution by law enforcement agencies (*e.g.*, Federal Bureau of Investigation, Secret Service (Homeland Security), United States

Attorneys, and local law enforcement agencies). The Fast Track Enforcement Program uses this SAR information to develop certain OCC enforcement cases against individuals.

POLICY

It is the OCC's policy to support and enforce the requirements of 12 CFR 21.11(c) as well as applicable enforcement statutes, including 12 USC 1818 and 12 USC 1829, aimed at keeping the banking industry safe and sound. The Fast Track Enforcement Program was established to implement this policy.

The Fast Track Enforcement Program implements streamlined enforcement procedures to be used in specific situations in which there is a conviction of, an admission by, or clear evidence that an IAP has committed a criminal act(s) or other significant act(s) of wrongdoing involving an insured depository institution that are actionable under the agency's enforcement authority. Streamlined enforcement procedures for the Fast Track Enforcement Program are also included in the agency's delegation matrices.

PROCEDURES

Quarterly, the OCC loads selected SAR information of national banks into the OCC's SAR Fast Track Database (SAR F/T DB). Each SAR in the database contains information, such as bank name, contact information, name and address of the IAP(s), narrative description of the suspicious activity(ies), and information about law enforcement contacts.

The OCC uses this SAR information to identify and pursue appropriate enforcement relief under 12 USC 1818 or 12 USC 1829 against the IAP as follows:

1818 Prohibition Order

> Under 12 USC 1818, if certain legal standards are met, the OCC may issue an order of removal or prohibition[12] to ensure that the IAP does not again become employed by an insured depository institution.[13]

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[12] Under 12 USC 1818(e), a prohibition order requires the agency to establish that: (i) the IAP violated a law, regulation, cease and desist order, formal agreement, or condition imposed in writing *or* participated in an unsafe or unsound banking practice *or* committed a breach of fiduciary duty; (ii) such conduct resulted or will probably result in a loss to the bank, resulted in financial gain or other benefit to the IAP, *or* has prejudiced the interests of the depositors; *and* (iii) such conduct evidences dishonesty *or* a continuing or willful disregard for the safety and soundness of the bank.

[13] An insured depository institution includes all institutions insured by the Federal Deposit Insurance Corporation, including national banks, state banks, thrifts, and saving and loans. A prohibition also prevents an IAP from acting as agent to an insured depository institution as well as, among other things, participating in the affairs of a credit

While prohibition orders are a primary objective of the Fast Track Enforcement Program, the OCC also may issue, in appropriate cases, an order to cease and desist (C&D)[14] that requires the IAP to, among other things, take certain affirmative action, make restitution, or provide a guarantee against loss. In addition, the OCC has authority to assess a civil money penalty (CMP)[15] in appropriate cases.

All of the above actions can be based on an IAP's consent or based on an order issued by the Comptroller following a hearing before an administrative law judge.

1829 Prohibition Letter

Under 12 USC 1829, an IAP who has been convicted of, or entered into a pre-trial diversion program[16] for, a crime involving dishonesty or breach of trust is effectively prohibited from being employed at an insured depository institution by operation of law.

Under the Fast Track Enforcement Program, the OCC obtains the judgment and conviction documents from the state or federal court records and issues a letter informing the IAP of the automatic prohibition.

The purpose of an "1829 letter" is to put the person on notice that he or she has been prohibited by operation of law. As a result, if after receiving such a letter the person reenters the banking industry in violation of 12 USC 1829, he or she does so "knowingly" and may, therefore, be subject to criminal fines and penalties.

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union, an insured depository institution or its holding company, or transferring or voting the stock of such companies.

[14] Under 12 USC 1818(b), a C&D requires the agency to establish that the IAP has: (i) violated a law, rule, regulation, formal written agreement, or a condition imposed in writing; *or* (ii) participated in an unsafe or unsound practice. In addition, if the C&D requires an IAP to take certain affirmative action, make restitution, or provide a guarantee against loss, the agency must show that the IAP was unjustly enriched *or* recklessly disregarded the law.

[15] Under 12 USC 1818(i), an order to assess a first tier CMP requires the agency to establish that the IAP has violated a law, regulation, formal written agreement, C&D, or condition imposed in writing. An order to assess a second tier CMP requires the agency to establish that: (i) the IAP has committed a first tier violation, recklessly engaged in an unsafe or unsound practice, *or* breached a fiduciary duty; *and* (ii) such conduct is part of a pattern of misconduct, caused (or is likely to cause) more than minimal loss to the bank, *or* resulted in pecuniary gain or other benefit to such party.

[16] Under a typical federal pre-trial diversion agreement, an offender enters into a program of supervised probation, and upon successful completion the U.S. Attorney will decline prosecution and the charges will be dismissed. Similar programs at state level have various names, including deferred prosecution agreements. They will be referred to hereafter, collectively, as pre-trial diversion programs.

With narrow exception, the OCC is required by statute, 12 USC 1818(u), to make all prohibition orders public. All such orders issued by the OCC since 1989 are listed on the OCC's Web site, as are all 12 USC 1829 prohibition letters.

In federal criminal cases, U.S. Attorneys sometimes include various versions of model prohibition language in a defendant's plea agreement.[17] Regardless of the plea agreement language used, the OCC must follow up by issuing a 12 USC 1818 prohibition order *or* (at a minimum) by processing an 1829 letter in order to make the matter public on the OCC's Web site and available to banks performing pre-employment due diligence on new hires.

The Enforcement and Compliance Division will maintain a detailed procedures manual for processing Fast Track Enforcement Program cases that are assigned pursuant to this PPM.

GENERAL CRITERIA FOR THE PROGRAM

This section sets forth *general* criteria for the program but is not meant to limit the agency's discretion to pursue, case by case, enforcement actions that do not meet these criteria.

For 12 USC 1829 prohibitions, an IAP who is the subject of one or more SARs will be included in the program if the IAP is discovered to have been convicted of, or entered into a pre-trial diversion program, regarding a crime involving dishonesty or breach of trust *and* the dollar amount of the transaction(s) at issue in the SAR(s) equals or exceeds $5,000. In the case of an IAP who has entered into a pre-trial diversion program, which permits a dismissal of charges upon successful completion, an 1829 letter may be sent, provided the public record has not been expunged when the letter is issued and there is no indication that it will be expunged.[18]

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[17] The current model language, which may be accessed by U.S. Attorneys on the Department of Justice's intranet site, states that the defendant agrees not to become an officer, director, employee, or IAP of an insured depository institution without the prior written permission of the appropriate federal financial institutions regulator. Additional optional language states that the defendant "will cooperate" with the relevant regulatory agency in an administrative prohibition proceeding instituted against the defendant under 1818(e). Model plea agreement language preferred by the OCC states more directly that the defendant "agrees to consent" to any 12 USC 1818 prohibition action taken by a federal financial institutions regulatory agency.

[18] Expungements are the exception, not the rule. However, under the FDIC's Statement of Policy governing 12 USC 1829, if and when an IAP's criminal record is completely expunged, the 12 USC 1829 prohibition no longer applies. Therefore, fast track processors should carefully review the court documents to determine whether expungement is contemplated (*e.g.*, as part of the pre-trial diversion or deferred prosecution agreement). If expungement is contemplated, then the case should be processed for an 1818 prohibition. Consistent with this approach, 1829 letters should inform the IAP that if his/her criminal record is expunged in the future, the IAP may send the Director of

For 12 USC 1818 prohibitions, the OCC generally will consider an IAP who is the subject of one or more SARs for inclusion in the program if the following general criteria are met:

- Prosecution of the IAP has been declined by law enforcement authorities[19] *or* prosecution has been initiated but not yet completed and there is no written objection to the OCC pursuing enforcement relief.[20]

- The subject of the SAR has confessed or facts and circumstances of the case otherwise clearly indicate that the subject of the SAR has committed a criminal act or has engaged in an act of significant wrongdoing that meet the standards for an OCC enforcement action (*see* footnotes 1, 3, and 4 above);

- The subject of the SAR was an IAP of a national bank as defined by 12 USC 1813(u) at the time of the criminal act or significant wrongdoing and the criminal act or wrongdoing occurred within the preceding five years; and

- The dollar amount of the transaction(s) at issue in the SAR equals or exceeds $5,000 (subject to priorities set forth immediately below). This standard also will be satisfied if more than one insured depository institution files SARs on the IAP and the aggregate transaction amount meets or exceeds the $5,000 minimum.

For those SARs in the SAR F/T DB that meet the above-mentioned general criteria, the Enforcement & Compliance Division will take into account the following priority factors in selecting cases for assignment under the fast track program:

- SARs filed within the previous two years;
- IAPs who are officers and/or directors;
- A large dollar amount of the transaction(s) at issue (*e.g.*, $25,000 and above);
- IAPs on whom multiple SARs are filed; and

Enforcement & Compliance evidence of the expungement, so the agency can determine if it is appropriate to remove the 1829 letter from the OCC's web site. *See* 63 *Federal Register* 66177 (December 1, 1998).

[19] In some instances, law enforcement agencies may decline to prosecute banking officials and employees for their activities. For example, the criminal act(s) may not meet prosecutorial guidelines (*e.g.*, dollar amount of loss), or an IAP's actions may not constitute a violation of criminal law. In such cases, the IAP's actions may still constitute an act of significant wrongdoing that may serve as a basis for an OCC administrative enforcement action against the IAP.

[20] The OCC generally will not pursue fast track cases if the matter is being *actively* investigated or prosecuted by law enforcement. However, the agency reserves the discretion to do so and -- once a decision is made to proceed with a case -- will normally do so, unless law enforcement asks the OCC in writing, and the OCC agrees, to defer activity on a case.

- Special areas of current interest (*e.g.*, mortgage fraud, identity theft, computer intrusion).

RESPONSIBILITIES

The Enforcement and Compliance Division has primary responsibility for the program and for securing appropriate enforcement relief.

FURTHER INFORMATION

For further information, contact the Fast Track Counsel or the Director of the Enforcement and Compliance Division at (202) 874-4800.

/s/ Julie L. Williams

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

Comptroller of the Currency
Administrator of National Banks

Subject: Major Matters Supervision Review Committee Description: Charter

MAJOR MATTERS SUPERVISION REVIEW COMMITTEE (MMSRC) CHARTER

PURPOSE & SCOPE

The Committee's role is to ensure OCC bank supervision and enforcement policies are applied effectively and consistently on certain enforcement cases that are of heightened importance to the agency because of their visibility or policy sensitivity, the involvement of multiple agencies, potential systemic impact, the nature of the issues presented, or other factors (major matters). These include:

Bank Secrecy Act (BSA) Enforcement Actions

1. All Large Bank enforcement actions that include articles addressing BSA
2. All civil money penalties for violations of BSA or violations of enforcement actions addressing BSA involving Large Banks
3. All prohibitions/removals against individuals for violations of BSA (12 U.S.C. 1818(e)(2))

Compliance and Fair Lending

1. All enforcement actions based in whole or in part on unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1)
2. All referrals to the Department of Justice for violations of the Equal Credit Opportunity Act or the Fair Housing Act
3. All enforcement actions for violations of the Equal Credit Opportunity Act or the Fair Housing Act, where a referral to the Department of Justice is returned to the OCC.

Safety and Soundness Actions against Large Banks

All enforcement actions against Large Banks (informal and formal) based on safety and soundness

Other Significant Cases

1. Other cases may be referred to the Committee by a Senior Deputy Comptroller or the Chief Counsel

2. Cases where the appropriate Senior Deputy Comptroller does not concur with the consensus view of the members of the Washington Supervision Review Committee (WSRC)

MEMBERSHIP

The MMSRC is chaired by the Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner.

Voting members shall be:

- Committee on Bank Supervision (the Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner, Senior Deputy Comptroller for Large Bank Supervision, Senior Deputy Comptroller for Midsize and Community Bank Supervision, and Chief of Staff); and
- Chief Counsel

Ex Officio members shall be:

- Chair of the WSRC;
- Deputy Chief Counsel (responsible for Enforcement and Compliance);
- Deputy to Chief of Staff; and
- Senior Advisor to the Comptroller

The necessary quorum for MMSRC meetings shall be three voting members. Each member may designate an alternate to attend in the member's absence. At the discretion of the Chair of MMSRC, individuals with special expertise or knowledge may also be asked to attend when actions involving their area of expertise are under consideration.

DELIBERATIONS AND DECISIONS OF THE COMMITTEE

The responsible Deputy Comptroller, Large Bank Examiner in Charge, Assistant Deputy Comptroller, and/or the Director of Enforcement and Compliance (E&C) will present the relevant facts, supervisory history and recommended course of action. Members and participants will discuss the case in order to reach a decision regarding the most appropriate course of action.

The MMSRC shall exercise its delegated authority to decide cases by a majority vote of the Committee. The Committee shall also determine the parameters for settlement. The Chair of the

MMSCR shall brief the Comptroller on the Committee's decision promptly. Notwithstanding the above, the Comptroller of the Currency may, on any case, exercise his reservation of delegated authority and decide differently than the Committee.

MMSRC PACKAGES

The responsible Supervisory Office and the Enforcement and Compliance Division shall prepare a presentation package for MMSRC cases which shall include a memo summarizing the facts in the case, an objective analysis of the facts, other relevant issues and their recommendation. The Deputy Comptroller for the responsible Supervisory Office and the Director of E&C shall sign the memorandum. Where there is disagreement as to the recommendation or presentation of the facts the memorandum shall include both recommendations, or alternatively at the discretion of the Deputy Comptroller or the Director of E&C, two memoranda may be submitted. In addition, appropriate background documents shall be included in the presentation package. The background documents should include the reports of examination and/or supervisory letters that provide the basis for the recommendation, and the bank's response, if any, to draft examination conclusions, violations of law or 15 day letters.

Copies of the presentation package are due to the Staff Assistant, Special Supervision by close of business the five business days before the meeting, unless a later date is approved by the Chair of the MMSRC.

COMMITTEE MEETINGS

The Chair of the MMSRC shall establish regular dates and times for MMSRC meetings. Special meetings may be called as necessary and on rare occasion, decisions may be made through the use of notational votes. The Chair of the MMSRC will determine the need for a meeting outside of the regularly established meeting date or the appropriateness of a notational vote. Records of the meetings, including applicable case material shall be maintained by the Enforcement and Compliance Division.

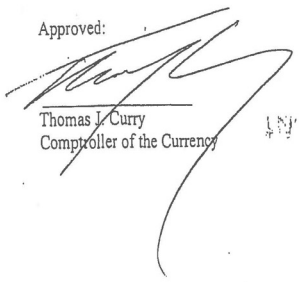
SETTLEMENT OF ENFORCEMENT CASE

All settlement offers within the parameters established by the Committee shall be decided by a concurrence of the appropriate Senior Deputy Comptroller and the Chief Counsel. Settlement offers that exceed the parameters shall be presented to the MMSRC.

COMMUNICATION OF DECISIONS

The decisions of the MMSRC or the Comptroller shall be posted to the Special Supervision Intranet site, normally within two weeks of each meeting, by the Staff Assistant, Special Supervision. The decisions shall be in the form of an email from the Chair of the WSRC to the responsible Supervisory Office and the Director of Enforcement and Compliance.

Approved:



Thomas J. Curry
Comptroller of the Currency

Comptroller of the Currency
Administrator of National Banks

Subject: Washington Supervision Review Committee Description: Charter

WASHINGTON SUPERVISION REVIEW COMMITTEE (WSRC) CHARTER

PURPOSE & SCOPE

The Committee's role is to ensure OCC bank supervision and enforcement policies are applied effectively and consistently, and to advise the Senior Deputy Comptroller, Midsize and Community Bank Supervision and Senior Deputy Comptroller, Large Bank Supervision on bank supervision and enforcement cases and issues. WSRC reviews enforcement actions pursuant to the current approved bank supervision delegation matrices. In addition, WSRC may also be asked to advise on cases that are highly unique or highly visible. To the extent that the cases brought before the WSRC raise policy issues, those issues are identified and brought to the attention of the Senior Deputy Comptroller, Midsize and Community Bank Supervision and Senior Deputy Comptroller, Large Bank Supervision.

MEMBERSHIP

Membership shall consist of a core group representing Midsize and Community Bank Supervision (MCBS), Large Bank Supervision, Policy, and Legal. In certain cases, this group, identified below, will include representatives of other divisions. Each member may designate an alternate to attend in the member's absence. Individuals with special expertise or knowledge may also be asked to attend when actions involving their area of expertise are under consideration.

Regular members of the Committee:

Deputy Comptroller for Special Supervision;
Director for Special Supervision (in MCBS and fast track cases) (will alternate among the three Directors for Special Supervision);
Director for Enforcement and Compliance;
Deputy Chief Counsel (with responsibility for Enforcement & Compliance issues);
Deputy Comptroller for Large Bank Supervision (may alternate among the four DCLB's);
Deputy Comptroller for Thrift Supervision;
Deputy Comptroller for Operational Risk;
Deputy Comptroller for Midsize Bank Supervision;

Senior Advisor to the Senior Deputy Comptroller for Midsize and Community Bank Supervision (for MCBS and fast track cases); and
Senior Advisor to the Senior Deputy Comptroller for Large Bank Supervision (for Large Bank cases).

Additional members for specific areas described:

Director for Securities and Corporate Practices for securities related enforcement cases;

Deputy Comptroller for Compliance Policy for consumer protection, fair lending, Community Reinvestment Act, Bank Secrecy Act and Office of Foreign Assets Control cases; and

Director for Community and Consumer Law for consumer protection, fair lending and. Community Reinvestment Act.

As appropriate, the following individuals generally may attend Committee meetings as observers for MCBS and fast track cases and receive copies of those WSRC packages (*as applicable*) when they are distributed to the Committee members.

District Deputy Comptrollers
Assistant Directors for Enforcement and Compliance;
District Counsel
Senior Public Affairs Specialist;
Deputy to the Chief of Staff;
Director for BSA & Anti-Money Laundering Compliance (*when Bank Secrecy Act, money laundering & Office of Foreign Assets Control issues are considered);*
Director for Consumer Compliance Policy *(when fair lending, compliance, & unfair & deceptive practices issues are considered);*
Director, Bank Information Technology *(data service provider and IT issues);*
Director, Asset Management *(trust issues);*
Rotator in the Comptroller's Office; and
Applicable field examiners or Assistant Deputy Comptrollers.

WSRC PACKAGES

Individuals preparing cases for WSRC are responsible for preparing a WSRC presentation package, which shall include (1) a memo summarizing the facts in the case, an objective analysis of the facts, their division's recommendation, any district recommendation, and other relevant issues; and (2) appropriate background documents. Copies of the presentation package are due to the Staff Assistant, Special Supervision by close of business the Friday before the meeting.

For MCBS and fast track cases, twenty five copies of the package and an electronic version should be submitted. However, for cases submitted by Districts directly (without involving

Enforcement & Compliance), an electronic version of the package may be submitted. The WSRC agenda and presentation packages (including phone number and conference codes) for each case on the agenda will be distributed (in hard copy and/or email) to all Committee members, Deputy Comptrollers and other known participants by noon on Tuesday before the Thursday meeting.

For Large Bank cases, sufficient copies for the relevant members should be submitted to the Staff Assistant, Special Supervision and an electronic copy to the Deputy Comptroller for Special Supervision. The WSRC agenda and presentation packages (including phone number and conference codes) for each case on the agenda will be distributed to all Committee members by noon on Tuesday before the Thursday meeting.

COMMITTEE MEETINGS

WSRC meetings are held at 9:00 a.m. each Thursday if there are large bank cases to be considered, and at 10:00am for all other agenda items for discussion. Also, to facilitate participation, a conference call will be arranged for all WSRC meetings. Cases on the agenda involving fair lending, compliance, and securities issues generally will be considered first.

Special meetings may be called as necessary and on occasion, recommendations may be made through the use of notational votes. The Deputy Comptroller for Special Supervision will determine the need for a meeting outside of a normal Thursday meeting or the appropriateness of a notational vote and will approve accordingly.

WSRC RECOMMENDATIONS

The WSRC serves as an advisory committee to the Senior Deputy Comptroller, Midsize and Community Bank Supervision and the Senior Deputy Comptroller, Large Bank Supervision by providing its recommendations on the proposed supervision and enforcement actions presented to it. The Deputy Comptroller for Special Supervision shall present the WSRC recommendations to the Senior Deputy Comptroller, Midsize and Community Bank Supervision for MCBS and fast track cases involving midsize and community banks, and to the Senior Deputy Comptroller, Large Bank Supervision for large bank and federal branch/agency cases and fast track cases involving large banks and federal branches and agencies. The Senior Deputy Comptrollers for Midsize and Community Bank Supervision and Large Bank Supervision will make the final decision for their respective cases.

COMMUNICATION OF DECISIONS

The decisions of the Senior Deputy Comptroller, Midsize and Community Bank Supervision and Senior Deputy Comptroller, Large Bank Supervision, shall be posted to the Special Supervision Intranet site, normally within two weeks of each meeting.

REVIEW OF ENFORCEMENT CASE SETTLEMENT BY WSRC

All settlement offers shall be presented to the Deputy Comptroller for Special Supervision, the relevant Director for Special Supervision, the Director for Enforcement and Compliance, and the relevant Deputy Comptroller for Large Bank Supervision/Deputy Comptroller for International Banking Supervision in Large Bank cases, for approval, rejection, or counteroffer. In those cases where unusual or very large dollar amounts are involved, the aforementioned individuals shall defer settlement approvals, rejections or counteroffers to the Senior Deputy Comptrollers for Midsize and Community Bank Supervision or Large Bank Supervision.

OPERATING PROCEDURES

The Committee operates as authorized in PPM 5310-3 (REV), and for securities related enforcement cases as authorized in PPM 5310-5 (REV). The Committee will review operating procedures and membership annually. Proposed changes should be submitted to the Senior Deputy Comptroller, Midsize and Community Bank Supervision and the Senior Deputy Comptroller, Large Bank Supervision.

Approved:

Jennifer C. Kelly
Senior Deputy Comptroller
Midsize and Community Bank Supervision

Michael L. Brosnan
Senior Deputy Comptroller
Large Bank Supervision

MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: Senior Deputy Comptroller and Chief National Bank Examiner;
Senior Deputy Comptroller for Large Bank Supervision;
Senior Deputy Comptroller for Midsize and Community Bank Supervision;
Chief Counsel; and
Chief of Staff

From: Thomas J. Curry, Comptroller of the Currency

Date: November 28, 2012

Subject: Delegation of Authority – Enforcement Authority for Major Matters

A. Pursuant to 12 U.S.C. §§ 4a and 1462a, the Comptroller of the Currency delegates his enforcement authority with respect to major matters, as described below, to the Major Matters Supervision Review Committee (MMSRC). The members of the MMSRC shall be the:

1. Senior Deputy Comptroller and Chief National Bank Examiner;
2. Senior Deputy Comptroller for Large Bank Supervision;
3. Senior Deputy Comptroller for Midsize and Community Bank Supervision;
4. Chief Counsel; and
5. Chief of Staff.

B. For the purposes of this delegation of authority, major matters are:

1. The following enforcement actions taken against any national bank or federal savings association that has been designated as a large national bank or large federal savings association; any national bank affiliate or federal savings association affiliate of a large national bank or large federal savings association; or any federal branch or agency of a foreign bank or national bank affiliate of a federal branch or agency:

i. agreements or orders issued pursuant to 12 U.S.C. § 1818(b) for violations of the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and its implementing regulations (BSA) or for unsafe or unsound practices;

ii. informal actions, including those issued pursuant to 12 U.S.C. § 1831p-1 and 12 C.F.R. Parts 30 and 170, based in whole or in part on violations of the BSA or on unsafe or unsound practices;

iii. temporary cease and desist orders pursuant to 12 U.S.C. § 1818(c) based in whole or in part on violations of the BSA or unsafe or unsound practices; and

iv. assessment of civil money penalties pursuant to 12 U.S.C. § 1818(i) for violations of the BSA, violations of enforcement actions addressing BSA, or unsafe or unsound practices.

2. All suspensions and prohibition or removal actions pursuant to 12 U.S.C. §§ 1818(e) or (g) for violations of the BSA.

3. All enforcement actions based in whole or in part on unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) pertaining to any national bank or federal savings association, any affiliate of a national bank or federal savings association, or any federal branch or agency of a foreign bank.

4. All referrals to the Department of Justice for violations of the Equal Credit Opportunity Act or the Fair Housing Act pertaining to any national bank or federal savings association, any affiliate of a national bank or federal savings association, or any federal branch or agency of a foreign bank.

5. All enforcement actions for violations of the Equal Credit Opportunity Act or the Fair Housing Act, where a referral to the Department of Justice is returned to the OCC.

6. Other cases referred to the MMSRC by a Senior Deputy Comptroller or the Chief Counsel.

7. Other cases where the appropriate Senior Deputy Comptroller does not concur with the consensus view of the members of the Washington Supervision Review Committee.

C. The authority delegated in paragraph B. includes the authority to issue, modify, terminate, or withdraw:

1. notices of charges;

2. documents or orders entered into by stipulation or consent; and

3. orders issued in the absence of a stipulation or consent by the Comptroller of the Currency or his delegate.

D. The signature authority to issue, modify, terminate, or withdraw notices of charges, documents, or orders entered into by stipulation or consent which are issued pursuant to this delegation is delegated to the appropriate Deputy Comptroller.

E. The authority provided by this delegation to the MMSRC shall be exercised jointly and shall be exercised in accordance with the MMSRC charter.

F. The authority delegated herein may not be redelegated.

G. The authority delegated herein is subject to the Memorandum from the Comptroller to the Executive Committee regarding Delegation of Authority, dated May 10, 2012.

MEMORANDUM

Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

To: Senior Deputy Comptroller for Midsize and Community Bank Supervision
Senior Deputy Comptroller for Large Bank Supervision

From: Thomas J. Curry, Comptroller of the Currency

Date: November 28, 2012

Subject: Delegation of Authority - Supervisory and Enforcement Authority

A. Pursuant to 12 U.S.C. §§ 4a and 1462a, the authority of the Comptroller of the Currency as specified in paragraphs B through D, below, is delegated to:

1. the Senior Deputy Comptroller for Midsize and Community Bank Supervision with respect to:

   a. any national bank, federal savings association or District federal savings association that is a midsized or community bank or savings association, or any credit card or trust company bank, that is not affiliated with a designated large bank or large savings association; and

   b. any non-bank or non-savings association affiliate or institution-affiliated party of any above-referenced bank or savings association; and

2. the Senior Deputy Comptroller for Large Bank Supervision with respect to:

   a. any national bank or federal savings association that has been designated as a large bank or large savings association;

   b. any bank affiliate or savings association affiliate of a large bank or large savings association;

   c. any federal branch or agency of a foreign bank or national bank affiliate of a federal branch or agency; and

   d. any non-bank or non-savings association affiliate or any institution-affiliated party of any large bank or large savings association or its bank or savings association affiliate.

B. The Comptroller's authority is delegated to the Senior Deputy Comptroller for Midsize and Community Bank Supervision and to the Senior Deputy Comptroller for Large Bank Supervision with respect to the following matters:

1. the issuance, modification, termination, or withdrawal of the following notices, directives, orders, or documents:

a. notices of charges authorized pursuant to applicable law, including 12 U.S.C. § 1818(b) and 15 U.S.C. §§ 78o-4(c), 78o-5(c), and 78q-1(c) and (d);

b. temporary cease and desist orders authorized pursuant to applicable law, including 12 U.S.C. § 1818(c) and 15 U.S.C. §§ 78(i) and 78u-3;

c. notices of assessment of civil money penalties authorized pursuant to applicable law, including 12 U.S.C. §§ 93(b), 504, 1467(d),1817(j), 1818(i) and 15 U.S.C. § 78u-2(a);

d. notices of suspension authorized pursuant to applicable law, including 12 U.S.C. §§ 1818(e) or (g);

e. notices of intention to remove and/or prohibit from office authorized pursuant to applicable law, including 12 U.S.C. §§ 1818(e) or (g);

f. notices establishing minimum levels of capital for banks and federal savings associations as determined necessary and appropriate in light of the particular circumstances pertaining to such banks and savings association, as authorized pursuant to 12 U.S.C. §§ 3907(a)(2) and 1464(s), and 12 C.F.R. Parts 3 and 167;

g. directives authorized pursuant to 12 U.S.C. §§ 3907(b)(2) and 1464(s) and 12 C.F.R. Parts 3 and 167 to banks or federal savings associations failing to maintain capital at or above levels established pursuant to 12 U.S.C. § 3907(a);

h. notices, directives, or orders to foreign banks addressing changes to capital equivalency deposits and agreements, including increases or reductions in the amounts of such deposits or changes in the terms of or assets pledged under existing capital equivalency deposit agreements;

i. directives to national banks, federal savings associations, federal branches or agencies of foreign banks calling for the filing of additional reports of condition, special reports, and reports of affiliates authorized pursuant to applicable law, including 12 U.S.C. §§ 161 and 1464(v);

j. imposing penalties for the failure to file reports or for the delinquent, false, or misleading filing of reports pursuant to applicable law, including 12 U.S.C. §§ 164, 1464(v), and 1818(i);

k. notices to national banks having boards of directors comprised of less than five members that such board composition constitutes a violation of 12 U.S.C. § 71a and that the continued operation with a board of less than five members, if not corrected within thirty days of such notice, provides authority for the appointment of a conservator or receiver for the bank in accordance with applicable law; and

l. orders to conduct formal investigations pursuant to applicable law, including 12 U.S.C. §§ 481, 1464(d), 1818(n), 1820(c), 15 U.S.C. § 78u, and 12 C.F.R. Parts 19, Subpart J and 112, and subpoenas under applicable law, including 12 U.S.C. §§ 481, 1464(d), 1818(n), 1820(c) , and 15 U.S.C. § 78u;

2. the issuance, modification, and termination of the following documents or orders entered into by stipulation or consent:

a. commitment letters, memoranda of understanding, and formal written agreements authorized pursuant to 12 U.S.C. § 1818(b);

b. cease and desist orders authorized pursuant to applicable law, including 12 U.S.C. § 1818(b) and 15 U.S.C.§§ 78l(i) and 78u-3;

c. orders of assessment of civil money penalties authorized pursuant to applicable law, including 12 U.S.C. §§ 93(b), 504, 1467(d), 1817(j), 1818(i), and 15 U.S.C. § 78u-2(a);

d. orders of removal and/or prohibition authorized pursuant to applicable law, including 12 U.S.C. §§ 1818(e) or (g);

e. disciplinary orders authorized pursuant to applicable law, including 15 U.S.C. §§ 78o-4(c), 78o-5(c), and 78q-1(c) and (d);

3. the modification and termination of the following orders issued in the absence of stipulation or consent by the Comptroller of the Currency or his delegate:

a. cease and desist orders authorized pursuant to applicable law, including 12 U.S.C. § 1818(b) and 15 U.S.C. §§ 78l(i) and 78u-3;

b. orders of assessment of civil money penalties authorized pursuant to applicable law, including 12 U.S.C. §§ 93(b), 504, 1467(d), 1817(j), 1818(i), and 15 U.S.C. § 78u-2(a);

c. orders of removal and/or prohibition authorized pursuant to applicable law, including 12 U.S.C. §§ 1818(e) or (g); and

d. disciplinary orders authorized pursuant to applicable law, including 15 U.S.C. §§ 78o-4(c), 78o-5(c), and 78q-1(c) and (d).

4. the approval, approval with conditions, or disapproval of, and the response to requests for comments of the Office of the Comptroller of the Currency regarding the following:

a. notices by federal savings associations of the intention to indemnify directors, officers and employees pursuant to 12 C.F.R. § 145.121;

b. applications by national banks to invest in bank premises or to make other premises-related loans or investments pursuant to 12 C.F.R. § 5.37;

c. notices or applications by federal savings associations to use an interest rate index that does not satisfy the requirements of 12 C.F.R § 160.35(d)(2), pursuant to 12 C.F.R. § 160.35;

d. applications by federal savings associations to use higher lending limits than those set forth in 12 C.F.R. § 160.93; and

e. applications by a federal savings association to exceed the limitations set forth in 12 U.S.C. § 1464(c)(2)(B)(i), regarding nonresidential real property loans, pursuant to 12 U.S.C. § 1464(c)(2)(B)(ii).

C. In addition, the Comptroller's authority pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Parts 6 and 165 is delegated to the Senior Deputy Comptroller for Midsize and Community Bank Supervision and the Senior Deputy Comptroller for Large Bank Supervision. This authority includes:

1. in consultation with the Federal Deposit Insurance Corporation (FDIC), the approval, approval with conditions, or disapproval of proposed capital distributions pursuant to 12 U.S.C. § 1831o(d)(1);

2. the approval, approval with conditions, or disapproval of requests to pay bonuses or increase the compensation paid to senior executive officers proposed pursuant to 12 U.S.C. § 1831o(f)(4);

3. the approval, approval with conditions, or disapproval of capital restoration plans submitted by undercapitalized, significantly undercapitalized, and critically undercapitalized banks, federal savings associations, or their branches pursuant to 12 C.F.R. Parts 6, Subpart B and 165.5;

4. the issuance, modification, withdrawal, and termination of notices calling for new or revised capital restoration plans;

5. the issuance, modification, withdrawal, and termination of notices of proposed reclassifications of banks' or federal savings associations' capital categories based on unsafe and unsound conditions or practices and notices of reclassification pursuant to 12 C.F.R. Parts 19, Subpart M and 165.8;

6. the issuance, modification, withdrawal, and termination of notices of intent to issue directives imposing restrictions and requirements on undercapitalized, significantly undercapitalized, and critically undercapitalized banks or federal savings associations and issuance, modification, and withdrawal of directives pursuant to 12 C.F.R. Parts 6, Subpart B, and 165.7;

7. with the concurrence of the FDIC, the initiation of corrective actions other than the placement of critically undercapitalized banks, federal savings associations, or their branches into receivership or conservatorship pursuant to 12 U.S.C. § 1831o(h)(3), but not including the certification of a critically undercapitalized institution's viability pursuant to 12 U.S.C. § 1831o(h)(3)(C)(II); and

8. the approval, approval with conditions, or disapproval of requests for reinstatement filed pursuant to 12 C.F.R. Parts 19, Subpart N and 165.9, by directors and senior executive officers whose dismissals were previously directed under the authority of 12 U.S.C. § 1831o(f)(2)(F).

D. The Comptroller's authority pursuant to 12 U.S.C. § 1831p-1 and 12 C.F.R. Parts 30 and 170 is also delegated to the Senior Deputy Comptroller for Midsize and Community Bank Supervision and the Senior Deputy Comptroller for Large Bank Supervision and may be exercised by each in carrying out examination and supervisory responsibilities. This authority includes:

1. requiring the submission of plans within the meaning of 12 U.S.C. § 1831p-1(e)(1) addressing the failure to meet applicable standards prescribed by either regulation or guideline; and

2. the issuance, modification, withdrawal, and termination of notices of intention to issue orders relating to the failure to adhere to standards established pursuant to 12 U.S.C. § 1831p-1(d) and issuing orders pursuant to 12 U.S.C. § 1831p-1(e)(2) with respect to banks that fail to submit or implement acceptable plans.

E. In acting on any matter described in Paragraph A, B, or C above, the Senior Deputy Comptroller for Midsize and Community Bank Supervision and the Senior Deputy Comptroller for Large Bank Supervision are also authorized to exercise the authority set forth in 12 C.F.R. § 100.2 to, for good cause and to the extent permitted by statute, waive the applicability of any provision of 12 C.F.R. Parts 100 through 197.

F. This delegation does not delegate, and expressly reserves for the Major Matters Supervision Review Committee (MMSRC), any authority related to the following matters:

1. The following enforcement actions taken against any national bank or federal savings association that has been designated as a large national bank or large federal savings association; any national bank affiliate or federal savings association affiliate of a large national bank or large federal savings association; or any federal branch or agency of a foreign bank or national bank affiliate of a federal branch or agency:

a. Agreements or orders issued pursuant to 12 U.S.C. § 1818(b) based in whole or in part on violations of the Bank Secrecy Act, 31 U.S.C. § 5311, *et seq.*, and its implementing regulations (BSA), or on unsafe or unsound practices;

b. Informal actions, including those issued pursuant to 12 U.S.C. § 1831p-1 and 12 C.F.R. Parts 30 and 170, based in whole or in part on violations of the BSA or on unsafe or unsound practices;

c. temporary cease and desist orders pursuant to 12 U.S.C. § 1818(c) based in whole or in part on violations of the BSA or unsafe or unsound practices; and

d. assessment of civil money penalties pursuant to 12 U.S.C. § 1818(i) for violations of the BSA, violations of enforcement actions addressing BSA, or unsafe or unsound practices.

2. All suspensions and prohibition or removal actions pursuant to 12 U.S.C. §§ 1818(e) or (g) for violations of the BSA.

3. All enforcement actions based in whole or in part on unfair or deceptive acts or practices in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) pertaining to any national bank or federal savings association, any affiliate of a national bank or federal savings association, or any federal branch or agency of a foreign bank.

4. All referrals to the Department of Justice for violations of the Equal Credit Opportunity Act and the Fair Housing Act pertaining to any national bank or federal savings association, any affiliate of a national bank or federal savings association, or any federal branch or agency of a foreign bank.

5. All enforcement actions for violations of the Equal Credit Opportunity Act and the Fair Housing Act, where a referral to the Department of Justice is returned to the OCC.

6. Other cases referred to the MMSRC by a Senior Deputy Comptroller or the Chief Counsel.

7. Other cases where the appropriate Senior Deputy Comptroller does not concur with the consensus view of the members of the Washington Supervision Review Committee.

G. Each Senior Deputy Comptroller is authorized to redelegate the authority provided by this delegation under such terms as the Senior Deputy Comptroller determines to be appropriate. Redelegation by either Senior Deputy Comptroller may be effected through issuance of letters of authorization or any other means selected by the Senior Deputy Comptroller.

H. Unless superseded by action of the Comptroller of the Currency or the appropriate Senior Deputy Comptroller, all outstanding redelegations of the authority provided by this memorandum that are not inconsistent with this delegation remain in full force and effect.

I. The authority delegated herein is subject to the Memorandum from the Comptroller to the Executive Committee regarding Delegation of Authority, dated May 10, 2012.

MIDSIZE and COMMUNITY BANK SUPERVISION – DELEGATIONS OF AUTHORITY										
	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
Examinations										
Report of Examination (ROE) and any associated Transmittal Letter				XS					S	ROE's require DSS and another signature.
Approve Ratings, Risk Assessments, Institution Indicators, & other Analysis Comments				X						
Approve Supervisory Strategy				X						
Decision to cite in a ROE or other supervisory correspondence, apparent unreported OFAC sanctions, violations, or significant deficiencies in policies, procedures and processes for ensuring compliance with OFAC regulations.				X						
Decide Formal Appeals (other than to Ombudsman)			X							
Correspondence / Requests / Disclosures / Referrals										
Routine Bank[1] Correspondence				XS						PBS has signature authority.
Federal and State Banking Agencies				XS						
Other Federal & State Agencies and NASD			X	S						Requires Consultation with Legal.
Federal Home Loan Banks (12 USC 1442)			X	S						
Foreign Financial Services Regulatory or Supervisory Authorities and Foreign Agencies or Instrumentalities having Investigative or Prosecutorial Responsibilities.			X	S						Requires Consultation with Legal.
Invite FDIC to Participate in OCC Exams				XS						Consult with DCSS as appropriate.
Approve FDIC Requests to Participate in OCC Exams involving Banks rated 4 or 5; Banks rated 1, 2 or 3 with material deteriorating conditions; or Banks in the Undercapitalized or worse category as defined by Prompt Corrective Action.				XS						Recommendations to deny FDIC's request must be discussed with the SDC. Denials can only be approved by the Comptroller. Copies of FDIC requests and OCC response or invitation should be sent to DSS.
Formal referrals to FinCEN, SEC, DOJ and Federal Elections Commission (FEC)	X	A								Appropriate legal division signs referral.
Sharing Information & Responding to Requests from FinCEN pursuant to 9/30/04 MOU				XS						Also see 8/29/05 Memo on Sharing Info w/FinCEN.

[1] The term "banks" will refer to national banks and federal savings associations unless specifically indicated otherwise.

X = Decision Authority – lowest level – includes higher level officials (Decision Maker or higher may, on a case-by-case basis, designate signature authority to someone other than authorized by this delegation)
S = Signature Authority – lowest level – includes higher level officials (Includes making necessary or appropriate edits and modifications to the applicable document)
A = Presentation to and advice of Supervision Review Committee Required

SDC = Senior Deputy Comptroller for Midsize/Community Banks
WSRC = Washington Supervision Review Committee
DCSS = Deputy Comptroller for Special Supervision
DCMCC = Deputy Comptroller for Midsize & Credit Card Bank Supervision
DSS = Director for Special Supervision
DDC = District Deputy Comptroller
DSRC = District Supervision Review Committee
AsDC = Associate Deputy Comptroller
ADC = Assistant Deputy Comptroller
EIC = Examiner-in-Charge or Portfolio Manager
SO = Supervisory Office
E&C = Enforcement & Compliance Division

MIDSIZE and COMMUNITY BANK SUPERVISION – DELEGATIONS OF AUTHORITY										
	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
Sharing Information & Responding to Requests from OFAC pursuant to 4/11/06 MOU				XS						Also see 7/14/06 Memo on Sharing Info w/OFAC.
Disclosure of non-public OCC information related to supervision of problem banks (including ROE and access to EIC) to a problem bank's potential purchasers, directors, or senior executive officers.			XS							Disclosure of non-public OCC information should be made only after consultation with the Law Department.
Requests to FDIC for concurrence on extending 90-day receivership period under 12 USC § 1831o.			XS							
Bank Requests & Other Actions										
Dividends approvals (12 USC Part 60 & 12 CFR § 5.64(c); 12 CFR § 163.143(a)(2), (1)(4), (b)(3)).				XS						
Excess Investment in Bank Premises (12 CFR § 5.37; OTS Examination Handbook, Fixed Assets (Sec. 252)).				XS						
OREO Expenditures & Holding Period Extensions.				XS						
National Banks: DPC Securities Holding Period Extensions (12 CFR § 1.7)				XS						
Requests to use alternative index to price ARMs (12 CFR § 34.22; 12 CFR § 160.35(d)(3)).			X	S						
Golden Parachute & Severance Payments/Agreements (12 CFR Part 359).			X	S						Requires coordination with FDIC.
National Banks: Require applications to issue or pre-pay subordinated debt pursuant to 12 CFR § 5.47(b).			X	S						
Requests for supplemental lending limit authority. 12 CFR § 32.7; OTS Examination Handbook 211.6			X	S						
Requiring Special Reports pursuant to 12 USC § 161(a); 12 USC § 1464(v), calling for the submission of business plans and reporting significant deviations or changes to such plans.			X	S						
Decide Formal Appeals (other than to Ombudsman)			XS							

X = Decision Authority – lowest level – includes higher level officials (Decision Maker or higher may, on a case-by-case basis, designate signature authority to someone other than authorized by this delegation)
S = Signature Authority – lowest level – includes higher level officials (Includes making necessary or appropriate edits and modifications to the applicable document)
A = Presentation to and advice of Supervision Review Committee Required

SDC = Senior Deputy Comptroller for Midsize/Community Banks
WSRC = Washington Supervision Review Committee
DCSS = Deputy Comptroller for Special Supervision
DCMCC = Deputy Comptroller for Midsize & Credit Card Bank Supervision
DSS = Director for Special Supervision
DDC = District Deputy Comptroller
DSRC = District Supervision Review Committee
AsDC = Associate Deputy Comptroller
ADC = Assistant Deputy Comptroller
EIC = Examiner-in-Charge or Portfolio Manager
SO = Supervisory Office
E&C = Enforcement & Compliance Division

MIDSIZE and COMMUNITY BANK SUPERVISION – DELEGATIONS OF AUTHORITY										
	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
Bank Enforcement Actions – Delegation applies to issuance[2], modification, withdrawal and termination[3]										
Temporary C&D, Conservatorship, Trust Powers Revocation, Enforcement Actions addressing Securities Law Violations (PPM 5310-5).	XS	A								
Enforcement Actions against Bank Service Companies, including third party service providers and Technology Service Providers (TSP), (12 USC §§ 1861 et seq.).	X	A		S						Coordinate w/FFIEC when services are provided to financial institutions supervised by other Federal Banking Agencies in addition to the OCC.
All Enforcement Actions which include articles addressing Fair Lending, Consumer Protection, Unfair/Deceptive Acts or Practices, or BSA Violations or Deficiencies.	X	A		S						
Enforcement Actions resulting from referrals from State Officials re: Consumer Law Violations.	X	A	S							Consult with District Counsel, E&C, CCL, and CMPL.
Authorize Order of Investigations – Nondelegated.	X	A								Order may be signed by Director of Enforcement and Compliance. See, 3/7/96 Memorandum addressing Delegated Orders of Investigation from Chief Counsel and SDC to DDC's and District Counsel.

[2] Tolling agreements can be decided and signed by officials with signature authority for the enforcement action.
[3] Terminations that occur by operation of law, e.g. merger of bank into another bank, divestiture or receivership do not need to be considered by WSRC and can be closed by Director.

X = Decision Authority – lowest level – includes higher level officials (Decision Maker or higher may, on a case-by-case basis, designate signature authority to someone other than authorized by this delegation)
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MIDSIZE and COMMUNITY BANK SUPERVISION – DELEGATIONS OF AUTHORITY										
	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
C&D, FA, MOU, CL, Capital Directive (12 CFR Part 3, Subpart E; 12 CFR § 167.4) & Establishment of Higher Minimum Capital Ratios (12 CFR Part 3, Subpart C, 12 CFR § 167.3), except those actions which require WSRC review. Delegation applies to issuance, modification, withdrawal and termination.[4]										
Authority to issue includes, as applicable: (1) entering into a tolling agreement[5]; (2) service of a Notice of Charges or Notice of Intent, (3) determination that Bank is not deemed to be in troubled condition notwithstanding that it is subject to a cease and desist order, a consent order, or a formal written agreement (12 CFR § 5.51(c)(6)(ii)); and (4) determination that Thrift is not deemed in troubled condition notwithstanding that it is subject to a capital directive, a cease and desist order, a consent order, a formal written agreement, or a PCA directive relating to the safety and soundness of the thrift.	X	A		S						Determinations to not deem a bank or thrift to be in troubled condition under (3) or (4) must be discussed with the SDC.
Supervisory Conditions Imposed in Writing ("SCIW") under 12 USC § 1818(b) in connection with any action on any application, notice, or other request that are decided by Supervision. Includes modification and termination of SCIW.	X	A		S						Termination of conditions imposed on applications and notices decided by Licensing require consultation with the SO to impose or terminate conditions in licensing matters.
Progress report responses, timeframe extensions, waivers & similar adjustments to enforcement actions				XS						
Prompt Corrective Action (PCA) - (12 USC § 1831o - 12 CFR 6, 12 CFR Part 19 – Subpart M; 12 CFR Part 165)										
Capital Category Notification except CUB				XS						
Capital Category Notification – CUB				XS						
Capital Restoration Plans (Approval & Denial)				XS						
Approval, approval with conditions or disapproval of proposed capital distribution,			X	S						Requires consultation with FDIC

[4] Terminations that occur by operation of law, e.g. merger of bank into another bank, divestiture or receivership do not need to be considered by SRC and can be closed by AsDC
[5] Tolling agreements can be decided and signed by officials with signature authority for the enforcement action.

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	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
where after distribution the bank would be undercapitalized.										
Approval, approval with conditions or disapproval of requests to pay bonuses or increased compensation paid to senior executive officers for significantly undercapitalized banks.				XS						
Reclassification of Capital Category Based on Criteria other than Capital (Includes modification, withdrawal, and termination.)	X	A		S						
PCA Directive & Notice of Intent to Issue a Directive (Includes modification, withdrawal, and termination.)	X	A		S						
Dismissal of Director or Senior Executive Officer. Includes modification; withdrawal approval, approval with conditions or disapproval of requests for reinstatement; and termination.	X	A		S						Included in PCA Directive on Bank.
Safety & Soundness Actions (12 USC § 1831p-1 - 12 CFR Part 30; 12 CFR Part 170)										
Notice of Deficiency (Requires Bank submission of a Safety & Soundness Plan)	X	A		S						
Approval or Rejection of Safety & Soundness Plan				XS						
Termination of Safety & Soundness Plan	X	A		S						
Safety & Soundness Order & Notice of Intent to Issue an Order	X	A		S						
Changes in Directors and Senior Executive Officers (12 USC § 1831i - 12 CFR § 5.51; 12 CFR Part 163, Subpart H)										
Troubled Condition Designation. Includes termination of troubled condition designation				XS						Designation of troubled condition prior to downgrade requires DC approval.
Waiver of Prior Notice Requirement				XS						
Decision				XS						Denials require consultation with district legal, Litigation, and BAS.
Appeal of decision to disapprove (must be one level higher than decision or an independent official)			XS							
Requests from Other Federal Banking Agencies				XS						
Enforcement Actions against Institution Affiliated Parties (IAP)										
Removal/Prohibition, Personal C&D or Restitution Order (including Notice of Charges)	X	A								In coordination with E&C.

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	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
Delegation includes modification, withdraw and termination outstanding action			S							
Suspension pursuant to 12 USC 1818e, Suspension or Removal pursuant to 12 USC 1818g	XS	A								
Recovery of OCC Costs & Expenses in Restitution Cases	X	A	S							In coordination with Director of E&C.
Assessment of Civil Money Penalty										
15-day Letters (including language regarding possible Removal/Prohibition and/or Restitution) Delegation includes tolling agreements.				XS						Requires Consultation with Legal
Supervisory Letters	X	A		S						
Letters of Reprimand	X	A		S						
CMP: (includes Notice and Stipulation, modification and termination)	X	A		S						
Charter Conversions (Dodd Frank Section 612)										
Conversion of Bank to State Charter: No objection of Plan to address significant supervisory matters to receiving Federal Banking Agency per Dodd Frank Section 612			X							S – Licensing will process and transmit determination.
Conversion of State Charter to National or Federal Charter: Development and submission of Plan to address significant supervisory matters to relinquishing Federal Banking Agency per Dodd Frank Section 612		A								S – Licensing will process and transmit determination. Note: All conversions to a national bank or federal thrift are to receive DSRC review even where Dodd Frank Section 612 does not apply.
Federal Savings Associations – Specific										
Loans to one Borrower: • Requests to exceed the general lending limit for loans to develop domestic residential housing units. (12 C.F.R. § 160.93(d)(3)(iii)) • Requests to make additional expenditures on OREO; i.e. salvage powers investments in excess of the lending limit. 12 C.F.R. § 159.13 (OTS Examination Handbook, Section 211)				XS						
Business plan modifications. (In accordance with the OTS Applications Handbook, requests are processed under the general procedures in 12 C.F.R. § 116.210 – 290.)				XS						

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	Special Supervision Supervised Banks									
Activity	SDC	WSRC	DCSS	DSS	DDC	DSRC	AsDC	ADC	EIC	Other
Requests for exceptions from the qualified thrift lender provisions of section 10(m) of the Home Owners' Loan Act. (12 U.S.C. § 1467a(m)(2)			XS							
Disapproval to notices of intention to indemnify directors, officers and employees. (12 C.F.R. § 145.121(c))			XS							Requires consultation with Legal.
Employment Contracts - approve omission of the default language which requires employment contracts between a thrift and its officers and employees contain certain provisions, including a provision that if the thrift is in default (as defined in 3(x)(1) of the FDIA), all obligations under the contract shall be terminated as of the default date. 12 C.F.R. § 163.39			XS							
Authorize a savings association's aggregate amount of loans secured by liens on nonresidential real property to exceed the 400% of total capital. 12 U.S.C. § 1464(c)(2)(B).			XS							
Waive any provision of regulations applicable to federal savings association, to the extent permitted by statute, for good cause. 12 C.F.R. § 100.2			XS							

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Q.2. Under what circumstances your agency has used 12 U.S.C. §§1818(e) and (g) in the past, including any actions taken against bankers in the largest financial institutions.

A.2. As a matter of course, the OCC pursues all legally supportable removal and prohibition actions. The OCC has removed and prohibited bankers under sections 1818(e), (g), and 1829 in a variety of circumstances where the applicable legal standard is met. Most removal and prohibition cases involve instances of insider abuse and self-dealing.

Since 2000, the OCC has issued 422 removal and prohibition orders under section 1818 and 3,963 prohibition notices under section 1829. Forty-one percent of the 1818 removals and 67 percent of the 1829 removal notices involved individuals affiliated with large banks. All OCC formal enforcement actions, including final orders of removal and prohibition, are listed on the OCC's Web site at *http://apps.occ.gov/EnforcementActions/*.

Q.3. The process your agency does or would follow to use its authority under 12 U.S.C. §§1818(e) and (g).

A.3. The documents we identified in response to your first question govern the process the OCC follows to use its authority under sections 1818(e), (g), and 1829.

Most OCC enforcement actions, including removal and prohibition cases, originate from examination findings and referrals from the examiners in the bank to the appropriate supervisory office. The supervisory office then works closely with the OCC's Enforcement and Compliance (E&C) Division to develop the case. In many cases, the E&C Division will conduct an investigation to gather additional facts to support the action, aided by the OCC's examiners. Once sufficient evidence has been obtained to support the case, the E&C Division presents its recommendation to the appropriate Supervision Review Committee. The OCC proceeds with an enforcement action if the OCC's Major Matters Supervision Review Committee authorizes the action, or if the Senior Deputy Comptroller for Midsize and Community Banks authorizes the action after reviewing the recommendation of the Washington Supervision Review Committee.

Upon receiving authorization, the E&C Division seeks to obtain the issuance of the order with the respondent's consent. While the majority of removal and prohibition cases are resolved this way, the respondent has the right to contest the action and, in cases where the respondent does not consent, the E&C Division will initiate litigation by filing a notice of charges with the administrative law judge who adjudicates enforcement actions brought by the Federal banking agencies. The matter then proceeds to an administrative hearing, with the presentation of evidence and full briefing on the matter by both parties. Both parties may file exceptions to the administrative law judge's recommended decision, and the Comptroller then issues a final agency decision. If the Comptroller issues a final order of removal and prohibition, that order is subject to review by an appropriate United States court of appeals.

Q.4. Attorney General Holder testified before the Judiciary Committee that he is "concerned that the size of some of these institutions becomes so large that it does become difficult for us to pros-

ecute them when, . . . if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy."

Can you explain how your efforts to ensure compliance with money laundering laws are affected when so many people—even the Attorney General of the United States—think it is "difficult to prosecute" the biggest banks?

A.4. The OCC's efforts to ensure compliance with the BSA and AML laws are not affected by concerns that some banks are "difficult to prosecute." Indeed, the OCC has brought many actions against large institutions for BSA violations in recent years, including actions against Key Bank, N.A. (2005), Union Bank of California, N.A. (2001), Wachovia Bank, N.A. (2010), Zions First National Bank (2010), Citibank, N.A. (2012), HSBC Bank USA, N.A. (2010, 2012) and JPMC Bank, N.A. (2012).

The OCC's willingness to take action is also not affected by a decision by DOJ to decline to prosecute a bank. The only significant impact of a decision by DOJ not to prosecute an institution is on the OCC's charter revocation authority set forth at 12 U.S.C. § 93(d). If the Attorney General declines to prosecute a bank or fails to obtain a criminal conviction for money laundering, the OCC does not have the legal authority to conduct a revocation hearing under that section. Revocation hearings can only be conducted upon the conviction of a bank of any criminal money laundering offense (18 U.S.C. §1956 or 1957) and the OCC does not have the authority to conduct such a hearing on its own accord.

Q.5. Are you worried that the size and interconnectedness of our Nation's largest financial institutions negatively affects your ability to enforce the law and reduces your leverage?

A.5. The OCC believes that no institution is above the law, regardless of its size and interconnectedness. Consequently, we take seriously our responsibilities as a regulator and we expect full compliance with BSA/AML requirements at all times. The OCC examines large banks for compliance using the FFIEC examination procedures. As noted immediately above, we have not been reluctant to enforce the U.S. banking laws against the largest banks. That said, there will always be challenges for our BSA/AML examinations of large financial institutions due to their global footprint, transaction volumes, diverse product lines, and the rapid changes in technology and payment systems. In addition, keeping pace with the innovation, flexibility, and speed with which criminals are able to alter their tactics to avoid detection is a constant challenge for both examiners and banks. In response to these challenges, the OCC continues to expand its ongoing dialogue with law enforcement to understand current money laundering and terrorist financing typologies.

Through participation in international forums such as the Financial Action Task Force (FATF), the OCC works with international law enforcement, prosecutors, and regulatory counterparts to identify and understand risks to national banks and Federal savings associations from international money laundering and terrorist financing schemes that impact the largest international banks. The OCC disseminates this information internally to examiners

through training and guidance. The examiners also participate in external seminars, workshops, and conferences.

The OCC will continue to refine its examination and enforcement processes to keep up with these challenges in this ever-changing environment, and to ensure that both large and community banks maintain effective BSA/AML compliance programs. The OCC will not hesitate to use its enforcement authority to ensure that the U.S. banking laws are complied with, suspicious activity is properly identified and reported to law enforcement, and wrongdoers are held accountable.

Q.6. At the hearing, Under Secretary Cohen and Governor Powell both testified that the Justice Department was in contact with their institutions regarding the HSBC case. Without reference to any particular case, can you describe the general or usual process for cooperation between your institution and the Justice Department regarding money laundering and Bank Secrecy Act issues?

In particular: Which office or offices in the Justice Department contact your institution?

A.6. The OCC cooperates extensively with the DOJ in BSA/AML cases. This cooperation includes discussion of cases through meetings and calls, providing documents and information, and making OCC examiners available to discuss transactions or serve as witnesses in grand jury proceedings and trials. Depending on the case, the initial contact in such cases may be initiated by the OCC, or it may be initiated by the DOJ. The DOJ components that typically contact us in BSA/AML cases are the Asset Forfeiture and Money Laundering Section of the DOJ's Criminal Division, and any U.S. Attorney's Office that is conducting or participating in an investigation. The OCC is also often contacted by the FBI and other investigative agencies.

In addition, we also interact with the DOJ through our active participation in several interagency groups focusing on BSA/AML compliance, including: (a) Treasury's Interagency Task Force on the U.S. AML Framework; (b) the Bank Secrecy Act Advisory Group (BSAAG); and (c) the National Interagency Bank Fraud Working Group.

Q.7. Which office or offices in your institution are contacted?

A.7. Contact with the DOJ is typically conducted through the OCC's Chief Counsel's Office, although sometimes law enforcement agents will initiate contact with field examiners (field examiners who are contacted by law enforcement will typically direct the call to the Chief Counsel's Office).

Q.8. At what points in the enforcement process is your institution contacted?

A.8. The timing of contact with the DOJ or other law enforcement agency varies depending on the case. In some cases, the OCC develops a case and refers it to law enforcement. In other cases, the OCC works closely with law enforcement on ongoing investigations.

Q.9. What information is usually requested?

A.9. Typically the DOJ will request OCC examination reports and underlying supervisory correspondence, examination work papers, look-back reports, investigation reports, and access to OCC exam-

iners, due to their expertise and knowledge of the institution under investigation. In some cases, the OCC may obtain access to grand jury materials and OCC attorneys will participate and assist in the investigation process, interview or depose witnesses, and provide responses to DOJ information requests.

Q.10. Are there are any formal or informal guidelines that are used for interagency cooperation on Bank Secrecy Act or Anti-Money Laundering issues?

A.10. The OCC has a Memorandum of Understanding in place with both FinCEN and the Office of Foreign Assets Control (OFAC). These agreements provide guidance on information sharing and interagency coordination with those agencies. In addition, as described above, the OCC actively participates in various interagency groups that focus on BSA/AML compliance. Those groups generally have charter documents that describe their purpose and provide guidelines for participation.

Q.11. As I understand it, when the OCC identifies a bank's failure to comply with its internal policies regarding money laundering, the bank then develops a new policy to address these shortfalls and the OCC examines the bank's practices during its next examination period.

When the OCC evaluates a bank's internal policies for BSA compliance, does it consider the extent to which, based on past supervision data, the policy is likely to be implemented effectively? If yes, can you explain the OCC's method of evaluation? If the OCC does not consider past supervision data, then how is the OCC able to evaluate whether the bank's policies are likely to lead to sufficient compliance with the BSA?

A.11. OCC's regulatory preplanning process for examinations includes an analysis of ongoing quarterly reviews of corrective actions taken to address matters requiring attention and violations of law and regulations. In addition, OCC examination planning includes a review of prior regulatory findings and those noted in bank internal audit, quality assurance and quality control reports. Finally, while on-site, staff review policy and system changes that were made to correct prior concerns. When applicable, this includes testing sustainability through transactional testing.

Q.12. When the OCC does find potential weaknesses in money laundering detection or controls, does the OCC provide that information to the Department of Justice or other regulators?

A.12. The OCC ensures that suspicious and potentially criminal activity is referred to the DOJ. In addition, in criminal cases, the DOJ will routinely contact the OCC and request examination reports and other supervisory information that documents any problems that the OCC identified in the bank's BSA/AML compliance program.

When the OCC finds potential weaknesses in money laundering detection or controls, the OCC provides the information to FinCEN and OFAC consistent with the terms of our MOUs with those agencies. If the weaknesses result in the failure to properly file reports with FinCEN or OFAC, including SARs, the OCC will typically coordinate with FinCEN and OFAC on any look-back or back-filing

requirements to ensure that activity is reported appropriately. If the weaknesses will result in a penalty action, the OCC will coordinate with FinCEN, which also has BSA penalty authority, and other applicable agencies (Federal Reserve, DOJ, State Attorney Generals, etc.).

Pursuant to the MOU with OFAC, the OCC reports (as permitted by law) to OFAC any sanctions violations discovered in the course of an examination. The OCC also requires banking organizations under our supervision, which are suspected of sanctions violations, to communicate this information directly to OFAC.

Q.13. Has the OCC adopted or will adopt a policy of imposing stiffer penalties for second, third, or repeated failures to achieve compliance?

A.13. Yes. In the case of civil money penalty actions, the OCC will follow the statutory framework set forth in 12 U.S.C. 1818(i) which provides for increased penalty amounts depending on the severity of the wrongdoing. The statute also requires that in determining the amount of any penalty, the OCC shall take into account the appropriateness of the penalty with respect to the history of previous violations. 12 U.S.C. 1818(i)(2)(G).

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP FROM THOMAS J. CURRY

Q.1. As all of you mentioned, the sophistication and determination of money launderers, terrorist financiers, and other criminals has evolved and changed as they find ways to gain access to our institutions. How can we support smaller institutions that cannot afford to put the same programs in place as the large banks? In your examinations, have you noticed vulnerabilities on a large scale?

A.1. We scale our expectations of smaller institutions to the risk and complexity of the products they offer. As long as the smaller institutions perform sufficient due diligence on their customers, and truly understand their customers' use of their accounts and the risks associated with their customers' transactions, small banks should meet regulatory expectations. We provide guidance to smaller banks through the examination process, as well as in various meetings and outreach sessions. We have, for instance, been very active for many years in offering workshops for bank directors to help them understand the risks associated with BSA. Additionally, as part of our examination process, we offer recommendations to bankers based on our unique knowledge of industry best practices. While the risks in smaller institutions vary from bank to bank, we have not noted significant vulnerabilities on a large scale. Rather, banks are adjusting to an increasing distance from their customers through technological innovation such as remote deposit capture and prepaid cards, some of which is facilitated through third parties with their own independent BSA programs. In many cases, reasonably sophisticated software is available to smaller banks to help them manage the increasing customer risks.

RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN JOHNSON FROM JEROME H. POWELL

Q.1. The major AML–BSA cases discussed at the hearing all illustrate various forms of breakdown in the bank compliance systems on which the BSA/AML and economic sanctions rules depend. Would you favor a requirement that the CEOs of large banks certify the effectiveness of their BSA/AML/sanctions compliance systems annually? If not, why not?

A.1. Imposing a Bank Secrecy Act/anti-money laundering (BSA/AML) and U.S. sanctions certification requirement may result in changes to an institution's strategic focus and the need to alter or curtail certain high-risk activities in order to reduce exposure. While such a change could reduce the risk profile of an institution and result perhaps in a more effective compliance program, it may also result in a reduced availability of certain financial services, such as private banking or correspondent bank services, or a curtailment of certain products and services in certain markets.

Even without any specific certification requirements, the Federal Reserve reviews the quality of an institution's BSA/AML and U.S. sanctions compliance programs through the ongoing exercise of supervision, and the results of these reviews are reflected in the "management" or "M" rating component of the CAMELS rating system we use to evaluate these institutions. For large, complex banking organizations, safety and soundness examination is a continuous process, and BSA/AML compliance is incorporated into examinations conducted throughout the year.

Additionally, the Federal Reserve has available at its disposal a broad range of supervisory tools to ensure appropriate compliance processes and programs. For example, the Federal Reserve may require an institution to address a BSA/AML or sanctions program deficiency through informal supervisory action, such as requiring an institution's board of directors to adopt an appropriate resolution or executing a memorandum of understanding between an institution and a Reserve Bank. In the most serious cases, the Federal Reserve may take a formal enforcement action against an institution.

Q.2. I understand that you are not prosecutors, but you are responsible for oversight of the Nation's largest financial institutions. Are there reasons that it is especially difficult to adequately discipline individuals with civil fines, industry removals, use of injunctions, limits on certain categories of bank activities, or other sanctions, in connection with seemingly significant BSA/AML violations?

A.2. The Federal Reserve and other Federal banking agencies have and use statutory authority to remove and prohibit insiders from participating in the banking industry. This authority is an effective tool in dealing with serious cases of insider abuse and self-dealing because it results in a lifetime ban on the individual working in the banking industry. In these cases, we may also determine that the assessment of civil money penalties is appropriate against the individual. In the past 5 years, the Federal Reserve has issued 44 prohibition orders, including several orders that included an assessment of a civil money penalty.

We believe that this existing authority to sanction misconduct by individuals is an effective tool to address significant BSA/AML violations involving specific insiders. For example, the Federal Reserve may prohibit an institution-affiliated party for violations of the BSA that are "not inadvertent or unintentional." 12 U.S.C. §1818(e)(2). Significant violations of the BSA and related anti-money laundering laws typically involve parallel criminal investigations. An individual convicted of a felony offense also is subject to the prohibitions set forth in section 19 of the Federal Deposit Insurance Act (FDI Act). 12 U.S.C. §1829. In these instances, the Federal Reserve will typically defer the decision to commence an investigation of an insider, at the request of prosecutors, to avoid interference with any ongoing criminal investigation. The Federal Reserve's enforcement program will instead focus on requiring an institution to remediate problem areas as quickly as possible in order to mitigate any negative effects on the bank and the U.S. financial system. We believe that the Federal Reserve's approach to enforcement matters accomplishes the statutory objective set by the Congress of ensuring the safe and sound operation of the banking system.

Q.3. How does the seriousness with which foreign Governments take compliance in this area affect U.S. regulatory efforts and bank compliance? Why didn't foreign regulators, especially in the EU, pick up on the correspondent banking and cross-border problems, and the wire stripping activity, sooner? Are there other particular areas of concern that you think must be addressed in your current discussions with foreign regulators?

A.3. Not all countries impose the same economic sanctions as the United States. Countries without these standards or with different sanctions than those in the U.S. do not approach sanctions enforcement in the same manner as the United States.

The Federal Reserve believes that a sound global compliance program, and proper oversight, is critical to deterring and preventing illicit activities at, or through, U.S. banks and other financial institutions, and we continuously reinforce this view with our foreign supervisory counterparts. Many of the enforcement actions we have taken in this area have required institutions to implement global compliance measures that will help them evaluate risk comprehensively, taking into account the full range of products, services, customers, and geographic locations of the firm. In a number of BSA/AML and U.S. sanctions enforcement cases, the Federal Reserve has enlisted the aid of our foreign counterparts, including what was formerly the U.K. Financial Services Authority, to ensure that a supervised institution is meeting its responsibilities in its home country and other jurisdictions where our examining authority is limited.

The Federal Reserve promotes high supervisory standards for international BSA/AML and U.S. sanctions compliance and payment transparency through our participation in the U.S. delegation to the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision's (BCBS) anti-money laundering experts group. For example, the U.S. delegation to the FATF continues to press for the strengthening of the international compli-

ance framework and has contributed to the revised set of international standards for AML compliance adopted by the FATF adopted its revised set of standards earlier this year. The BCBS's anti-money laundering experts group provides a forum for regular cooperation on anti-money laundering matters, and has issued guidance in several key areas, such as cover payment transparency. In addition, the Federal Reserve has strong and ongoing coordination and communication channels with our counterparts at foreign regulatory agencies, including but not limited to the U.K.'s Financial Services Authority and its successor organizations, the Prudential Supervisory Authority and the Financial Conduct Authority. On an institution-specific basis, Federal Reserve also participates in supervisory colleges with its foreign supervisory colleagues. These groups are intended to promote information sharing and discussion on a range of supervisory issues and emerging risks at the institution, including anti-money laundering concerns.

Q.4. In the last decade, major new innovative technologies and products have come onto the market, including prepaid access cards, mobile phone banking, smart ATM machines and kiosks, mobile wallets, Internet cloud-based payment processes, and others—and they are evolving rapidly. While they provide huge benefits to consumers, they can also pose major AML risks, including by making it easier to move large amounts of money on stored value cards. What are you doing to mitigate those risks now, and what should banks be doing to mitigate those risks on their own, even as they develop these products?

A.4. The Federal Reserve has long recognized the anti-money laundering risks associated with prepaid cards and other payment systems and has taken steps to address these threats as they emerge. The Federal Reserve maintains an open dialogue with other regulatory agencies and the prepaid card industry and participates in many discussions focused on identifying risks associated with prepaid cards and other technologies. For example, in 2006 and 2010, the Federal Reserve, working with the member agencies of the Federal Financial Institutions Examination Council (FFIEC) working group on BSA/AML matters, incorporated guidance in the FFIEC examination manual on ways banks can mitigate the risks associated with prepaid card programs, and developed specific examination procedures for reviewing the adequacy of a bank's BSA/AML program as it relates to its prepaid card program. The guidance is publicly available through the Federal Reserve's Web site. [1]

The Federal Reserve also serves as cochair to the BSA Advisory Group Subcommittee on Prepaid Access alongside the National Branded Prepaid Card Association (NBPCA). The subcommittee has been in existence now for several years, and includes representatives from the banking regulatory agencies (both Federal and State), the Financial Crimes Enforcement Network (FinCEN), law enforcement, and industry. In addition, Federal Reserve staff speaks regularly at conferences and meetings focused on prepaid cards and emerging payment systems, including NBPCA events

[1] "Federal Financial Institutions Examination Council Bank Secrecy Act/Anti-Money Laundering Examination Manual". Available at: *www.federalreserve.gov/boarddocs/supmanual.default.htm.*

and the annual Federal Reserve Bank of Chicago's Payments Conference.

Q.5. The BSA regulations about wire transfers (at 31 CFR 1010(f)(2)) allow a U.S. bank to accept and process a wire transfer from overseas even if the "transmitter" field is blank. That may have been understandable 15 years ago when the regulations were written. But why has the rule not been changed, in light of the sanctions abuses illustrated by these cases and the possibility of other attempts to avoid our sanctions rules in the future? The changes in the SWIFT regulations to require completion of all fields, which you mentioned in your testimony, do not appear to have the force of law. In a world in which banking institutions operate globally, effective money laundering control is extremely difficult without uniform and uniformly enforced cross-border standards within banks and under applicable law.

A.5. Foreign banks that operate in countries without sanctions similar to those imposed by the United States have not always had in place the mechanisms to ensure transactions routed through the U.S. comply with U.S. law. In 2009, based on transparency concerns raised by the Board and others, the Society for Worldwide Interbank Financial Transaction (SWIFT) adopted a new message format for cover payments (the MT 202 COV) that provides intermediary banks with additional originator and beneficiary information, enabling them to perform sanctions screening and suspicious activity monitoring. In furtherance of these efforts, the Board issued guidance on the necessity for transparency and proper monitoring with respect to cross-border funds transfers.[2] The guidance clarifies that financial institutions should not omit, delete, or alter information in payment messages or orders for the purpose of avoiding detection of that information by any other financial institution in the payment process. Also effective since 2009, the domestic wire transfer systems, Fedwire and Clearing House Interbank Payments System (CHIPS), have created similar message formats to improve transparency of cross-border payment messages.

While the SWIFT message format for cover payments does not have a direct statutory basis, it is enforced by SWIFT against its members, and any institution that fails to provide the appropriate information or that processes a transaction without the appropriate information is subject to penalties imposed by U.S. regulators if the transaction does not conform with U.S. law.

The Board participates in several organizations that are actively involved in enhancing the uniformity of cross-border anti-money laundering standards. In particular, Board is a member of the U.S. delegation to the FATF, which was established with the objective of creating and promoting a common set of anti-money laundering standards for incorporation into the legislative frameworks of its member countries. FATF Standard 16 is primarily concerned with ensuring financial institutions include relevant information with

[2] "Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers" (November 19, 2009). Available at: *www.federalreserve.gov/boarddocs/srletters/2009/sr0909al.pdf.*

cross-border wire transfers, which includes accurate originator and required beneficiary information, as described in the standard. [3]

Q.6. Various international activities of these major banks, especially foreign correspondent banking and other means for cross-border funds transfer, have been recognized by Congress as special risk areas since at least 2001. What further steps should be taken to prevent the movement of illicit funds into and out of the U.S. through banks' non-U.S. branches in violation of U.S. law? What are your agencies doing specifically to address the myriad problems that have arisen in these areas, including by strengthening cooperation with foreign regulators who may be in a position to flag problem banks earlier for U.S. regulators?

A.6. The management of complex international banking businesses creates inherent risks, which must be mitigated through sophisticated enterprise-wide risk management and internal controls. These systems and controls should be reasonably designed by financial institutions to ensure that the institution has effective anti-money laundering procedures in place, including procedures to cover transactions involving its overseas affiliates. The Federal Reserve has issued guidance that highlights the importance of enterprise-wide risk management, and has taken supervisory action to ensure that the internationally active firms we supervise have appropriate controls in place. In many cases, we have enlisted the assistance of foreign regulators, including what was formerly the U.K. Financial Services Authority, to ensure that the supervised institution is meeting its responsibilities in its home country and other jurisdictions where our examining authority is limited.

The Federal Reserve has placed particular emphasis on the importance of risk management in the context of correspondent banking activities. Examiners regularly evaluate whether a bank's compliance program can detect and report suspicious activity with respect to its foreign correspondent account relationships. In addition, we have prescribed advanced procedures for our examiners regarding specific money laundering risks for foreign correspondent banking activities, such as bulk shipments of currency, pouch activity, U.S. dollar drafts, and payable through accounts.

Earlier this year, the FATF issued recommendations concerning the obligations of financial institutions with respect to customer due diligence (CDD). These new recommendations, which are based on input provided by the Federal Reserve and other members of the U.S. delegation to the FATF, emphasize that financial institutions must use CDD information to better understand customer behavior and query whether the customer relationship is being used for improper means. Through its participation at FATF, the Federal Reserve has encouraged our foreign regulatory counterparts to ensure that the financial institutions they supervise have the programs necessary to conduct CDD appropriately.

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[3] For additional information, *see http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF__Recommendations.pdf.*

RESPONSES TO WRITTEN QUESTIONS OF SENATOR CRAPO FROM JEROME H. POWELL

Q.1. *International Coordination:* The dangers of illicit global money must receive adequate and effective attention at the G20, IMF, World Bank, and foreign national levels.

Do each of you, together with the Comptroller, at your particular levels of office, ever meet together to discuss and review BSA programs and policies, both domestically and abroad?

A.1. The Federal Reserve maintains an active dialogue with its regulatory counterparts regarding efforts to combat illicit financing in the U.S. banking system, both domestically and abroad. In addition to strengthening the compliance programs of U.S. financial institutions, we remain committed to making the supervision of internationally active banking organizations more effective and we have engaged in several efforts to achieve this important goal. The Federal Reserve also coordinates with foreign regulators as part of our enforcement program. For example, the Federal Reserve's recent enforcement action against HSBC involved participation from what was formerly the U.K. Financial Services Authority. Likewise, the ABN AMRO case involved De Nederlandsche Bank N.V. (the regulator of Dutch banks).

On the domestic side, the Federal Reserve participates in the Federal Financial Institutions Examinations Counsel (FFIEC), which has an expansive Bank Secrecy Act and anti-money laundering (BSA/AML) working group that promotes high standards for bank examinations and compliance. The Federal Reserve, other FFIEC member agencies, and the Financial Crimes Enforcement Network (FinCEN) meet monthly to review and discuss supervisory issues and to share information regarding emerging risks and other matters regarding banking industry compliance with BSA/AML requirements. To further enhance the goals of the BSA working group, a broader set of Government agencies with supervisory and regulatory responsibilities under the BSA are routinely invited to participate in these discussions.

The Federal Reserve also participates in the U.S. Department of the Treasury's Interagency Task Force on Strengthening and Clarifying the BSA/AML Framework (Task Force), which includes representatives from the Federal banking agencies, the Department of Justice (DOJ), Office of Foreign Asset Control (OFAC), FinCEN, the Commodity Futures Trading Commission (CFTC), and the Securities and Exchange Commission (SEC). The primary focus of the Task Force is to review the BSA, its implementation, and its enforcement with respect to U.S. financial institutions that are subject to these requirements, and to develop recommendations for ensuring the continued effectiveness of the BSA and efficiency in agency efforts to monitor compliance.

Q.2. How effective is the international compliance structure and how exposed are our financial system and individual institutions to cross-border enforcement challenges?

A.2. With respect to international coordination efforts, the Federal Reserve is a member of the U.S. delegation to the Financial Action Task Force (FATF). The FATF's primary objective is to set standards to promote the effective implementation of the AML frame-

work in its member countries. As a member of the U.S. delegation to the FATF, the Federal Reserve continues to press for the strengthening of the international compliance framework and has contributed to the revised set of international standards for anti-money laundering compliance adopted by the FATF earlier this year. These standards are intended to create a global AML framework that is consistent across countries.

The FATF also conducts regular peer reviews, or mutual evaluations, of its member countries' AML frameworks against the standards to facilitate compliance and a level playing field. The mutual evaluations are publicly available and identify specific deficiencies and opportunities for enhancement for each country. Once the FATF evaluates its member countries against the standards, it revises the standards to incorporate lessons learned and implement improved AML measures. Finally, the FATF has a structured process to enhance the AML frameworks of noncompliant countries, such as action plans, publishing lists of noncompliant countries, and engaging the countries' senior Government officials. These measures will help U.S. financial institutions to conduct appropriate due diligence of foreign correspondent accounts involving noncompliant countries.

The Federal Reserve also coordinates internationally through the Basel Committee on Banking Supervision (BCBS). The BCBS provides a forum for regular cooperation on anti-money laundering matters, and has issued guidance in several key areas, such as transparency with respect to cross-border payments. On an institution-specific basis, Federal Reserve also participates in supervisory colleges with its foreign supervisory colleagues. These groups are intended to promote information sharing and discussion on a range of supervisory issues and emerging risks at the institution, including anti-money laundering concerns.

Q.3. It appears that BSA regulations permit wire transfers to enter the U.S. with an incomplete originator field. Since that situation can potentially harm a U.S. bank—what should be done to address this issue?

A.3. Foreign banks that operate in countries without sanctions similar to those imposed by the United States have not always had in place the mechanisms to ensure transactions routed through the U.S. comply with U.S. law. In 1995, the Board and FinCEN issued a rule that requires U.S. financial institutions, at the initiation of a funds transfer, to collect and retain the name of the originator (and, if received with an incoming funds transfer order, the name of the recipient) on funds transfers in excess of $3,000. In 2009, based on transparency concerns raised by the Board and others, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) adopted a new message format for cover payments (the MT 202 COV) that requires banks located outside the United States that send payments through or to the U.S. banking system to provide intermediary banks with originator and beneficiary information that enables them to perform sanctions screening and suspicious activity monitoring. In furtherance of these efforts, the Board issued guidance on the necessity for transparency and prop-

er monitoring with respect to cross-border funds transfers.[1] The guidance clarifies that financial institutions should not omit, delete or alter information in payment messages or orders for the purpose of avoiding detection of that information by any other financial institution in the payment process. Also effective since 2009, the domestic wire transfer systems, Fedwire and the Clearing House Interbank Payments System (CHIPS), have created similar message formats to improve transparency of cross-border payment messages.

Through supervisory and enforcement efforts, the Board has, for many years, focused attention on the payment messages that accompany funds transfers. From a compliance standpoint, U.S. financial institutions routinely screen the information contained in cross-border payment messages to identify transactions that violate U.S. economic sanctions.

The Board participates in several organizations that are actively involved in enhancing the uniformity of cross-border anti-money laundering standards. In particular, Board is a member of the U.S. delegation to the FATF, which was established with the objective of creating and promoting a common set of anti-money laundering standards for incorporation into the legislative frameworks of its member countries. FATF Standard 16 is primarily concerned with ensuring financial institutions include relevant information with cross-border wire transfers. This information includes accurate originator and required beneficiary information, as described in the standard.[2]

Q.4. *Deferred Prosecution Agreements:* The use of a Deferred Prosecution Agreement, or DPA, represents the continuation of a trend in enforcement matters in economic sanctions, export controls, and other matters. In opting for a DPA, companies may avoid criminal prosecution; in exchange, they assume ongoing responsibilities and risks. The DPA is open, on average, for about 18 months.

If it sometimes takes years to uncover BSA violations and other bad behavior, how useful is the DPA as an enforcement tool?

A.4. Please see response for Question 6.

Q.5. What is an example of the lowest trigger for a violation of a DPA?

A.5. Please see response for Question 6.

Q.6. How long have DPAs been in place on financial institutions and has any resulted in a violated? What was the end result?

A.6. A Deferred Prosecution Agreement (DPA) is a tool of the law enforcement community. The Federal Reserve does not have the legal authority to impose criminal penalties against financial institutions for violations of the BSA/AML requirements or U.S. economic sanctions, and also does not use DPAs. The decision to use a DPA or any other criminal law enforcement tool rests solely with the DOJ. In cases where the DOJ has imposed a DPA on a financial institution supervised by the Federal Reserve, the institution

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[1] "Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers" (November 19, 2009). Available at: *www.federalreserve.gov/boarddocs/srletters/2009/sr0909al.pdf.*

[2] For additional information, *see http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF__Recommendations.pdf.*

is also typically required to abide by any orders we impose requiring the firm to take corrective measures, which provides an additional mechanism for enforcing our enforcement actions. Together, these actions result in an overall improvement to the firm's compliance program. The DOJ has imposed DPAs on institutions supervised by the Federal Reserve that are in place for as long as 5 years. Any institution found by the DOJ to be in breach of a DPA may be subject to criminal charges, or any civil or administrative charge that was not filed as a result of the agreement.

Q.7. *Referrals and Examinations:* Has either OCC or the Federal Reserve made any criminal referrals to Federal or other law enforcement officials as a result of examinations and, if so, what were the results?

A.7. The Federal Reserve routinely coordinates with the DOJ and State law enforcement, as appropriate, as part of our enforcement program. When requested by the DOJ or other Federal law enforcement authorities, the Federal Reserve provides support to criminal investigative authorities in connection with criminal investigations that are initiated as a result of these interagency contacts, consistent with applicable legal restrictions. For example, many of the enforcement cases the Federal Reserve has pursued involving violations of the BSA, the related AML rules, and U.S. economic sanctions, have involved a coordinated resolution with the DOJ and State criminal enforcement authorities. These include our case against Riggs Bank, ABN Amro, American Express, Credit Suisse, Barclays, Standard Chartered, and HSBC. These cases are among the largest, most complex enforcement cases in the BSA and U.S. sanctions area. Collectively, these cases have generated billions of dollars in fines paid to the U.S. Treasury.

Q.8. Have the results of any BSA examinations had any negative impact on a bank's CAMEL rating?

A.8. The Federal Reserve assesses the quality of an institution's BSA/AML compliance program and the results are reflected in the management or "M" rating component of the CAMELS rating system. For bank holding companies, the Board conducts an annual supervisory assessment of the firm on a consolidated basis. BSA deficiencies at the holding company or at a subsidiary bank are taken into account in determining the Risk Management rating contained in the Board's annual assessment. Specifically, BSA deficiencies are reflected in the Board's evaluation of the risk management practices, policies, and internal controls at the firm.

Q.9. *Exam Consistency:* The Committee understands that, in the interests of exam consistency, all of the Federal regulators now use the Federal Financial Institutions Examination Council or FFIEC manual for Bank Secrecy Act examinations.

Are there differences in the manner of which each agency conducts its examinations? Particularly, is there a substantial difference in the manner so-called pillar violations or program violations are treated before there is movement to a formal enforcement action. If so, why?

A.9. Since 2005, the Federal banking agencies and State regulatory authorities have relied on the FFIEC manual as a tool for pro-

moting consistency in the BSA/AML examination process for the banking organizations we supervise. These agencies meet regularly under the auspices of the FFIEC working group on BSA/AML to share their examination experiences, and we have revised the manual several times to further ensure consistency in the examination process. Differences in the examination approach taken by the Federal banking agencies are typically the result of differing risk profiles of the individual banking organizations we supervise.

In 2007, the Federal Reserve and the other Federal banking agencies issued a policy, again on an interagency basis, on the application of our enforcement authority in the BSA/AML area. This policy explains when the banking agencies must issue a cease and desist order against a depository institution that fails to establish and maintain a BSA/AML program as required by the agencies' regulations. Under the agencies' regulations, an effective BSA/AML program must have four minimum elements or "pillars," including a system of internal controls to ensure ongoing compliance; independent testing of BSA/AML compliance; a designated individual responsible for managing BSA compliance (BSA compliance officer); and training for appropriate personnel. The enforcement policy was issued in 2007 to promote a consistent approach to agency enforcement of BSA/AML requirements and to make those standards more transparent to the industry.

When an agency identifies a supervisory concern relating to a financial institution's BSA compliance program in the course of an examination or otherwise, the agency may communicate those concerns to the financial institution by various means. In the most serious cases, the Federal Reserve may take a formal enforcement action against an institution. The Federal Reserve has a longstanding practice of citing institutions for failing to establish or maintain one of the individual BSA pillars in formal enforcement actions (referred to as a "sub-part" violation). Since the 1980s, the Board has had a specialized group in the Division of Bank Supervision that reviews BSA/AML examination findings and consults with examiners on enforcement actions to ensure that the Federal Reserve's enforcement responses are consistent with the policy statement, and through this review we ensure an appropriate supervisory response to deficiencies in a bank's BSA/AML compliance program, whether through a formal enforcement action or otherwise.

Q.10. *OCC and Federal Reserve Practice:* What is the practice of the OCC and Federal Reserve on prevention and resolution of deficiencies within its supervisory framework?

A.10. Please see response for Question 11.

Q.11. In the course of resolving deficiencies, has a member bank, or other entity, ever opted to leave either the national banking system or the Federal Reserve System rather than accept an enforcement document?

A.11. The Federal Reserve examines, on a regular basis, institutions for which we have been granted supervisory authority by Congress and, through that authority, reviews the programs financial institutions use to maintain compliance with BSA/AML requirements and U.S. economic sanctions. Enforcement measures may escalate depending on the nature, duration, and severity of

the problem. Problems that cannot be corrected immediately will be formally reported to the institution in the examination report or in a supervisory letter as matters requiring management's attention and corrective action. These matters are presented to the institution's board of directors, which is charged with ensuring that management addresses and corrects them. Federal Reserve supervision staff will subsequently follow management's actions to ensure that the problem is corrected. If a problem requires a more detailed resolution or is more pervasive at an institution, the Federal Reserve may enter into a memorandum of understanding with the financial institution in which the board of directors commits to specific actions to correct the potentially unsafe and unsound banking practice or possible violations of laws or regulations. More serious deficiencies may result in a public enforcement against the institution such as a written agreement, a cease and desist order, and civil money penalties.

Congress has placed significant restrictions on a bank's ability to change charters when subject to an enforcement action regarding a significant supervisory matter. Section 612 of the Dodd-Frank Wall Street Reform and Consumer Protection Act generally prohibits charter conversions by an insured depository institution while the institution is subject to formal enforcement order issued by, or a memorandum of understanding entered into with, its current Federal banking agency, or a State bank supervisor with respect to a significant supervisory matter. The Federal Reserve and the Federal banking agencies have issued guidance to the institutions we supervise advising them of these restrictions. [3]

Where a depository institution attempts to evade a formal enforcement action by converting charters in advance of the action, under section 612, the current Federal banking agency will notify the prospective Federal banking agency supervisor of any ongoing supervisory or investigative proceedings that the current Federal banking agency believes are likely to result in a formal action in the near term with respect to a significant supervisory matter. Under these circumstances, the current Federal banking agency will provide the prospective Federal banking agency supervisor with access to all investigative and supervisory information relating to the proceedings.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM JEROME H. POWELL

Q.1. The United States Government takes money laundering very seriously. A bank that launders drug money or terrorists' money can be shut down, [1] and individuals in the bank can be banned from banking. [2] In December, HSBC admitted to laundering at least $881 million for Colombian and Mexican drug cartels, and violating U.S. sanctions against Iran, Cuba, Libya, Sudan, and

[3] Interagency Statement on Section 612 of the Dodd-Frank Act Restrictions on Conversions of Troubled Banks (November 26, 2012). Available at: *http://www.federalreserve.gov/bankinforeg/srletters/sr1216al.pdf.*

[1] *See,* e.g., "Annunzio-Wylie Anti Money Laundering Act of 1992", §§1501–1507, Pub. L. 102-550, 106 Stat. 3680 (1992).

[2] 12 U.S.C. 1818(e) and (g).

Burma.[3] These were not one-time actions. The bank was warned over and over and told to fix the problem, and it didn't. It just kept making money by laundering money for drug dealers.[4]

In the hearing, you noted that the threshold determination for revoking a bank's charter is dependent on prosecution and conviction, and you testified that the Justice Department makes determinations about when it is appropriate to prosecute. However, there are other tools available to hold accountable banks and bankers who engage in illegal activity, such as banning individuals from the banking industry. Could you please describe:

Whether your agency has any regulation, guidance, policies, formal or informal, that guide when individuals should be banned from banking under 12 U.S.C. §§1818(e) and (g). If so, please provide those documents.

A.1. Please see response for Question 3.

Q.2. Under what circumstances your agency has used 12 U.S.C. §§1818(e) and (g) in the past, including any actions taken against bankers in the largest financial institutions.

A.2. Please see response for Question 3.

Q.3. The process your agency does or would follow to use its authority under 12 U.S.C. §§1818(e) and (g).

A.3. The Federal Reserve and other Federal banking agencies make decisions on whether to initiate actions to ban individuals from banking based on application of the statutory criteria to the facts of the particular case. To prohibit an individual from participating in the banking industry under 12 U.S.C. §1818(e), the Federal Reserve must show that the individual engaged in an unsafe or unsound practice, breach of fiduciary duty or violation of law that resulted in losses or other harm to the institution or gains to the individual, and that involved personal dishonesty, or willful or continuing disregard for safety and soundness. 12 U.S.C. §1818(e)(1). Congress has also provided the Federal banking agencies with authority to prohibit insiders in cases involving violations of the Bank Secrecy Act (BSA) if such violation "was not inadvertent or unintentional," or is aware that an institution-affiliated party has engaged in a criminal violation of the BSA or the anti-money laundering laws. 12 U.S.C. §1818(e)(2). The Federal banking agencies may also suspend an institution-affiliated party who is charged with a felony involving dishonesty or a breach of trust or with a criminal violation of anti-money laundering laws, pending final resolution of the criminal charges. 12 U.S.C. §1818(g)(1). In these cases, we may also determine that the assessment of civil money penalties is appropriate against the individual.

Because application of the statutory factors for a prohibition order is highly dependent on the individual factual record relating to a particular banker's conduct, we have not issued any general guidance or policies related to the exercise of this authority.

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[3] Dept. of Justice, Press Release, Dec. 11, 2012, available at: *http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html.*

[4] Senate Permanent Subcommittee on Investigations, "U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History", July 16, 2012, available at: *http://www.levin.senate.gov/download/?id=90fe8998-dfc4-4a8c-90ed-704bcce990d4.*

An individual convicted of a criminal offense involving dishonesty or a breach of trust also is subject to the prohibitions set forth in section 19 of the Federal Deposit Insurance Act (FDI Act). 12 U.S.C. §1829. Section 19 prohibits a convicted person from directly or indirectly owning, controlling, or participating in the affairs of any insured depository institution, or a bank or savings and loan holding company in the United States without the consent of the Federal Depository Insurance Corporation (FDIC), in the case of an insured depository institution, or the Board in the case of a holding company. 12 U.S.C. §1829(a)(1). The regulators may not consent to such service or control by a person who has been convicted of certain types of crimes, such as a conviction for money-laundering, for 10 years from the date of the conviction. 12 U.S.C. §1829(a)(2).

In the past 5 years, the Federal Reserve has issued 44 prohibition orders, including several orders that included an assessment of a civil money penalty, and notified more than 200 individuals of their ban from banking under section 19. These actions involve individuals employed by several large financial institutions, including UBS, Bank of New York Mellon, American Express, CitiFinancial, Wells Fargo, SunTrust, and Regions. These prohibitions involved, among other things, instances of unauthorized trading activity, falsification of records, and other unsafe bank practices and violations of law.

The Federal Reserve and the Federal banking agencies have issued rules of practice and procedures that govern prohibition and removal actions. 12 CFR §263 et seq. A copy of these regulations is attached. The Federal Reserve makes public all of its prohibition orders and posts them on its Web site at: *www.federalreserve.gov/apps/enforcementactions/search.aspx.*

Q.4. Attorney General Holder testified before the Judiciary Committee that he is "concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when, . . . if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy."

Can you explain how your efforts to ensure compliance with money laundering laws are affected when so many people—even the Attorney General of the United States—think it is "difficult to prosecute" the biggest banks?

A.4. Please see response for Question 5.

Q.5. Are you worried that the size and interconnectedness of our Nation's largest financial institutions negatively affects your ability to enforce the law and reduces your leverage?

A.5. The Federal Reserve firmly believes that no institution is above the law or too large to be prosecuted for failure to comply with the law. Indeed, the Federal Reserve, which has authority to impose only civil penalties and orders, has on its own and in coordination with other law enforcement agencies, imposed a number of substantial fines and penalties against the largest, most complex financial firms using the enforcement authorities granted by Congress to the Federal banking agencies. In addition to fines, the Federal Reserve's enforcement actions required firms to implement the necessary firm-wide compliance risk management programs.

Q.6. At the hearing, Under Secretary Cohen and Governor Powell both testified that the Justice Department was in contact with their institutions regarding the HSBC case. Without reference to any particular case, can you describe the general or usual process for cooperation between your institution and the Justice Department regarding money laundering and Bank Secrecy Act issues? In particular:

Which office or offices in the Justice Department contact your institution?

A.6. Please see response for Question 10.

Q.7. Which office or offices in your institution are contacted?

A.7. Please see response for Question 10.

Q.8. At what points in the enforcement process is your institution contacted?

A.8. Please see response for Question 10.

Q.9. What information is usually requested?

A.9. Please see response for Question 10.

Q.10. Are there are any formal or informal guidelines that are used for interagency cooperation on Bank Secrecy Act or Anti-Money Laundering issues?

A.10. The Federal Reserve maintains close contact with multiple offices of the Department of Justice (DOJ). In cases involving potential money-laundering or BSA violations, the Board's Legal Division is typically in contact with the Asset Forfeiture and Money-Laundering Section (AFMLS) of the Criminal Division of the DOJ. The Board and the Reserve Banks also maintain contact with the local United States Attorney. For example, in the HSBC case the Board and the Reserve Bank legal departments maintained contact with the local United States Attorney's office, the District Attorney for New York County, and AFMLS. The Federal Reserve contacts the DOJ whenever we have reason to believe a criminal violation of the BSA has occurred. The Board also contacts Office of Foreign Assets Control (OFAC) and Financial Crimes Enforcement Network (FinCEN) as appropriate, as well as State prosecutors. The Federal Reserve provides support to criminal authorities investigating potential violations of the BSA, related anti-money laundering laws, and U.S. economic sanctions consistent with applicable legal restrictions. The kind of cooperation provided depends on the circumstances of the particular case. Typically, such assistance involves sharing supervisory information and expertise with staff from the criminal division of the DOJ and the local United States Attorney's office. The Federal Reserve makes its own decision whether to bring a civil enforcement case; the decision to file criminal charges in a particular case is fully within the discretion of the DOJ or other Federal agency with the authority to press criminal charges.

The rules or procedures that govern our interagency cooperation efforts depend on the type of assistance requested by law enforcement. For example, requests made by law enforcement for supervisory information and other assistance are subject to the rules and procedures regarding the availability of supervisory information. 12

CFR §261.21. Conversely, the circumstances may require Federal Reserve staff to obtain access to Grand Jury information in order to lend our expertise on matters under consideration by the Grand Jury. Congress has prescribed a legal mechanism to facilitate the sharing of such information in these instances. 12 U.S.C. §3322(b).

Q.11. The Federal Reserve has conducted a great deal of research around various topics in money laundering, including around compliance issues. As you know, the Federal Reserve has a unique ability to take a broader, deeper look at the industry and its practices, rather than focusing on a particular case.

Has the Federal Reserve conducted any studies, similar to its private banking study, recently? If so, can you provide these studies?

A.11. Please see response for Question 13.

Q.12. Are there plans to conduct similar studies in the future?

A.12. Please see response for Question 13.

Q.13. Has the Federal Reserve conducted any studies of problems revealed during examinations on BSA issues? If so, can you provide these studies?

A.13. Since the Federal Reserve's efforts to highlight the illicit financing risks associated with private banking activities in 1996, we have continued to addresses perceived anti-money laundering vulnerabilities in the banking industry by developing supervisory guidance and making improvements to our examination procedures. For example, in 2008, the Federal Reserve issued supervisory guidance regarding firm-wide compliance expectations for large, complex banking organizations.[5] A firm-wide compliance function that plays a key role in managing and overseeing compliance risk while promoting a strong culture of compliance across the organization is particularly important for large, complex organizations that have a number of separate business lines and legal entities that must comply with a wide range of applicable rules and standards. In 2009, based on transparency concerns raised by the Board and others, the Society for Worldwide Interbank Financial Telecommunication (SWIFT) adopted a new message format for cover payments (the MT 202 COV) that provides intermediary banks with additional originator and beneficiary information, enabling them to perform sanctions screening and suspicious activity monitoring. In furtherance of these efforts, the Board issued guidance on the necessity for transparency and proper monitoring with respect to cross-border funds transfers.[6]

The Federal Reserve's expectations in the area of firm-wide compliance have been incorporated into the procedures utilized by the member agencies of the Federal Financial Institutions Examination Council (FFIEC) for conducting compliance examinations under the BSA and anti-money laundering (BSA/AML) rules and regulations. The Federal Reserve has not conducted any special studies; how-

[5] S.R. 08-8, "Compliance Risk Management Programs and Oversight at Large Banking Organizations With Complex Compliance Profiles" (October 18, 2008). Available at: *www.federalreserve.gov/boarddocs/srletters/2008/SR0808.htm.*

[6] "Transparency and Compliance for U.S. Banking Organizations Conducting Cross-Border Funds Transfers" (November 19, 2009). Available at: *www.federalreserve.gov/boarddocs/srletters/2009/sr0909al.pdf.*

ever, we have recently begun working with the FFIEC member agencies to identify additional areas of concern that require heightened attention by the banking organizations we supervise, based on our examination experience, and will incorporate the results of this effort as part of our continuing effort to update our examination procedures.

Currently, as a member of the U.S. Department of the Treasury's Interagency Task Force on Strengthening and Clarifying the BSA/AML Framework (Task Force), the Federal Reserve is engaged in a review of the BSA, its implementation, and its enforcement with respect to U.S. financial institutions that are subject to these requirements. The Task Force will develop recommendations for ensuring the continued effectiveness of the BSA and efficiency in agency efforts to monitor compliance.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR HEITKAMP FROM JEROME H. POWELL

Q.1. As all of you mentioned, the sophistication and determination of money launderers, terrorist financiers, and other criminals has evolved and changed as they find ways to gain access to our institutions. How can we support smaller institutions that cannot afford to put the same programs in place as the large banks? In your examinations, have you noticed vulnerabilities on a large scale?

A.1. Financial institutions are expected to maintain a Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance program scaled to the specific risk profile of the institution. An institution's risk profile involves factors such as the size of the banking organization, the products and services it offers, and the markets it serves. Consequently, the risk profile for a smaller community banking organization will be different than that of a large, complex banking organization with international operations, and the examination process will be tailored in accordance with that profile. The Federal Reserve understands that some community banks may not share the same level of risk and resources as their larger peers. When determining the depth of a BSA/AML review, our examiners consider the institution's risk profile, history of BSA/AML compliance, and emerging risks in the markets it serves.

While the majority of the institutions supervised by the Federal Reserve have well-administered programs for complying with the BSA, there have been occasions when examiners have raised concerns with the programs maintained at smaller institutions. For example, in 2012, the Federal Reserve issued a Cease and Desist Order against Asian Bank, Philadelphia, Pennsylvania, for BSA compliance deficiencies and required the bank's management maintain effective control over, and supervision of the bank's BSA/AML compliance program. The Federal Reserve and the member agencies of the Federal Financial Institutions Examination Council (FFIEC) have developed a uniform manual for examining the programs used by banking organizations to maintain compliance with the BSA/AML rules and regulations. Examinations are based on the broad principle that an effective BSA/AML compliance program requires sound risk management. This FFIEC BSA/AML examination manual also provides guidance that smaller institutions can

use to identify and control these risks. The manual undergoes periodic revisions to ensure it is relevant and responds appropriately to risks identified by examiners or law enforcement, and that those procedures apply to those specific institutions that carry those risks.