The following Question and Answer (Q & A) provides interpretive guidance to questions submitted during the July 31, 2006, OTS BSA/AML "Getting it Right" conference call. The answers provided may encompass suggested best practice guidance and are not intended to be comprehensive, apply to all factual situations, or to replace or supersede the BSA regulations. Whenever possible, we provided hyperlinks to various referenced guidance materials and/or administrative rulings.

A. Bank Secrecy Act/Anti-Money Laundering Examination Manual Questions

A1.Q: The new manual is 367 pages. Is this a total revamp, or can you provide a listing of the pages (or sections) that need to be replaced so that I do not need to reprint the entire manual?

A1.A: We recommend you print the entire manual because it would be very difficult to match up pages between the 2005 and 2006 manual. Although not every section of the manual was updated, the Bank Secrecy Act/Anti-Money Laundering Examination Manual (2006 BSA/AML Examination Manual) is significantly reformatted and reorganized to make it more user-friendly. For example, the overview sections are followed by their corresponding examination procedures. The table of contents identifies revised sections within the 2006 version of the manual.

A2.Q: When is the revised FFIEC BSA/AML manual effective?

A2.A: We have advised OTS examiners to begin using the updated OTS BSA/AML Preliminary Examination Response Kit (PERK) beginning on or after August 1, 2006. Examiners will use the updated examination procedures for those institutions that receive the new PERK (i.e., for PERK's transmitted on or after August 1, 2006).

A3.Q: Does the new manual have a summary of the new changes?

A3.A: The manual does not include a summary of changes, however, as mentioned above sections of the 2006 manual that have been added or significantly modified from the previous edition are reflected by date in the table of contents. In addition, the interagency transmittal letter released with the manual summarizes the revisions and updates in the 2006 version.

B. BSA Training Questions

B1.Q: Does the OTS BSA/AML "Getting it Right" conference call qualify as BSA training?

B1.A: For examination purposes, if documented in your training records (e.g., event and who attended) we would credit it towards ongoing BSA training for experienced staff such as a BSA Officer. On the other hand, this conference call would not qualify as a substitute for training needed by newly hired front-line personnel, which needs to be more comprehensive and should include testing to confirm basic knowledge of the BSA recordkeeping/reporting requirements.

B2.Q: How often do you recommend the board of directors receive BSA training?

B2.A: For experienced staff, it recommended that BSA training be conducted at least annually. As a best practice, BSA training for board members should be ongoing and incorporate current developments and changes to the BSA and any related regulations. Guidance found on Pages 32-33 of the 2006 BSA/AML Examination Manual states: "The board of directors and senior management should be informed of changes and new developments in the BSA, its implementing regulations and directives, and the federal banking agencies' regulations."

B3.Q: Is it sufficient to train just the audit committee of the board of directors?

B3.A: No, it is not sufficient to just train an audit committee of the board of directors. BSA training should encompass all board of directors. While board members may not require the same degree of training as front-line operations personnel, they need sufficient training to provide a general understanding of BSA regulatory requirements in order to provide effective compliance oversight, approve policy, and ensure adequate resources.

B4.Q: How does the agency view on-line BSA training for bank employees? Is it considered sufficient? The training includes a general overview of the BSA regulations and it includes specific BSA regulatory requirements and guidelines for Tellers, Loan Personnel and Operations personnel. Employees must get a passing grade of 80% on the courses in the post-test to have successfully completed the course. Compliance Officer monitors the training and areas of difficulty are addressed. Records of training are maintained each year. The BSA Officer attends at least one outside BSA training course each year.

B4.A: On-line BSA training is considered sufficient if appropriate personnel are trained in applicable aspects of the BSA and can demonstrate knowledge. Appropriate personnel encompass any employee including senior management whose duties require knowledge of the BSA. BSA training guidance beginning on page 32 of the 2006 BSA/AML

Examination Manual states: "The training should be tailored to the person's specific responsibilities. In addition, an overview of the BSA/AML requirements typically should be given to new staff during employee orientation. Training should encompass information related to applicable business lines, such as trust services, international, and private banking. The BSA compliance officer should receive periodic training that is relevant and appropriate given changes to regulatory requirements as well as the activities and overall BSA/AML risk profile of the bank." ..."Banks should document their training programs. Training and testing materials, the dates of training sessions, and attendance records should be maintained by the bank and be available for examiner review."

C. Currency Transaction Report (CTR) & Designation of Exempt Person (DEP) Questions

C1.Q: Is "retired" an acceptable occupation to enter on the CTR form?

C1.A: Guidance issued September 1995 by FinCEN advises that "homemaker", "retired", or "unemployed" are acceptable as occupation descriptions, but that financial institutions should attempt to get information that is more specific, and pay particular attention to customers with such non-specific occupations who continually make large cash deposits. In addition, the occupation "self-employed" is not acceptable without additional information as it is too non-specific.

C2.Q: Should daily currency transactions for two or more separately incorporated businesses having different tax identification numbers, owned by the same principal, be aggregated for purposes of CTR filings?

C2.A: 31 CFR § 103.22(c)(2) of the BSA, requires that "multiple currency transactions shall be treated as a single transaction if the financial institution has knowledge that they are by or on behalf of any person and result in either cash in or cash out totaling more than $10,000 during any one business day." However, a common principal ownership of incorporated businesses maintaining separate accounts and tax identification numbers does not itself trigger the currency aggregation-reporting requirement. The aggregation requirement may apply if factors exist indicating the businesses owned by the same principal are not operated separately and independently. For example, customer due diligence may disclose that commonly owned businesses share employees, or payroll, or that one of the business accounts is used to pay expenses of another. Those exampled findings should lead you to conclude that the common owned, multiple, incorporated businesses are not truly separate and independent. Further, due diligence may indicate that the businesses currency transactions should be aggregated as conducted by or on

behalf of one person. For additional guidance, please see the aggregation analysis provided in FinCEN Ruling 2001-2.

C3.Q: Two of our business account customers, one a local restaurant and one a local theater group, deal primarily in cash. Can we consider these two businesses on an exemption list? Both businesses have been with us for over a year.

C3.A: If the questioned businesses are not publicly traded or listed on the specified stock exchanges, they would be eligible for exempt status as a "Non-Listed Business" if all criteria in 31 CFR § 103.22(d)(2)(vi) is met. That is, the incorporated entity has maintained a transaction account (or separate accounts for each franchise) for at least 12 months, engages in frequent currency transactions in excess of $10,000. FinCEN has provided guidance on interpreting the term "Frequently" found in the criteria for exempting a "Non-Listed Business" under 31 CFR § 103.22(d)(2)(vi)(B). Finally, as a way of reducing CTR submissions, we encourage you to expand utilization of the statutory exemption provisions for eligible customers by completing the FinCEN form 110, Designation of Exempt Person.

C4.Q: We have a customer that made a cash deposit into a joint account. The 3rd owner had missing information on the system and we were unable to get in touch with the customer before the 15-day time limit expired for filing a CTR. How do we correct this now?

C4.A: For deposits, all those who are known to have benefited from the transaction (e.g., joint accountholders) must be identified on the CTR. Upon obtaining the missing beneficiary joint account owner information, you should submit an amended CTR by checking box "a" in Item 1, i.e., "Amends prior report". For addition guidance about amending a prior CTR or about obtaining a backfilling determination, please contact the IRS-Detroit Computing Center (DCC) Hotline Help Desk at 1-800-800-2877.

D. BSA/AML Risk Assessment Questions

D1.Q: Is it necessary to have a separate risk assessment for Suspicious Activity Reporting?

D1.A: No, it is not necessary to conduct a separate risk assessment for Suspicious Activity Reporting. A quality risk assessment should encompassed mitigating controls for all areas subject to the BSA recordkeeping/reporting requirement including SARs.

D2.Q: Can the OFAC risk assessment be combined with the BSA risk assessment?

D2.A: Yes, an OFAC and BSA risk assessment could be combined because an adequate assessment in these areas would encompass common factors such as products, services, customers, transactions, and geographic locations, to identify potential risk exposure. For guidance on assessing OFAC risk, please review the "Office of Foreign Assets Control - Overview" found on pages 135-143 of the 2006 BSA/AML Examination Manual.

D3.Q: Common weakness noted in the BSA Conference call was for a "formal" risk assessment. Does OTS have a recommended resource for developing a "formal" model?

D3.A: As a resource reference for developing a formal risk assessment, we recommend the newly added "BSA/AML Risk Assessment – Overview" and "Examination Procedures" section, pages 18-27 of the 2006 BSA/AML Examination Manual.

D4.Q: Is there guidance for determining or assessing customer risk?

D4.A: The 2006 BSA/AML Examination Manual provides guidance for assessing and monitoring customer risk is provided in the newly added "BSA/AML Risk Assessment – Overview" section, pages 20-21, and also in the "Expanded Examination Overview and Procedures" section for "Person and Entities", pages 257-294.

E. Customer Identification Program (CIP) Questions

E1.Q: There have been many requests for us to accept the Matricula Consulate card. Everything I read on this indicates most of these cards are fraudulent and there is no way to verify their legitimacy. Nevertheless, there are many banks accepting them. How are they doing due diligence on these accounts?

E1.A: You are correct in that a number of banks accept consular identification issued by foreign governments to their citizens living abroad. While concerns have been voiced regarding the Matricula Identification (ID) cards, conflicting views exist on their usage and acceptance, and to date there is no Federal guidance in this area. The CIP rule neither endorses nor prohibits bank acceptance of information from these particular types of identification documents issued by foreign governments, such as the Matricula ID. Instead, a bank must decide for itself, based upon appropriate risk factors, whether the information presented by a customer is reliable. If your institution accepts consular identification, as a best practice, additional safeguard steps should be considered and incorporated into your CIP program. For example, one safeguard practice we have observed is the contacting of the closest Mexican Consulate office to verify validity of the issued ID.

E2.Q: We have some Amish customers that do not have social security cards. They want a mortgage loan and the interest paid needs to be reported to the IRS. They say that they are exempt from getting social security card and/or taxpayer identification number. I cannot find where they are exempt. Our policy says furnish us with information in 8 weeks or we close the account.

E2.A: Pursuant to 31 CFR §103.121(b)(2)(i), customer information required, a bank cannot open an account for a U.S. person that does not have a taxpayer identification number (TIN). The CIP regulation does provide an exception for a customer who the bank confirms applied for a TIN before opening the account, and the TIN is obtained within a reasonable period of time. For additional required customer information guidance, please see the April 28, 2005 Interagency Interpretive Guidance on Customer Identification Program Requirements.

E3.Q: Can there be reliance on CIP conducted by a mortgage broker if the mortgage broker provides annual certifications that it complies with CIP? Are such annual certifications required? We have been told that the larger lenders do not require that their mortgage brokers provide annual certifications.

E3.A: No, there cannot be reliance on CIP conducted by a mortgage broker via annual certifications of compliance with the CIP. A "mortgage broker" is not considered a "financial institution" for purposes of the reliance provision under the CIP rule when the bank is extending credit to the borrower using the mortgage broker as its agent. In contrast to the reliance provision in the CIP rule, 31 CFR §103.121(b)(6), the bank is ultimately responsible for its agent's compliance with the rule, however, may delegate to its agent the obligation to perform the requirements of the bank's own CIP. Guidance provided in the Interagency Interpretive Guidance on Customer Identification Program Requirements states: "...a bank can only use the reliance provision when the other financial institution is regulated by a Federal functional regulator and is subject to a general BSA compliance program rule, they share the customer, the bank can show its reliance upon the other financial institution's performance of an element of the bank's CIP was reasonable under the circumstances, and the requisite contract is signed and certifications provided."

E4.Q: Can there be exceptions in our CIP policy if the board approves the exceptions?

E4.A: While board approved polices may provide for exceptions that are not in violation of law or regulation, the CIP rule only allows a specific exception, i.e., persons applying for a TIN prior to an account opening, 31 CFR §103.121(b)(2)(i)(B). In contrast, the CIP rule does provide for and requires board approved risk-based procedures for verifying the

identity of the customer within a reasonable period of time after the account is opened, including procedures describing when it will use documents, nondocumentary methods, or a combination of both, or, when a bank cannot form a reasonable belief that it knows the true identity of the customer. Detailed guidance on risk-base customer verification procedure requirements is provided in the "Customer Identification Program — Overview" section, pages 45-51 of the 2006 BSA/AML Examination Manual,

E5.Q: Where the bank has entered into an agreement with an IRA service provider and recordkeeper to provide custodial services, what are the bank's CIP and suspicious activity monitoring/reporting responsibilities?

E5.A: For purposes of the CIP an account is defined as a formal banking relationship established to provide or engage in services, which includes custodial services. It is permissible to have this type of third party service provider act as the bank's agent to perform aspects of its CIP, however, the bank is ultimately responsible for compliance with the requirements of the CIP including SAR monitoring/reporting responsibilities.

F. Customer Due Diligence (CDD) & AML Monitoring/SAR Questions

F1.Q: If an institution determines that a customer is Kiting are they required to issue a SAR?

F1.A: OTS regulation 12 CFR §563.180(d)(3)(ii) requires a SAR to be filed for known or suspected violations aggregating $5,000 or more where a suspect can be identified. Check kiting is illegal and kiting schemes involving transactions exceeding $5,000 or more must be reported. Kiting typically occurs when a depositor with accounts at two or more banks draws checks against the uncollected balance at one bank to take advantage of the float, i.e., time required for the bank of deposit to collect from the paying bank. Further, the depositor initiates the transaction with knowledge that there are not sufficient collected funds available to cover the amount of the checks drawn on all accounts.

F2.Q: Two of our business account customers, one a local restaurant and one a local theater group, deal primarily in cash. Aside from filing necessary CTRs, is there anything additional we need to satisfy due diligence?

F2.A: The objective of any customer due diligence (CDD) should be to enable you to predict with relative certainty the customer's normal and expected transactions, which in turn, will enhance your institution's ability to detect and report unusual or suspicious transactions. For further guidance on developing and implementing a risk-based CDD

program and/or procedures, please refer to the Customer Due Diligence-Overview section beginning on page 56 of the 2006 BSA/AML Examination Manual.

F3.Q: We are a large international bank with a department dedicated to monitoring activities. Does the new manual create any new requirements for monitoring programs?

F3.A: The 2006 BSA/AML Examination Manual is updated to include changes in regulations and supervisory guidance such as the final rules implementing Section 312 of the USA PATRIOT Act, which encompasses Private Banking Due Diligence Program (Non-U.S. Persons), Foreign Correspondent Account Recordkeeping and Due Diligence, and Politically Exposed Persons. As an international operation, to determined any need to adjust your AML monitoring program, we suggest you carefully review the following manual sections: Suspicious Activity Reporting, Foreign Correspondent Account Recordkeeping and Due Diligence, Private Banking Due Diligence Program, Insurance, and Politically Exposed Persons. Design requirements of your suspicious activity-monitoring activities should be based on an assessment of money laundering risk exposure for the types of products, services, customers and entities, and geographic locations your bank serves.

F4.Q: Given the confidential nature and strict requirements for the handling of any National Security Letter (NSL), what is acceptable language to be included in the BSA-AML policy to indicate the bank's procedures?

F4.A: Currently, there is no model language provided by the federal banking agencies for acceptable policy/procedure language regarding National Security Letters (NSLs). As a best practice, you should establish policies, procedures, and processes for handling law enforcement inquiries such as grand jury subpoenas, NSLs, and section 314(a) requests. Financial institutions that receive NSLs must respond appropriately to ensure the confidentiality of the letters, and you should have procedures in place for processing and maintaining the confidentiality of NSLs. NSLs are highly confidential documents; as such, examiners will not review or sample specific NSLs. Page 65 of the 2006 BSA/AML Examination Manual provides additional guidance for handling of these requests.

F5.Q: The United States is listed as a Country of Primary Concern in the list contained within the 2006 International Narcotics Control Strategy Report (INCSR). As the requirement is for bank’s to use heightened monitoring procedures when handling wire activity from any country on this list, how do we reconcile the USA being on the list without having to use heightened monitoring procedures on every transaction?

F5.A: For clarification purposes, those countries listed in the INCSR category "Country of Primary Concern" are based on significance of amount of proceeds laundered, and this category is not an assessment of a particular country's anti-money laundering efforts. That said, as a best practice, implementation of risk-based monitoring procedures for domestic and/or international wire fund activity should help alleviate having to use heighten monitoring on every fund transfer. For example, if your analysis shows low volume wire transfers that mainly involve bank to bank wires for mortgage settlements, and you restrict individual wire transfers to established customers, obviously the risk is lower and so is the need for heighten monitoring procedures. Risk factors to consider along with mitigating controls such as obtaining customer due diligence (CDD) information are exampled in the Fund Transfer-Overview section beginning on page 193 of the 2006 BSA/AML Examination Manual.

F6.Q: Will the agency consider offering financial institutions a best practice or guidelines for monitoring high-risk customers?

F6.A: The 2006 BSA/AML Examination Manual provides suggested best practices for progressive methods of due diligence for suspicious activity monitoring. In addition, there are publications available that are specific to certain operational areas regarding best practices. For example, the 2003 Financial Action Task Force publication, "Combating the Abuse of Alternative Remittance Systems", provides international best practice guidelines. As due diligence is an ongoing process, banks should take measures to ensure account profiles are current and AML monitoring is risk based. As a best practice, banks should also consider whether risk profiles should be adjusted or suspicious activity reported when the activity is inconsistent with the account profile.

F7.Q: When testing (during independent testing) to determine whether a SAR was filed on time, is it correct to start the 30-day time frame from the time the activity was deemed suspicious (for example, post-investigation), or should the clock start ticking when the transaction occurs?

F7.A: OTS regulation 12 CFR §563.180 requires a SAR to be filed "...no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a SAR. If no suspect was identified on the date of detection of the incident requiring the filing, a savings association or service corporation may delay filing a SAR for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction." FinCEN has provided additional guidance regarding timing for SAR filings including timing guidance for repeated SAR filings on the same activity in Section 5 of The SAR Activity Review – Trends, Tips & Issues (October 2000), which states: "...It

may be appropriate for organizations to conduct a review of the activity to determine whether a need exists to file a SAR. The fact that a review of customer activity or transactions is determined to be necessary is not necessarily indicative of the need to file a SAR, even if a reasonable review of the activity or transactions might take an extended period of time. The time to file a SAR starts when the organization, in the course of its review or on account of other factors, reaches the position in which it knows, or has reason to suspect, that the activity or transactions under review meets one or more of the definitions of suspicious activity."

F8.Q: Law enforcement requests for information under section 314(a) of the Patriot Act as provided for under 31 CFR §103.100(b)(2)(ii) states: "Report to FinCEN. If a financial institution identifies an account or transaction identified with any individual, entity, or organization named in a request from FinCEN, it shall report to FinCEN, in the manner and in the time frame specified in FinCEN's request, the following information: (A) The name of such individual, entity, or organization; (B) The number of each such account, or in the case of a transaction, the date and type of each such transaction; and (C) Any Social Security number, taxpayer identification number, passport number, date of birth, address, or other similar identifying information provided by the individual, entity, or organization when each such account was opened or each such transaction was conducted." If a financial institution identifies a match for a named subject, do they need to wait for a subpoena to provide information requested under paragraphs (B) and (C)?

F8.A: No, you do not need to wait for a subpoena for the information requested under the aforementioned paragraphs (B) and (C) of 31 CFR §103.100(b)(2)(ii). The information required to be reported is in accordance with a Federal statute or rule promulgated thereunder, for purposes of subsection 3413(d) of the Right to Financial Privacy Act (12 U.S.C. 3413(d)) and subsection 502(e)(8) of the Gramm-Leach-Bliley Act (15 U.S.C. 6802(e)(8)).

F9.Q: Can you provide us with guidance on monitoring Money Service Businesses (MSB) accounts?

F9.A: On April 25, 2005, FinCEN and the federal banking agencies issued interpretive Guidance on Providing Banking Services to Money Services Businesses Operating in the United States to clarify the BSA requirements and supervisory expectations for accounts opened or maintained for MSBs. The guidance sets forth the minimum due diligence expectations for banks when opening or maintaining accounts for MSBs. You will also find guidance on monitoring MSB accounts beginning on page 271 of the 2006 BSA/AML Examination Manual.

F10.Q: What documentation is required when a money service business (MSB) registers with FinCEN?

F10.A: FinCEN's website dedicated to MSBs provides detail on documentation required for a Money Services Business Registration. To confirm FinCEN registration, if required, this website also provides an updated MSB Registration List.

F11.Q: If a customer of Bank A (there has been full due diligence, including CIP and source of funds and wealth) remits funds to Bank A via a Latin American MSB which is NOT a correspondent of the Bank A, and those funds are transferred through Bank B, another US bank, which does have a correspondent relation with the MSB, is Bank A required to conduct any due diligence on the MSB even though Bank A does not have any direct relationship with the Latin American MSB?

F11.A: Your question indicates that the Latin American MSB has an established correspondent relationship with Bank B. Further, that a full CDD was conducted of bank A's customer. Under this scenario, if the remittance of funds are normal and expected transactions commensurate with the Bank A's known customer profile, additional due diligence of the Latin American MSB would appear unnecessary unless subsequent unusual or suspicious transactions are detected. If you have concerns regarding transactions occurring directly and/or indirectly with a foreign MSB, as a best practice, consider checking with the related foreign countries' financial banking authority. Also, some foreign countries will provide an Internet webpage listing of legitimate MSBs under their respective regulatory authority.

F12.Q: If our association cashes a check for a known customer, the check is return and identified as a check scam, because we know the identity of our customer who is identified as the victim, therefore a SAR is required, regardless that the amount is less than $25,000. Is our understanding correct?

F12.A: If your exampled scenario is indicating that no suspect could be identified and amount of known or suspected violations is less than $25,000, no SAR is required to be filed. OTS regulation 12 CFR §563.180(d)(3)(iii) requires a SAR to be filed for known or suspected violations aggregating $25,000 or more when there is "...no substantial basis for identifying a possible suspect or group of suspects." Meanwhile, nothing prohibits the filing of a SAR below required regulatory thresholds and if you suspect the "check scam" is widespread, the information you provide may prove useful to law enforcement.

F12.Q: Please detail the various operations reports you recommend compliance professionals review when their institution cannot justify expensive monitoring solutions.

F12.A: We recommend utilizing available BSA recordkeeping and reporting information as part of your anti-money laundering program to detect unusual activity that may not be commensurate with a customer's known profile. Examples of those reports include: CTRs, daily large currency activity reports, wire funds transfer reports, monetary instrument sales reports, significant balance change reports, branch cash activity reports, and nonresident alien (NRA) reports. Make sure that SARs are considered and/or filed as a result of any unusual activity disclosed in available monitoring reports.

F13.Q: If a Bank knows the true identity of its Latin American customer, visits that customer on a regular basis to monitor the relationship, and knows the beneficial owner of a Private Investment Company (PIC), would a bank be required to maintain control of bearer shares or entrust them with a reliable independent third party, or is this just a recommendation?

F13.A: Maintaining control of bearer shares as exampled in your scenario is a recommended best practice for risk mitigation. Risk mitigation guidance provided on page 288 of the 2006 BSA/AML Examination Manual for "Foreign Business Entities" including a PIC states: "If ownership is held in bearer share form, banks should assess the risks these relationships pose and determine the appropriate controls. For example, banks may choose to maintain (or have an independent third party maintain) bearer shares for new clients, or those without well-established relationships with the institution. For well-known, established customers, banks may find that periodically recertifying beneficial ownership is effective."

H. BSA Enforcement Questions

H1.Q: Do you publish BSA/AML enforcement actions on your website? If so, where?

H1.A: Yes, you can search for published enforcement actions on the OTS Enforcement Orders Database and view related OTS Enforcement Press Releases issued on or after August 14, 2002. In addition, the OTS Website provides links to the external website of Other Regulating Agencies' Enforcement Pages.

I. Independent Testing Questions

I1.Q: How often does the OTS require that a BSA/AML independent audit be performed at the financial institution?

I1.A: OTS regulation 12 CFR §563.177(c)(2) states: "Provide for independent testing for compliance to be conducted by a savings association's in-house personnel or by an outside party". While the frequency of an independent BSA testing audit is not specifically defined in this regulation, guidance beginning on page 34 of the 2006 BSA/AML Examination Manual, advises that a sound practice is to conduct independent testing generally every 12 to 18 months, commensurate with the BSA/AML risk profile of the bank. A regular independent test is an institution's best protection tool for ensuring an effective BSA/AML compliance program to prevent money laundering.

I1.Q: Any suggestions of sources for independent testing of BSA/AML policy and procedures?

I1.A: We would suggest guidance found on pages 30-31 the 2006 BSA/AML Examination Manual as a source for risk-based independent testing policy/procedures. As a best practice, the frequency of independent testing including expectations for breath and scope should be addressed in your board adopted BSA/AML program.

J. Office of Foreign Assets Control (OFAC) Questions

J1.Q: If our bank checks customers through the OFAC website, is that efficient enough? We also use Chex Systems and Watch Dog as well as credit bureaus.

J1.A: An assessment of your OFAC risk profile is the key to providing the answer to your question. It is a best practice for a bank to analyze its products, services, and customer base in order to determine the risk tolerance and adequacy of the internal controls for managing OFAC compliance. By conducting an OFAC risk assessment, you should be able to determine if your exampled internal controls are sufficient. For example, manually filtering for OFAC compliance may be sufficient for a smaller low-risk bank with limited volumes of transactions. For guidance on an OFAC risk assessment, please refer to pages 138-139 of the 2006 BSA/AML Examination Manual, core overview and examination procedures, "Office of Foreign Assets Control."

J2.Q: Will banks be sited for not using the Palestinian list? Most vendors do not currently offer this list as part of the verification process.

J2.A: We assume your question regarding a "Palestinian List" pertains to the OFAC List-Based Sanctions Programs, Anti-Terrorism Sanctions. For guidance on complying with Economic Sanctions in this area, OFAC issued a "Guide to Dealing with the Palestinian Authority" along with a series of "general licenses" authorizing certain transactions with the Palestinian Authority.

K. Fund Transfer and ACH Transaction Questions

K1.Q: Should an originating bank include in a wire transmittal a customer's address and account number?

K1.A: Yes, pursuant to 31 CFR §103.33(g), also referred to as the "Travel Rule", fund transmittals of $3,000 or more subject to recordkeeping requirements under 31 CFR §103.33(e)(1), shall include the following information: (i) the name and, where applicable, the account number of the transmittor; (ii) the address of the transmittor; (iii) the amount of the transmittal order; (iv) the execution date of the transmittal order; and (v) the identity of the recipient's financial institution. As noted in the 2006 BSA/AML Examination Manual "Funds Transfers Recordkeeping — Overview" on page 103, a conditional exception to the Travel Rule existed from 1998 to 2004 that generally permitted banks to include a customer's coded name in a transmittal order, provided the bank maintained the customer's full information in an automated customer information file (CIF). FinCEN revoked this exception as of July 1, 2004. After that date institutions must use a customer's true name and address to comply with the Travel Rule.

K2.Q: Are there specific regulatory guidelines (or a specific mandate) relative to recording or monitoring "country codes" for incoming and outgoing wire transfers?

K1.A: While no specific regulatory guidelines/mandates exist requiring the monitoring or recording of incoming/outgoing wires by country codes, this type of practice would assist in preventing prohibited transactions with countries subject to OFAC sanctions. In addition, this type of practice would assist in complying with Section 311 – Special Measures, i.e., the requirement for U.S. financial institutions to take special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.

K3.Q: Please elaborate on what is new with ACH requirements.

K3.A: A new section was added to the 2006 BSA/AML Examination Manual, Automated Clearing House Transactions – Overview and Examination Procedures, pages 196-201. These new sections provide guidance to examiners and industry on assessing the adequacy of a bank's systems to manage the risks associated with ACH transaction activities.

M. Sale of Monetary Instrument Questions

M1.Q: Is the "Monetary Instrument Log" still required for a bank that only sells monetary instruments to customers by having them deposit cash into their deposit account?

M1.A: A “Monetary Instrument Log” would not be required if your bank by other methods is able to monitor and comply with the BSA recordkeeping requirements set forth in 31 CFR §103.29, which requires financial institutions to verify and retain records of certain information prior to issuing or selling a monetary instrument when purchased with currency in amounts between $3,000 and $10,000. FinCEN’s advised in its Guidance On Interpreting Financial Institution Polices In Relation To Recordkeeping Requirements that: “...in selling monetary instruments to deposit account holders, a financial institution will already maintain most of the information required by 31 CFR §103.29 in the normal course of its business, and therefore the requirement to fully comply with the regulation should not be overly burdensome.”