May 4, 2005

Department of the Treasury
Federal Reserve System
Federal Deposit Insurance Corporation

Re: Request for Burden Reduction Recommendations; Money Laundering, Safety and Soundness, and Securities Rules; Economic Growth and Regulatory Paperwork Reduction Act of 1996 Review

Dear Madams and Sirs:

This letter is in response to the above Request made in the February 3, 2005 Federal Register. I am the General Counsel for The Sumitomo Trust & Banking Co., Ltd., New York Branch ("STB"), which is regulated by the Federal Reserve System, and External General Counsel of its subsidiary bank, Sumitomo Trust & Banking Co. (U.S.A.) ("STBUSA"), which is regulated by the Federal Deposit Insurance Corporation. Being subject to the regulations and regulatory interpretations of two separate federal bank regulatory agencies, I have experienced first hand a number of issues related to the regulatory agency interpretation and enforcement of the Bank Secrecy Act and bank anti-money laundering requirements, which include the following:

1. Regulatory requirements are often unclear. The specific requirements of the Bank Secrecy Act are not adequately stated—and too often not stated at all—in the regulations issued by the regulatory agencies. The regulations are often vague or ambiguous, and lead to differing interpretations by banks and regulatory agencies. One example of this concerns exactly what standards banks should employ concerning "know your customer" and customer account monitoring requirements. The regulatory agencies have not offered any meaningful regulatory standards in this regard.

In other instances, regulatory agencies have imposed specific requirements that have no basis under either pertinent statute or regulation. One example of this is the requirement of the Federal Reserve Bank of New York that U.S. branches of foreign banks implement compliance testing functions, separate and apart from their internal audit functions, as an element of their anti-money laundering programs, even though there is no basis for such a function by either statute or regulation.

2. A lack of coordination exists among the regulatory agencies. All too often the different federal regulatory agencies impose differing and inconsistent requirements on the banks they regulate. I am specifically familiar with the requirements of the FRBNY and the FDIC, and the respective standards they impose on STB and STBUSA are not consistent. For instance, as mentioned above, the FRBNY requires that STB have a compliance testing function. However, in a recent FDIC examination of STBUSA, when I asked the FDIC examiners whether the FDIC had a similar requirement, they expressed ignorance as to what I was even talking about.

3. The regulatory agencies do not offer sufficient guidance to the banking industry. Although the regulatory agencies impose on banks numerous requirements relating to the Bank Secrecy Act and anti-money laundering, they have generally failed to offer specific regulatory guidance as to how banks may satisfy these requirements. The one notable exception to this lack of guidance concerns Customer Identification Program requirements, which have been discussed in at least two different written guidance statements jointly issued by the federal regulatory agencies. These guidance statements have been extremely helpful to banks concerning what their customer identification requirements are. Unfortunately, however, they are the exception to the more typical lack of any guidance whatsoever.

4. The regulatory agencies do not adequately train their examiners. From my specific experiences, it is apparent that during our periodic regulatory examinations, too many examiners have not been adequately trained as to exactly what are the regulatory requirements they are supposed to be examining. This has resulted in inaccurate and unsupportable findings and criticisms. For instance, during a recent FDIC examination, STBUSA was criticized for having an inadequate customer identification program. Yet the basis for the examiners' criticisms was directly and completely contradicted by the May 9, 2003 CIP Final Rule, specifically adopted by the FDIC. When queried, the examiners did not even know that this Final Rule had been issued.

5. Examiners are given too much discretion in imposing their own requirements on the banks they examine. The regulatory agencies have not issued sufficiently clear and complete regulatory requirements and have not adequately trained their examiners. As a result, the examiners have too much discretion in imposing their own specific requirements on the banks they examine, even when those requirements have no regulatory basis. And, in the absence of any specific regulatory guidance to the contrary, banks are obligated to comply with these requirements, irrespective of their costs, reasonableness or rationale.

For these reasons, I urge the federal regulatory agencies to adopt jointly written and agreed upon rules and standards for all aspects of bank anti-money laundering programs, which clearly and completely spell out exactly what the regulatory agencies' expectations, and also to provide adequate training to their examiners in their enforcement of these standards.

Thank you for your consideration.

Very truly yours,
Bruce A. Ortwine
Joint General Manager and General Counsel
The Sumitomo Trust & Banking Co., Ltd.,
New York Branch
Director and External General Counsel
Sumitomo Trust & Banking Co. (U.S.A.)