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TESTIMONY OF

THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

Before the

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

of the

COMMITTEE ON GOVERNMENTAL AFFAIRS

of the

U.S. SENATE

July 15, 2004

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.

I. INTRODUCTION

Chairman Coleman, Ranking Member Levin, and members of the Subcommittee, the Office of the Comptroller of the Currency (OCC) appreciates the opportunity to appear before you today to discuss the challenges the OCC – and other financial institutions regulators – face in combating money laundering in the U.S. financial system, and how we are meeting those challenges. This testimony addresses in detail the enforcement actions in this area we have recently taken against Riggs Bank, N.A. (Riggs or Bank) and other matters in which the Subcommittee has expressed an interest.

The OCC's commitment to ensuring that the banks under its supervision have the necessary controls in place and provide requisite notices to law enforcement to ensure that banks are not used as vehicles to launder money for drug traffickers or other criminal organizations is longstanding. The tragic events of 9/11 have brought into sharper focus the related concern of terrorist financing. Together with the other federal banking agencies, the banking industry and the law enforcement community, the OCC shares the Subcommittee's goal of preventing and detecting money laundering, terrorist financing, and other criminal acts and the misuse of our nation's financial institutions.

The cornerstone of the federal government's anti-money laundering (AML) efforts is the Bank Secrecy Act (BSA). Enacted in 1970, the BSA is primarily a recordkeeping and reporting statute that is designed to ensure that banks and other financial institutions provide relevant information to law enforcement in a timely fashion. The BSA has been amended several times, most recently through passage of the USA PATRIOT Act in the wake of the 9/11 tragedy. Both the Secretary of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), and the federal banking agencies, have issued regulations implementing the BSA, including regulations requiring all banks to have a BSA compliance program, and to file reports such as suspicious activity reports (SARs) and currency transaction reports (CTRs).

Due to the sheer volume of financial transactions processed through the U.S. financial system, primary responsibility for compliance with the BSA and the AML statutes rests with the nation's financial institutions themselves. The OCC and the other federal banking agencies are charged with ensuring that the institutions we supervise have strong AML programs in place to identify and report suspicious transactions to law enforcement, and that such reports are, in fact, made. Thus, our supervisory processes seek to ensure that banks have systems and controls in place to prevent their involvement in money laundering, and that they provide the types of reports to law enforcement that the law enforcement agencies, in turn, need in order to investigate suspicious transactions that are reported.

To accomplish our supervisory responsibilities, the OCC conducts regular examinations of national banks and federal branches and agencies of foreign banks in the United States. These examinations cover all aspects of the institution's operations, including compliance with the BSA. Our resources are concentrated on those institutions, and the areas within institutions, that have the highest risk. In cases of noncompliance, the OCC has broad investigative and enforcement authority to address the problem.

Unlike other financial institutions, which have only recently become subject to compliance program and SAR filing requirements, banks have been under such requirements for years. For example, banks have been required to have a BSA compliance program since 1987, and have been required to file SARs (or their predecessors) since the 1970s. Not surprisingly, most banks today have strong AML programs in place, and many of the largest institutions have programs that are among the best in the world. There are now approximately 1.3 million SARs in the centralized database that is maintained by FinCEN. While the USA PATRIOT Act further augmented the due diligence and reporting requirements for banks in several key areas, one of its primary objectives was to impose requirements on nonbanking institutions that had long been applicable to banks.

The OCC's efforts in this area do not exist in a vacuum. We have long been active participants in a variety of interagency working groups that include representatives of the Treasury Department, FinCEN, law enforcement, and the other federal banking agencies. We also work closely with the FBI and other criminal investigative agencies, providing them with documents, information, and expertise on a case-specific basis. In addition, when we are provided with lead information from a law enforcement agency, we use that information to investigate further to ensure that BSA compliance systems are adequate.

We continue to work to improve our supervision in this area and we are constantly revising and adjusting our procedures to keep pace with technological developments and the increasing sophistication of money launderers and terrorist financers. For example, along with the other federal banking agencies, the OCC recently developed examination procedures to implement several key sections of the USA PATRIOT Act, and we expect to be issuing a revised version of our BSA Handbook by year end. We have also recently initiated two programs that will provide stronger and more complete analytical information to assist our examiners in identifying banks that may have high money laundering risk. Specifically, we are developing a database of national-bank filed SARs with enhanced search and reporting capabilities, and we also are developing and will implement nationwide, a new risk assessment process to better identify high-risk banks. Additionally, we are exploring with FinCEN and the other banking agencies better ways to use BSA information in our examination process to better identify risks and vulnerabilities in the banking system.

Recent events surrounding Riggs have heightened interest in how the banking agencies, and the OCC in particular, conduct supervision for BSA/AML compliance. Together with FinCEN, the OCC recently assessed a record $25 million civil money penalty (CMP) against Riggs. The OCC also imposed a supplemental cease and desist (C&D) order on the Bank, requiring the institution to strengthen its controls and improve its processes in the BSA/AML area. Along with the prior C&D order we issued against the Bank in July 2003, these and other actions we have taken have greatly reduced the Bank's current risk profile.

However, with the benefit of hindsight, it is clear that the supervisory actions that we previously took against the Bank were not sufficient to achieve satisfactory and timely compliance with the BSA, that more probing inquiry should have been made into the Bank's high risk accounts, and that stronger, more forceful enforcement action should have been taken sooner. While we do not believe that Riggs is representative of the OCC's supervision in the BSA/AML area, we are

nonetheless taking a number of steps to guard against a repeat of this type of situation. In this regard, the Comptroller has directed that our Quality Management Division commence a review and evaluation of our BSA/AML supervision of Riggs and make recommendations to him on several issues concerning our approach to and the adequacy of our BSA/AML supervision programs generally, and particularly with respect to Riggs.

II. BACKGROUND AND LEGAL FRAMEWORK

In 1970 Congress passed the "Currency and Foreign Transactions Reporting Act" otherwise known as the "Bank Secrecy Act," which established requirements for recordkeeping and reporting by private individuals, banks and other financial institutions. The BSA was designed to help identify the source, volume and movement of currency and other monetary instruments into or out of the United States or being deposited in financial institutions. The statute sought to achieve that objective by requiring individuals, banks and other financial institutions to create a paper trail by keeping records and filing reports of certain financial transactions and of unusual currency transfers. This information then enables law enforcement and regulatory agencies to pursue investigations of criminal, tax and regulatory violations.

The BSA regulations require all financial institutions to submit various reports to the government. The most common of these reports are: (1) FinCEN Form 104 (formerly IRS Form 4789) – Currency Transaction Report (CTR) for each payment or transfer, by, through or to a financial institution, which involves a transaction in currency of more than $10,000; and (2) FinCEN Form 105 (formerly Customs Form 4790) – Report of International Transportation of Currency or Monetary Instruments (CMIR) for each person who physically transports monetary instruments in an aggregate amount exceeding $10,000 into or out of the United States. Bank supervisors are not responsible for investigating or prosecuting violations of criminal law that may be indicated by the information contained in these reports; they are, however, charged with ensuring that the requisite reports are filed timely and accurately.

The Money Laundering Control Act of 1986 precludes circumvention of the BSA requirements by imposing criminal liability for a person or institution that knowingly assists in the laundering of money, or who structures transactions to avoid reporting. It also directed banks to establish and maintain procedures reasonably designed to assure and monitor compliance with the reporting and recordkeeping requirements of the BSA. As a result, on January 27, 1987, all federal bank regulatory agencies issued essentially similar regulations requiring banks to develop procedures for BSA compliance. The OCC's regulation requiring that every national bank maintain an effective BSA compliance program is set forth at 12 C.F.R. § 21.21 and is described in more detail below.

Together, the BSA and the Money Laundering Control Act charge the bank regulatory agencies with:

- overseeing banks' compliance with the regulations described, which direct banks to establish and maintain a BSA compliance program;
- requiring that each examination includes a review of this program and describes any problems detected in the agencies' report of examination; and

- taking C&D actions if the agency determines that the bank has either failed to establish the required procedures or has failed to correct any problem with the procedures which was previously cited by the agency.

The Annunzio-Wylie Anti-Money Laundering Act, which was enacted in 1992, strengthened the sanctions for BSA violations and the role of the Treasury Department. It contained the following provisions:

- a so-called "death penalty" sanction, which authorized the revocation of the charter of a bank convicted of money laundering or of a criminal violation of the BSA;
- an authorization for Treasury to require the filing of suspicious-transaction reports by financial institutions;
- the grant of a "safe harbor" against civil liability to persons who report suspicious activity; and
- an authorization for Treasury to issue regulations requiring all financial institutions, as defined in BSA regulations, to maintain "minimum standards" of an AML program.

Two years later, Congress passed the Money Laundering Suppression Act, which primarily addressed Treasury's role in combating money laundering. This statute:

- directed Treasury to attempt to reduce the number of CTR filings by 30 percent and, to assist in this effort, it established a system of mandatory and discretionary exemptions for banks;
- required Treasury to designate a single agency to receive SARs;
- required Treasury to delegate CMP powers for BSA violations to the federal bank regulatory agencies subject to such terms and conditions as Treasury may require;
- required nonbank financial institutions to register with Treasury; and
- created a safe harbor from penalties for banks that use mandatory and discretionary exemptions in accordance with Treasury directives.

Finally, in 2001, as a result of the 9/11 terror attacks, Congress passed the USA PATRIOT Act. The USA PATRIOT Act is arguably the single most significant AML law that has been enacted since the BSA itself. Among other things, the USA PATRIOT Act augmented the existing BSA framework by prohibiting banks from engaging in business with foreign shell banks, requiring banks to have due diligence procedures concerning foreign correspondent and private banking accounts, and to have procedures to identify customers at account opening. The USA PATRIOT Act also:

- provides the Secretary of the Treasury with the authority to impose special measures on jurisdictions, institutions, or transactions that are of "primary money-laundering concern;"
- facilitates records access and requires banks to respond to regulatory requests for information within 120 hours;
- requires regulatory agencies to evaluate an institution's AML record when considering bank mergers, acquisitions, and other applications for business combinations;
- expands the AML program requirements to all financial institutions; and

- increases the civil and criminal penalties for money laundering.

The OCC and the other federal banking agencies have issued two virtually identical regulations designed to ensure compliance with the BSA. The OCC's BSA compliance regulation, 12 C.F.R. § 21.21, requires every national bank to have a written program, approved by the board of directors, and reflected in the minutes of the bank. The program must be reasonably designed to assure and monitor compliance with the BSA and 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 PATRIOT Act requires that every bank adopt a customer identification program as part of its BSA compliance program.

The OCC's SAR regulation, 12 C.F.R. §21.11, requires every national bank to file a SAR when they detect certain known or suspected violations of federal law or suspicious transactions related to a money laundering activity or a violation of the BSA. This regulation mandates a SAR filing for any potential crimes: (1) involving insider abuse regardless of the dollar amount; (2) where there is an identifiable suspect and the transaction involves $5,000 or more; and (3) where there is no identifiable suspect but the transaction involves $25,000 or more. Additionally, the regulation requires a SAR filing in the case of suspicious activity that is indicative of potential money laundering or BSA violations and the transaction involves $5,000 or more.

III. OCC'S BSA/AML SUPERVISION

The OCC and the other federal banking agencies are charged with ensuring that banks maintain effective AML programs. The OCC's AML responsibilities are coextensive with our regulatory mandate of ensuring the safe and sound operation of the national banking system. Our supervisory processes seek to ensure that institutions have compliance programs in place that include systems and controls to satisfy applicable CTR and SAR filing requirements, as well as other reporting and recordkeeping requirements to which banks are subject under the BSA.

The OCC devotes significant resources to BSA/AML supervision. The OCC has nearly 1700 examiners in the field, many of whom are involved in both safety and soundness and compliance with applicable laws including the BSA. We have over 300 examiners onsite at our largest national banks, engaged in continuous supervision of all aspects of their operations. In 2003, the equivalent of approximately 40 full time employees were employed in BSA/AML supervision. The OCC also has three full time BSA/AML compliance specialists in our Washington D.C. headquarters office dedicated to developing policy, training, and assisting on complex examinations. In addition, the OCC has a full-time fraud expert in Washington D.C., who is responsible for tracking the activities of offshore shell banks and other vehicles for defrauding banks and the public. These resources are supplemented by dozens of attorneys in our district offices and Washington D.C. headquarters office who work on compliance matters. In 2003 alone, not including our continuous large bank supervision, the OCC conducted approximately 1,340 BSA examinations of 1,100 institutions and, since 1998, we have completed nearly 5,700 BSA examinations of the 2,100 institutions that we supervise.

The OCC monitors compliance with the BSA and money laundering laws through its BSA compliance and money laundering prevention examination procedures. The OCC's examination procedures were developed by the OCC, in conjunction with the other federal banking agencies, based on our extensive experience in supervising and examining national banks in the area of BSA/AML compliance. The procedures are risk-based, focusing our examination resources on high-risk banks and high-risk areas within banks. During an examination, examiners use the procedures to review the bank's policies, systems, and controls. Examiners test the bank's systems by reviewing certain individual transactions when they note control weaknesses, have concerns about high-risk products or services in a bank, or receive information from a law enforcement or other external source. In large and mid-size bank examinations, OCC procedures require that examiners engage in transaction testing and conduct a review of individual transactions.

In 1997, the OCC formed the National Anti-Money Laundering Group (NAMLG), an internal task force that serves as the focal point for all BSA/AML matters. Through the NAMLG, the OCC has undertaken a number of projects designed to improve the agency's supervision of the BSA/AML activities of national banks. These projects include the development of a program to identify high-risk banks for expanded scope BSA examinations and the examination of those banks using agency experts and expanded procedures; examiner training; the development of revised examination procedures; and the issuance of policy guidance on various BSA/AML topics.

Over the years, the NAMLG has had many significant accomplishments including:

- publishing and updating numerous guidance documents, including the Comptroller's BSA Handbook, extensive examination procedures, numerous OCC advisories, bulletins and alerts, and a comprehensive reference guide for bankers and examiners;
- providing expertise to the Treasury Department and the Department of Justice in drafting the annual U.S. National Money Laundering Strategy;
- providing expertise to the Treasury Department, FinCEN and the other federal banking agencies in drafting the regulations to implement the PATRIOT Act; and
- developing state-of-the-art training programs for OCC and other federal and foreign regulatory authorities in training their examiners in BSA/AML supervision.

To deploy its resources most effectively, the OCC uses criteria developed by NAMLG that targets banks for expanded scope AML examinations. Experienced examiners and other OCC experts who specialize in BSA compliance, AML, and fraud are assigned to the targeted examinations. The examinations focus on areas of identified risk and include comprehensive transactional testing procedures. The following factors are considered in selecting banks for targeted examinations:

- locations in high-intensity drug trafficking areas (HIDTA) or high-intensity money laundering and related financial crime areas (HIFCA);
- excessive currency flows;
- significant international, private banking, fiduciary or other high-risk activities;

- unusual suspicious activity reporting patterns;
- unusual large currency transaction reporting patterns; and
- funds transfers or account relationships with countries known for drug trading or known as bank secrecy havens.

Other responsibilities of the NAMLG include sharing information about money laundering issues with the OCC's District offices; analyzing money laundering trends and emerging issues; and promoting cooperation and information sharing with national and local AML groups, the law enforcement community, bank regulatory agencies, and the banking industry.

NAMLG has also worked with law enforcement agencies and other regulatory agencies to develop an interagency examiner training curriculum that includes instruction on common money laundering schemes. In addition, the OCC has conducted AML training for foreign bank supervisors and examiners two to three times per year for the past four years. Over 250 foreign bank supervisors have participated in this training program. Recently, the World Bank contracted with the OCC to tape our international BSA school for worldwide broadcast. The OCC has also partnered with the State Department to provide AML training to high-risk jurisdictions, including selected Middle Eastern countries. And we consistently provide instructors for the Federal Financial Institutions Examination Council schools, which are now patterned after the OCC's school. In total, the OCC's AML schools have trained approximately 550 OCC examiners over the past five years.

OCC's Enforcement Authority

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 promptly. An OCC Report of Examination, or an OCC Target Letter (used for large or mid-size banks), documents the OCC's findings and conclusions with respect to its supervisory review of a bank. 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 documented in its Report or Target Letter are important factors in determining whether more forceful action is needed.

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 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 CMPs. C&D orders and formal agreements are generally entered into consensually by the OCC and the bank and require the

bank to take certain actions or refrain from taking 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). Possible actions against institution-affiliated parties include removal and prohibition from participation in the banking industry, CMPs and C&D orders.

To ensure that the OCC's bank supervision and enforcement policies are applied effectively and consistently, and to advise the appropriate Senior Deputy Comptroller for bank supervision on enforcement cases and issues, a core group of representatives from Bank Supervision Operations, Bank Supervision Policy and Legal review all enforcement actions against large banks, and non-delegated mid-size and community banks, as well as all non-delegated actions against individuals. This group, known as the Washington Supervision Review Committee (WSRC), meets on a weekly basis to review and discuss proposed enforcement actions against these banks and individuals. The WSRC plays an advisory role in the OCC's enforcement process and the ultimate decision on whether or not to take action rests with the Senior Deputy Comptroller for Mid-Size and Community Bank Supervision or the Senior Deputy Comptroller for Large Bank Supervision. The WSRC reviews the majority of the enforcement actions taken by the OCC, including, all cases involving BSA enforcement, all cases that are unique or highly visible, and those cases involving referrals to the Department of Justice, HUD and the SEC. Similar groups comprised of representatives from each of the OCC's four district offices advise the District Deputy Comptrollers on enforcement cases and issues. These District Supervision Review Committees (DSRCs) also meet once a week and review certain enforcement actions that have been delegated by the Comptroller for district action.

In recent years, the OCC has taken numerous formal actions against national banks to bring them into compliance with the BSA. These actions are typically C&D orders and formal agreements. The OCC has also taken formal actions against institution-affiliated parties who participated in BSA violations. From 1998 to 2003, the OCC has issued a total of 78 formal enforcement actions based in whole, or in part, on BSA/AML violations. During this same time period, the OCC has also taken countless informal enforcement actions to correct compliance program deficiencies that did not rise to the level of a violation of law.

Significant BSA/AML Enforcement Actions

The OCC has been involved in a number of cases involving serious BSA violations and, in some cases, actual money laundering. Some of the more significant cases involved the Bank of China (New York Federal Branch), Broadway National Bank, Banco do Estado do Parana (New York Federal Branch), and Jefferson National Bank. There are also may other examples where the OCC identified BSA non-compliance or, in some cases, actual money laundering, took effective action to stop the activity, and ensured that accurate and timely referrals were made to law enforcement.

Bank of China, New York Federal Branch

In May 2000, OCC examiners conducting a safety and soundness examination discovered serious misconduct on the part of the branch and its former officials, including the facilitation of

a fraudulent letter of credit scheme and other suspicious activity and potential fraud and money laundering. The misconduct, which resulted in significant losses to the branch, was subsequently referred to law enforcement. In January 2002, the OCC and the Peoples Bank of China entered into companion actions against the Bank of China and its U.S.-based federal branches. The bank's New York branch agreed to pay a $10 million penalty assessed by the OCC and the parent bank, which is based in Beijing, agreed to pay an equivalent amount in local currency to the People's Bank of China, for a total of $20 million. The OCC also required that the branch execute a C&D order which, among other things, required it to establish account opening and monitoring procedures, a system for identifying high risk customers, and procedures for regular, ongoing review of account activity of high risk customers to monitor and report suspicious activity. The OCC also took actions against six institution-affiliated parties.

Broadway National Bank, New York, New York

In March of 1998, the OCC received a tip from law enforcement that this bank may be involved in money laundering. The OCC immediately opened an examination which 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 which shut down the money laundering and required the bank to adopt more 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. 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.

Banco do Estado do Parana, Federal Branch, New York, N.Y (Banestado).

In the summer of 1997, the OCC received information from Brazilian government officials concerning unusual deposits leaving Brazil via overnight courier. The OCC immediately dispatched examiners to the branch that was receiving the majority of the funds. OCC examiners discovered significant and unusually large numbers of monetary instruments being shipped via courier into the federal branch from Brazil and other countries in South America, as well as suspicious wire transfer activity that suggested the layering of the shipped deposits through various accounts with no business justification for the transfers. The OCC entered into a C&D order with the federal branch and its head office in Brazil in January 1998 that required controls over the courier and wire transfer activities and the filing of SARs with law enforcement. The OCC also hosted several meetings with various law enforcement agencies discussing these activities and filed a referral with FinCEN. Shortly thereafter, the Brazilian bank liquidated the branch. In May of 2000, the OCC assessed a CMP against the branch for $75,000.

Jefferson National Bank, Watertown, New York

During the 1993 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 four criminal referral forms (predecessor to the SAR) with law enforcement pertaining to this cash activity and several additional criminal referral forms pertaining to 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. 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. The four criminal referral forms filed by the OCC in the early stages of this investigation were directly on point and pertained to the ultimate ringleaders in the overall scheme. These money laundering cases were in addition to the C&D order entered into with the bank, the prohibition and CMP cases that were brought by the OCC, and the insider abuse bank fraud cases that were brought by law enforcement against some of the bank's officers and directors. Seven bank officers and directors were ultimately convicted of crimes.

OCC Cooperation with Law Enforcement and Other Agencies

As the above cases illustrate, combating money laundering depends on the cooperation of law enforcement, the bank regulatory agencies, and the banks themselves. The OCC participates in a number of interagency working groups aimed at money laundering prevention and enforcement, and meets on a regular basis with law enforcement agencies to discuss money laundering issues and share information that is relevant to money laundering schemes. For example, the OCC is an original member of both the National Interagency Bank Fraud Working Group and the Bank Secrecy Act Advisory Group. Both of these groups include representatives of the Department of Justice, the FBI, the Treasury Department, and other law enforcement agencies, as well as FinCEN and the federal banking agencies. Through our interagency contacts, we sometimes receive leads as to possible money laundering in banks that we supervise. Using these leads, we can target compliance efforts in areas where we are most likely to uncover problems. For example, if the OCC receives information that a particular account is being used to launder money, our examiners would then review transactions in that account for suspicious funds movements, and would direct the bank to file a SAR if suspicious transactions are detected. The OCC also provides information, documents, and expertise to law enforcement for use in criminal investigations on a case-specific basis.

The OCC has also played an important role in improving the AML and terrorist financing controls in banking throughout the world. For the past several years, the OCC has provided

examiners to assist with numerous U.S. government-sponsored international AML and terrorist financing assessments. We have a cadre of specially trained examiners that has provided assistance to the Treasury Department and the State Department on these assessments in various parts of the world, including South and Central America, the Caribbean, the Pacific-rim nations, the Middle East, Russia and the former Eastern Bloc nations. In this regard, the cadre has participated in terrorist financing investigations, assessed local money laundering laws and regulatory infrastructure, and provided training to bank supervisors.

The OCC also has provided direct assistance to the Coalition Provisional Authority (CPA) of Iraq. Four OCC examiners recently returned from working in Iraq as technical assistance advisers to the CPA's Ministry of Finance and helping their counterparts at the Central Bank of Iraq develop a risk-based supervisory system tailored to the Iraqi banking system. The OCC examiners assisted in the development of a law addressing money laundering and terrorist financing, drafting of new policy and examination manuals to implement this law, and they have provided extensive AML training to Iraqi bank regulators.

OCC Cooperation with FinCEN and the FinCEN Referral Guidelines

In the BSA area, the OCC's CMP authority is concurrent with that of FinCEN. In cases involving systemic noncompliance with the BSA, in addition to taking our own actions, the OCC refers the matter to FinCEN. The referral guidelines developed by FinCEN (or its predecessor unit within the Treasury Department) provide that the examiner should assess all of the facts and circumstances surrounding the violations, whether the violations represent an isolated incident caused by human error, and whether the deficiencies are indicative of significant noncompliance with the BSA and/or systemic weaknesses in the institution's BSA compliance program. The examiner is instructed to consider whether the violations are the result of blatant, willful or flagrant disregard of the requirements of the BSA; whether there is a pattern of noncompliance with one or more sections of the regulations; whether the violations result from inadequate policies, procedures or training programs; and whether they result from a nonexistent or seriously deficient compliance program. The guidelines also provide that first time violations may or may not be appropriate for referral depending on the circumstances and, normally, isolated incidences of noncompliance should not be referred. The guidelines also set out mitigating factors that should be considered by the examiner, including, the implementation of a comprehensive compliance program, voluntary reporting by the institution of violations discovered, and positive efforts by the bank to assist law enforcement. The Comptroller's BSA handbook also contains an abbreviated version of these referral guidelines and sets forth a number of factors that an examiner should consider in making a referral to FinCEN.

In the case of Riggs, the OCC and FinCEN worked together extensively on the CMP that was recently taken against the bank.

IV. POST 9/11 ACTIVITIES AND THE IMPLEMENTATION OF THE USA PATRIOT ACT

In the immediate aftermath of the 9/11 terror attacks, the OCC participated in a series of interagency meetings with bankers sponsored by the New York Clearinghouse to discuss the

attacks and their impact on the U.S. economy and banking system, and provided guidance to the industry concerning the various requests from law enforcement for account and other information. The OCC was also instrumental in working with the other banking agencies to establish an electronic e-mail system for law enforcement to request information about suspected terrorists and money launderers from every financial institution in the country. This FBI Control List system was in place five weeks after 9/11 and was the precursor to the current system established under section 314(a) of the USA PATRIOT Act, which is now administered by FinCEN. At the same time, the OCC established a secure emergency communications e-mail system for all national banks through the OCC's BankNet technology.

In October 2001, Congress passed the USA PATRIOT Act. The OCC has been heavily involved in the many interagency work groups tasked with writing regulations to implement the USA PATRIOT Act over the past few years. To date, these work groups have issued final rules implementing sections 313 (foreign shell bank prohibition); 319(b) (foreign correspondent bank account records), 314 (information sharing), and 326 (customer identification).

The OCC also provided input into the drafting of the interim final rule implementing section 312 (foreign private banking and correspondent banking). Section 312 requires banks to have due diligence procedures (and, in some cases, enhanced due diligence procedures) for foreign private banking accounts, including the accounts of senior political figures, and foreign correspondent accounts, and to detect and report transactions that may involve the proceeds of foreign corruption. Section 315 of the USA PATRIOT Act also addresses foreign corruption and includes this particular offense as an underlying money laundering crime or "specified unlawful activity" that could trigger the criminal money laundering provisions if the proceeds from the "specified unlawful activity" are involved in a financial transaction. Specifically, section 315 expands the term "specified unlawful activity" to include, with respect to a financial transaction occurring in whole or in part in the U.S., an offense against a foreign nation involving bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official.

The OCC also took the lead in developing the current 314(a) process for disseminating information between law enforcement and the banks. The OCC worked with the interested regulatory and law enforcement agencies, and drafted detailed instructions to banks concerning the 314(a) process and the extent to which banks are required to conduct record and transactions searches on behalf of law enforcement. The OCC also took the lead in drafting a frequently asked questions (FAQs) document to provide further guidance as to the types of accounts and transactions required to be searched, when manual searches for this information would be required, and the timeframes for providing responses back to law enforcement. Under the new procedures, 314(a) requests from FinCEN are batched and issued every two weeks, unless otherwise indicated, and financial institutions have two weeks to complete their searches and respond with any matches.

Throughout this process, the OCC continually assisted FinCEN in maintaining an accurate electronic database of 314(a) contacts for every national bank and federal branch, provided effective communications to the industry through agency alerts concerning the 314(a) system,

and participated in quarterly interagency meetings with fellow regulators and law enforcement agencies to ensure that the process was working effectively and efficiently.

The OCC also took the lead in drafting the interagency Customer Identification Program (CIP) regulation mandated by section 326, which mandates the promulgation of regulations that, at a minimum, require financial institutions to implement reasonable procedures for: (1) verifying the identity of any person seeking to open an account, to the extent reasonable and practicable; (2) maintaining records of the information used to verify the person's identity, including name, address, and other identifying information; and (3) determining whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. The OCC is also the primary drafter of interagency FAQs concerning the implementation of the CIP rules. A second set of interagency FAQs will be issued shortly.

In order to assess USA PATRIOT Act implementation by the industry, in the summer of 2002, the OCC conducted reviews of all of its high-risk banks (generally large banks and federal branches) to assess their compliance with the processes and regulations issued under the USA PATRIOT Act up to that time, to ascertain the effectiveness of the banks' anti-terrorist financing systems, and to evaluate the industry response to terrorist financing risk. Although, at that time, many of the USA PATRIOT Act regulations had not yet been finalized, we felt it was important to ascertain the level of bank compliance with and understanding of the new requirements. The purpose of these reviews was to discern the types of systems and controls banks had in place to deter terrorist financing, and follow up with full-scope AML exams in institutions that had weaknesses. As a result of these reviews, the OCC was able to obtain practical first hand knowledge concerning how banks were interpreting the new law, whether banks were having problems implementing the regulations or controlling terrorist financing risk, and which banks needed further supervision in this area.

On October 20, 2003, the OCC issued interagency examination procedures to evaluate national bank compliance with the requirements of sections 313 and 319(b), and section 314(a). The procedures were designed to assess how well banks are complying with the new regulations and to facilitate a consistent supervisory approach among the banking agencies. OCC examiners are now using the procedures during BSA/AML examinations of the institutions under our supervision. The procedures allow examiners to tailor the examination scope according to the reliability of the bank's compliance management system and the level of risk assumed by the institution. An interagency working group is currently drafting examination procedures concerning section 326. The OCC is also the primary drafter of these procedures and we expect that they will be issued shortly.

The OCC is currently using draft examination procedures to assess compliance with section 312 of the USA PATRIOT Act by national banks. These examination procedures are not final because the section 312 regulation has not yet been finalized and published by the Treasury Department. The OCC will coordinate with the other federal banking agencies to issue final interagency examination procedures upon publication of the final regulation. The draft procedures currently in place, among other things, require OCC examiners to evaluate bank policies and procedures to ensure that they are reasonably designed to detect and report instances

of money laundering and foreign corruption through foreign private and correspondent banking accounts. The draft procedures also require that examiners test a sample of accounts of senior foreign political officials. The OCC made the section 312 draft procedures available to its large bank examiners in November 2003 and they were provided to mid-size and community bank examiners in February 2004.

The OCC evaluates national bank compliance with section 315 of the USA PATRIOT Act through its section 312 draft examination processes and the OCC's SAR regulation. Banks that identify suspicious transactions involving foreign private and correspondent banking accounts are required to file SARs in accordance with the SAR regulation.

The OCC is currently conducting USA PATRIOT Act examinations in all of its large and high-risk banks and expects all of these examinations to be completed by the end of 2005. USA PATRIOT Act examinations of all other national banks and federal branches of foreign banks will be completed by December 2006.

OCC Outreach and Industry Education

As previously stated, the primary responsibility for ensuring that banks are in compliance with the BSA lies with the bank's management and its directors. To aid them in meeting this responsibility, the OCC devotes extensive time and resources to educating the banking industry about its obligations under the BSA. This has typically included active participation in conferences and training sessions across the country. For example, in 2002 the OCC sponsored a nationwide teleconference to inform the banking industry about the USA PATRIOT Act. This teleconference was broadcast to 774 sites with approximately 5,400 listeners.

The OCC also provides guidance to national banks through: (1) industry outreach efforts that include roundtable discussions with bankers and industry wide conference calls sponsored by the OCC; (2) periodic bulletins that inform and remind banks of their responsibilities under the law, applicable regulations, and administrative rulings dealing with BSA reporting requirements and money laundering; (3) publications, including the distribution of comprehensive guide in this area entitled Money Laundering: A Banker's Guide to Avoiding Problems; (4) publication and distribution of the Comptroller's BSA Handbook which contains the OCC's BSA examination procedures, and the Comptroller's Handbook for Community Bank Supervision which provides guidance on BSA/AML risk assessment; and (5) periodic alerts and advisories of potential frauds or questionable activities, such as alerts on unauthorized banks and FinCEN reporting processes. In addition, senior OCC officials are regular participants in industry seminars and forums on the BSA, the USA PATRIOT Act, and related topics.

Current Supervisory Initiatives

The OCC's BSA/AML examination approaches for national banks differ somewhat depending largely on the size of the institution and its risk profile. In large banks (generally total assets greater than $25 billion) and mid-size banks (generally total assets of $5 - $25 billion), OCC examiners focus first on the banks' BSA compliance program. These banks are subject to our general BSA/AML examination procedures that include, at a minimum, a review of the bank's

internal controls, policies, procedures, customer due diligence, SAR/CTR information, training programs, and compliance audits. We also evaluate BSA officer competence, the BSA program structure, and the bank's audit program, including the independence and competence of the audit staff. While examining for overall BSA compliance, examiners typically focus on suspicious activity monitoring and reporting systems and the effectiveness of the bank's customer due diligence program. In the case of large and mid-size bank examinations, OCC procedures require that examiners engage in transaction testing and conduct a review of individual transactions.

Additional and more detailed procedures are conducted if control weaknesses or concerns are encountered during the general procedures phase of the examination. These supplemental procedures include:

- transaction testing to ascertain the level of risk in the particular business area (*e.g.*, private banking, payable upon proper identification programs (PUPID), nonresident alien accounts, international brokered deposits, foreign correspondent banking, and pouch activity) and to determine whether the bank is complying with its policies and procedures, including SAR and CTR filing requirements;
- evaluation of the risks in a particular business line or in specific accounts and a determination as to whether the bank is adequately managing the risks; and
- a selection of bank records to determine that its recordkeeping processes are in compliance with the BSA.

For community banks (generally total assets under $5 billion), examiners determine the examination scope based on internal and external audit and the risks facing the institution. For low-risk banks, examiners evaluate changes to the bank's operations and review the bank's BSA/AML compliance program. For banks with higher risk characteristics and weak controls, additional procedures are performed, including review of a sample of high-risk accounts and additional procedures set forth above. Examiners also perform periodic monitoring procedures between examinations and conduct appropriate follow-up activities when issues are identified.

Use of CTR and SAR Data in the Examination Process

All banks are required by regulation to report suspected crimes and suspicious transactions that involve potential money laundering or violate the BSA. In April 1996, the OCC, together with the other federal banking agencies and FinCEN, developed the SAR system, form, and database. This system provides law enforcement and regulatory agencies with online access to the entire SAR database. Based upon the information in the SARs, law enforcement agencies may then, in turn, initiate investigations and, if appropriate, take action against violators. By using a universal SAR form, consolidating filings in a single location and permitting electronic filing, the system greatly improves the reporting process and makes it more useful to law enforcement and to the regulatory agencies. As of December 2003, banks and regulatory agencies had filed over 1.3 million SARs, with national banks by far the biggest filers. Nearly 50% of these SARs were for suspected BSA/money laundering violations.

The OCC also uses the SAR database as a factor in identifying high-risk banks and high-risk areas within banks. Year-to-year trend information on the number of SARs and CTRs filed is used to identify banks with unusually low or high filing activity, relative to their own historical patterns or to peer institutions. While no conclusions or inferences can be drawn from this type of comparative analysis, standing alone, it may be indicative of broader patterns within the bank's BSA/AML program. Examiners also review SARs and CTRs to identify accounts to include in the examination sample. Accounts where there have been repetitive SAR filings, significant cash activity, or activity that is inconsistent with the type of business of the customer, would be examples of the types of accounts that would be selected for this examination sample.

V. RIGGS BANK SUPERVISION AND ENFORCEMENT

The following is a summary of the OCC's supervision and enforcement efforts with respect to the deficiencies in Riggs' BSA/AML compliance program. Since this matter involves an open bank and open investigations, there are limitations on what can be said without disclosing confidential supervisory information and potentially compromising future criminal, civil and administrative actions. With that caveat, we have tried to set out below, in as much detail as possible, a description of the OCC's supervision of this institution in the BSA/AML area, dating back to 1997.

The OCC first identified deficiencies in Riggs' procedures in the late 1990's. At that time, we recognized the need for improved processes at Riggs and for improvements in the training in, and awareness of, the BSA's requirements and in the controls over their BSA processes. Prior to 9/11, the OCC visited the bank at least once a year and sometimes more often to review the Bank's BSA/AML compliance program.

Over this timeframe, OCC examiners consistently found that Riggs' BSA compliance program was either "satisfactory" or "generally adequate," meaning that it met the minimum requirements of the program regulation, but we nonetheless continued to identify weaknesses and areas of its program that needed improvement in light of the business conducted by the bank. We addressed these weaknesses using various informal, supervisory actions. Generally, this involved bringing the problems to the attention of Bank management and the board and securing various commitments to take corrective action.

During this period, it was clear that the Bank's compliance program needed improvement, but we determined that the program weaknesses did not rise to the level of a violation of our regulation or constitute a pervasive supervisory concern. The OCC identified problems with the Bank's internal audit coverage in this area, its internal monitoring processes, and its staff training on the BSA and customer due diligence requirements. Repeatedly, management took actions to address specific OCC concerns but, as is now clear, the corrective actions taken were not sufficient to achieve the intended results. The Bank took numerous steps to respond to OCC criticisms, but failed to ensure that it maintained a comprehensive and adequate compliance program, especially with regard to high-risk areas. Due to the lack of an effective and proactive management team, additional weaknesses and deficiencies were identified by the OCC over this time period, but bank follow-up on these weaknesses ultimately proved to be ineffective and the problems persisted longer than they should have.

In July 2000, the OCC conducted a targeted examination of the Bank's International Private Banking Division and, as a part of this examination, we reviewed the Bank's processes for completion of CTRs, the comprehensiveness of training, policies and procedures and the BSA audit program. We also specifically requested from the Bank a list of accounts where the Bank's private banking and fiduciary customers are politicians, export/import business owners, money changers, private investment corporations, financial advisors, offshore entities, or money managers (where an intermediary is acting on behalf of customers). Upon completion of the examination, the OCC found that Bank's BSA compliance "satisfactory" and recommended that the Bank improve monitoring of high-risk customers, improve customer profiles, expand BSA training and improve internal audit.

As various changes occurred in the regulatory expectations for banks relative to BSA compliance and related issues over this period of time, our scrutiny of the bank was adjusted accordingly. For example, when the Financial Action Task Force and FinCEN identified "uncooperative" countries, we conducted an examination at Riggs that specifically focused on account relationships with those countries and determined that the bank did not have extensive transaction activity with any of the countries on the list. In addition, the Treasury Department, the State Department and the federal financial institutions regulatory agencies issued their guidance on "politically exposed persons" (PEPs) in January 2001 (Interagency Guidance), and, as a result, the OCC's focus on the risks associated with the Riggs' embassy banking business began to increase and our supervisory activities were heightened accordingly. However, at that time, the Kingdom of Saudi Arabia was not viewed as a country that posed a heightened risk of money laundering or terrorist financing, and Equatorial Guinea had just begun to reap the financial benefits of the discovery of large oil reserves in the mid-1990s.

Post 9/11 Private Banking Review and the Pinochet Accounts

After 9/11, the OCC escalated its supervisory efforts to bring Riggs' compliance program to a level commensurate with the risks that were undertaken by the Bank and we then believed that we were beginning to see some progress in this regard. The Bank was beginning the process of implementing a major computer system conversion that would address many of the shortcomings in the existing information systems. However, Bank management had to adjust the timeline repeatedly. This caused significant delays in the implementation date, pushing it from the original target of year-end 2002 to September 2003. Thus, the Bank was not able to fulfill many of the commitments that it made to the OCC to correct our concerns pertaining to their BSA compliance program.

In April 2002, as part of the OCC's review of the Bank's overall BSA compliance program, 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. These accounts had not been disclosed to us in response to our July 2000 request to the Bank for a list of customer accounts where the Bank's private banking and fiduciary customers are politicians. In our initial review, we found that Mr. Pinochet had received ten sequentially numbered $50,000 cashiers checks from foreign private investment accounts that he owned. As a result, the OCC immediately conducted a targeted

examination into transactions and accounts related to Mr. Pinochet. We subsequently found that Mr. Pinochet held personal NOW and money market accounts in Riggs' London branch, as well as two foreign private investment companies – Ashburton Company, Ltd. and Althorp Investment Ltd. These companies engaged in transactions involving 8 – 10 sequential cashiers checks each payable to Mr. Pinochet and/or his wife for $50,000 each, totaling in the aggregate between $400,000 to $500,000. The OCC identified four separate series of sequential cashiers check transactions that involved the Pinochets and their private investment companies over a 20-month time period involving approximately $1.9 million in funds.

The OCC concluded that, among other things, the Bank had: (1) failed to include the Augusto Pinochet accounts in its lists of PEP accounts that were previously requested by the OCC; (2) failed to file a SAR on the suspicious sequentially numbered cashiers checks that were received by the Pinochets and deposited into accounts in a Chilean Bank, or on the movement of funds out of Spain and the United Kingdom that coincided with legal efforts in those countries to seize his assets under international conventions and treaties; and (3) failed to document the source of Mr. Pinochet's assets held at the Bank.

The Bank informed the OCC that they did not consider Mr. Pinochet to be a PEP since he was no longer involved in the affairs of Chile. However, the Bank's interpretation of the PEP guidance was incorrect and they should have been monitoring Pinochet's accounts as "high risk" PEP accounts, should have been taken steps to confirm the sources and uses of funds through these accounts, and should have filed SARs on the unusual transactions flowing through the accounts from the Pinochet private investment trusts. The Bank closed the Pinochet account and Pinochet's related private investment company accounts, and agreed to implement the enhanced due diligence procedures for PEP accounts consistent with the Interagency Guidance issued in January 2001.

Shortly after these issues were discovered, the OCC specifically brought the Pinochet accounts to the attention of the Department of Justice and the Department of the Treasury. Because the Bank had taken corrective action to address the Pinochet matter by closing all of his accounts and agreeing to further corrective action (implement enhanced due diligence procedures, significant issues related to high risk individuals brought to attention of the Board Directors), the OCC did not take formal enforcement action as a result of this matter. However, we considered the Pinochet matter to be indicative of broader problems with the Bank's BSA/AML program, and it was a factor leading to our conclusion that a more comprehensive examination of the bank's high-risk areas was required.

Immediately after completing the targeted examination into the Pinochet accounts, the OCC commenced a broader anti-terrorist financing review at Riggs in July 2002. As previously described, this was part of a coordinated review of all large and high-risk banks. During this review, OCC examiners concluded that the Bank's BSA/AML risk was significant due to the nature of its Embassy Banking and International Private Banking Divisions' business, and the fact that controls were not fully developed. Further, we noted that there was a large volume of higher risk accounts that Bank management had not adequately reviewed. The OCC raised the Bank's risk rating from "increasing" to "high" and took a series of steps to emphasize to the Bank the critical importance of managing these activities appropriately.

The examination report dated October 7, 2002 informed Bank management that Riggs, as the dominant financial institution serving embassies both in the U.S. and abroad, faced significant challenges in achieving compliance with the requirements of the USA PATRIOT Act. It noted that Bank management had identified approximately 1,200 higher-risk accounts and was affirmatively taking steps to improve controls in this area. The examination report also noted that Bank management had agreed to designate all accounts opened in the Embassy Banking department as "high-risk," subject to heightened scrutiny. At this time, the OCC informed the Bank that we would be performing a BSA/AML targeted examination during the 1st quarter 2003. This would provide the Bank with a reasonable amount of time to implement these new directives and to ensure that the Bank's efforts in this area were sufficient and effective.

January 2003 Examination and the Saudi Embassy Accounts

As a result of the OCC's anti-terrorist financing review findings and other internal assessments, plus published accounts of suspicious money transfers involving Saudi Embassy accounts, our concerns regarding Riggs BSA/AML compliance were further heightened. The OCC significantly expanded the scope of the targeted BSA/AML examination that had already been scheduled for the 1st quarter 2003, developed an action plan for significant issues at the Bank, and we commenced a comprehensive BSA compliance examination of Riggs in January of 2003. The OCC's examination lasted for approximately five months and involved agency experts in the BSA/AML area.

The focus of this examination was Riggs' Embassy Banking business, and, in particular, the accounts related to the Embassy of Saudi Arabia. Due to its Washington D.C. location, its extensive retail branch network, and its expertise in private banking, Riggs found Embassy Banking to be particularly attractive and had developed a market niche. In fact, at one time, 95% of all foreign embassies in the U.S., and 50% of the embassies in London conducted their banking business with Riggs.

During the course of the 2003 examination, the OCC cooperated extensively with investigations by law enforcement into certain suspicious transactions involving the Saudi Embassy relationship. These transactions involved tens of millions of dollars in cash withdrawals from accounts related to the Embassy of Saudi Arabia; dozens of sequentially-numbered international drafts that totaled millions of dollars that were drawn from accounts related to officials of Saudi Arabia, and that were returned to the bank; and dozens of sequentially-numbered cashier's checks that were drawn from accounts related to officials of Saudi Arabia made payable to the account holder.

During the examination, we met with the FBI on a regular basis and provided the FBI with voluminous amounts of documents and information on the suspicious transactions, including information concerning transactions at the bank that the FBI previously was not aware of. The OCC also hosted a meeting with the FBI to discuss these documents and findings. Throughout this process, we provided the FBI with important expertise on both general banking matters and on some of the complex financial transactions and products that were identified.

During the five month examination, OCC examiners were also in regular contact with representatives from the Federal Reserve, which regulates the Bank's holding company and Edge Act subsidiary. Following the examination, we also contacted officials at the Treasury Department, the Federal Reserve, and the FBI and informed them of the Bank's problems and the pending enforcement action.

July 2003 C&D order and CMP Referral to FinCEN

The findings from the January 2003 examination formed the basis for the July 2003 C&D order entered into with the bank. The OCC also identified violations of the BSA that required a referral to FinCEN under FinCEN's referral guidelines. Because FinCEN also has authority to enforce the BSA, the OCC then decided to postpone any final decision on a CMP action until FinCEN had an opportunity to review the case and the agencies could coordinate their actions appropriately.

Although we originally intended to include a review of the Equatorial Guinea Embassy accounts during the January 2003 examination, we decided that a separate examination of these accounts was warranted; this was done in the Fall of 2003. However, from early 2003, Bank management was on notice of our concerns and was aware of our expectations with respect to the Equatorial Guinea accounts.

The July 2003 C&D order, one of the most comprehensive BSA/AML-related orders ever issued by any of the banking agencies, directed the Bank to take a number of steps to correct deficiencies in its internal controls in the BSA/AML area and to strongly consider staffing changes. Among other requirements in this action, the OCC directed the bank to:

- Hire an independent, external management consultant to conduct a study of the Bank's compliance with the BSA, including training, SAR monitoring, correcting deficiencies, and conducting a risk assessment for compliance with the BSA throughout the Bank.
- Require the consultant to evaluate the responsibilities and competence of management.
- Require the consultant's report to address, among other things, the responsibilities and competence of the Bank's BSA officer, and the capabilities and competence of the supporting staff in this area.
- Determine whether any changes were needed regarding the Bank's BSA officer and staff.
- Adopt and implement detailed policies and procedures (including account opening and monitoring procedures) to provide for BSA compliance and for the appropriate identification and monitoring of high-risk transactions.
- Ensure effective BSA audit procedures and expansion of these procedures.
- Review and evaluate the level of service and ability of the audit function for BSA matters provided by any auditor.
- Ensure Bank adherence to a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness and their responsibility for compliance with the BSA.

The OCC continued to monitor the Bank and its compliance with the requirements of the C&D order throughout the summer. A formal referral to FinCEN was made June 16, 2003, and the OCC also continued to coordinate with FinCEN on the BSA referral that was made.

Coordination with FinCEN

By the summer of 2003, senior OCC officials were in regular contact with FinCEN concerning the CMP processes and ongoing supervisory processes. The OCC provided regular, ongoing cooperation, information and assistance to FinCEN concerning the OCC's proposed CMP action and the referral that was filed with FinCEN. Specifically, the OCC provided FinCEN with copies of the Bank's examination reports, monthly progress reports and consultant reports that were required pursuant to the C&D Orders, as well as information on SAR filings. We also conducted briefings with FinCEN on the Saudi Embassy accounts and role of law enforcement and we arranged for FinCEN representatives to meet with the OCC examiners who were involved in the supervisory and compliance examinations of the Bank.

When the CMP was ultimately assessed upon completion of the 2004 examination and the Equatorial Guinea findings (discussed immediately below), the OCC and FinCEN had worked extensively on both the legal and supervisory issues underlying the charges. Concurrent 15-day letters were sent by both agencies to the Bank Bank's Board of Directors informing them that CMPs were being considered against the Bank, and providing them with an opportunity to respond to the charges.

The OCC and FinCEN worked together in analyzing the responses provided by the Bank and reached a shared conclusion on the final dollar amount of the assessment. The OCC and FinCEN ultimately issued concurrent CMPs against the Bank that were satisfied with one single payment to the Treasury Department.

October 2003 Examination and the Equatorial Guinea Accounts

The OCC began its next examination of the bank's BSA compliance in October 2003. The purpose of this examination was to assess compliance with the C&D order and the USA PATRIOT Act, and to review accounts related to the Embassy of Equatorial Guinea. The Bank had made progress in complying with the order and in improving its AML program. It also finally had implemented the long planned system upgrade that significantly improved the information available to Bank staff and management to monitor account activity and identify suspicious activity. Notwithstanding these steps, however, there were significant areas of noncompliance identified by our examination.

The examiners found that, as with the Saudi Embassy accounts, the Bank lacked sufficient policies, procedures and controls to identify suspicious transactions concerning the Bank's relationship with Equatorial Guinea, which was the Bank's largest depository relationship. The Bank failed to implement controls or monitor the ongoing activity in these accounts despite various indicators in early 2003 that should have alerted it to the high-risk nature of the relationship, including publication of a newspaper article alleging official corruption and Riggs' receipt of a subpoena requiring documents regarding the relationship. The Bank also failed to

identify, evaluate, and report on suspicious activity occurring in the accounts owned by the government of Equatorial Guinea involving transactions by and for the benefit of PEPs, including: (1) cash deposits into the account of a private investment company owned by a PEP who is a government official, totaling $11.5 million over a two-year period; and (2) wire transfers, totaling hundreds of thousands of dollars, from a government account to the personal account of another government official who had signature authority over the government account.

The Bank also failed to discover that its own 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. Examples of the relationship manager's suspicious transactions with respect to this relationship include:

- Alteration of a check from the account of a PEP who is the relative of an Equatorial Guinea government official; and
- Over $1 million in wire transfers from accounts owned by the government of Equatorial Guinea into the account of a private investment company that was owned by the relationship manager at another U.S. bank.

The findings from this examination, combined with previous examination findings, made it clear to the OCC and FinCEN that a large CMP against the Bank was warranted.

May 2004 CMP and C&D order

Along with the assessment of a $25 million CMP against Riggs for violations of the BSA and its implementing regulations, and for failing to comply with the requirements of an OCC C&D order that was signed by the bank in July 2003, the OCC also initiated a separate C&D action dated May 13, 2004 to supplement the C&D we had issued in July 2003. The second C&D order directed the Bank to take a number of additional steps to correct deficiencies in its internal controls, particularly in the BSA/AML area. Among other requirements in this separate action, the OCC directed the Bank to:

- Ensure competent management and staffing to achieve compliance with both Orders and successfully implement the bank's planned strategic shift from international business into retail.
- Determine whether management or staff changes are needed and whether management skills require improvement.
- Develop a plan to evaluate the accuracy and completeness of the Bank's books and records, and develop a methodology for determining that information required by the BSA is appropriately documented, filed and maintained.
- Adopt and implement comprehensive written policies for internal controls applicable to the Bank's account relationships and related staffing, including the Embassy and International Private Banking Group. Among other requirements, the policies must mandate background checks of all relationship managers at least every three years and

must prohibit any employee from having signature authority, ownership or custodial powers for any customer account.

- Develop and implement a policy that permits dividend payments only when the Bank is in compliance with applicable law and upon written notice to the OCC.
- Adopt and implement an internal audit program sufficient to detect irregularities in the Bank's operation, determine its level of compliance with applicable laws and regulations and provide for testing to support audit findings, among other requirements.

These actions were based on a finding that the Bank had failed to implement an effective AML program, and as a result, did not detect or investigate suspicious transactions and had not filed SARs as required under the law. The Bank also did not collect or maintain sufficient information about its foreign bank customers. In particular, the OCC found a number of problems with the Bank's account relationship with foreign governments, including Saudi Arabia and Equatorial Guinea. Riggs failed to properly monitor, and report as suspicious, transactions involving tens of million of dollars in cash withdrawals, international drafts that were returned to the bank, and numerous sequentially-numbered cashier's checks.

The OCC will continue to closely monitor the corrective action that the Bank takes in response to the Order and we are prepared to take additional actions where warranted.

In retrospect, as we review our BSA/AML compliance supervision of Riggs during this period, while we identified the BSA deficiencies at the Bank, we should have been more aggressive in our insistence on remedial steps at an earlier time. We also should have done more extensive probing and transaction testing of accounts. Our own BSA examination procedures called for transactional reviews in the case of high-risk accounts, such as those at issue here, yet until 2003, that was not done at Riggs in the Saudi Embassy and the Equatorial Guinea accounts. Clearly, the types of strong formal enforcement action that we ultimately took should have been taken sooner. But, this is not a case where the deficiencies in the bank's systems and controls were not recognized, nor was there an absence of OCC supervisory attention to those deficiencies. Yet, we failed to sufficiently probe the transactions occurring in the Bank's high-risk accounts and we gave the bank too much time, based on its efforts to fix its own problems, before we demanded specific solutions, by specific dates, pursuant to formal enforcement actions. As described below, we have reevaluated our BSA/AML supervision processes in light of this experience and we will be implementing changes to improve how we conduct supervision in this area. The Comptroller has also directed that our Quality Management division undertake an internal review of our supervision of Riggs. These steps are outlined more fully below.

VI. The OCC's Ethics Requirements and Policies

Attention has been focused recently on the fact that in August 2002, the former OCC examiner-in-charge of Riggs (Riggs EIC) retired from the OCC after 34 years as a bank examiner and thereafter joined Riggs initially as a loan review manager, and later became the executive vice president and chief risk officer. Certain post employment choices made by former government employees may result in conflicts of interest and the appearance of conflicts of interest, and, as a result, there are government-wide ethics rules addressing these issues. The OCC also has put in place additional procedures to safeguard against conflicts of interest in the post-OCC

employment setting. However, neither the government-wide ethics rules, nor our supplemental standards, prohibit examiners, upon the termination of their employment, from working for a bank they had been responsible for examining in their immediately preceding position. We recognize such situations create issues of appearance as well as the potential for conflicts of interest and the OCC currently is considering implementing additional measures in this area. We are awaiting the results of the OCC Quality Management Division's review of this and other issues arising from the Riggs situation and the results of the review also underway by the Treasury Department's Office of Inspector General, before making final decisions.

Government-wide Ethics Rules and Regulations

The Standards of Ethical Conduct for all federal employees require those who seek employment in any way, such as sending a resume or expressing an interest in a job opening, to stop work on matters related to the prospective employer. 5 C.F.R. § 2635.602. In addition, a criminal statute prohibits employees from negotiating for employment with any individual or company while working on a particular matter related to that individual or company. 18 U.S.C. § 208. Thus, the prohibition in the statute and the regulation is not against seeking employment with any particular company, but in seeking employment while at the same time working on a matter involving that company.

All former federal employees are subject to the post-employment ethics statute, 18 U.S.C. § 207. The following are the three sections of the post-employment statute that most affect former OCC employees:

- The "permanent prohibition" provides that former OCC employees generally may not call, attend meetings with, or otherwise appear before the OCC or any other government agency on behalf of a bank or other company to discuss with intent to influence decisions, applications, examination reports, or other particular matters involving the bank or company, if they personally and substantially participated in or worked on these matters while they were employed at the OCC. 18 U.S.C. § 207(a)(1).

- The "supervisors' prohibition" provides that for two years following their departure from the federal government, former OCC employees may not call, attend meetings with, or otherwise appear before the OCC or any other government official on behalf of a bank or other company to discuss with intent to influence decisions, applications, examination reports, or other particular matters pending under their official supervision or responsibility during their last year of federal employment. 18 U.S.C. § 207(a)(2).

- The "one-year cooling-off period" provides that for one year following their departure from the government, a senior OCC official may not call, attend meetings with, or otherwise appear before the OCC on behalf of a bank or other party with intent to influence on any matter. This prohibition applies to OCC employees with a base salary (excluding geographic pay) equal to or greater than the applicable threshold ($136,757 as of January 2004). 18 U.S.C. § 207(c).

Additional OCC Ethics Procedures

To ensure that departing employees are fully aware of their post-OCC ethics obligations, OCC ethics officials conduct pre-exit interviews with departing employees, provide them with a copy of the ethics restrictions, and discuss the applicability of these restrictions to the specific future plans of the departing employee. The OCC also informs departing employees that they may contact OCC ethics officials at any time in the future should any questions or issues arise. The OCC also provides guidance for its current employees who have contacts with former OCC employees.

In implementing these ethics laws and regulations, the OCC's ethics guidance consistently reminds OCC examiners and other employees that, as soon as they contact, or are contacted by, a bank or other company about employment, they must stop any work they are doing at the OCC that involves that company and may not accept any new assignments involving that company.

OCC employees are regularly advised in ethics issuances and ethics training that they should exercise special caution in this area, because apparently insignificant actions can inadvertently have immediate and significant effects, resulting in possible criminal prosecution. They are warned that a brief conversation with a bank official or the sending of a resume can constitute "seeking employment" and can require the employee's recusal from a bank. They are advised that an examiner or other employee who is contacted by a bank about employment, or seeks employment with the bank, during an examination must immediately terminate his or her participation in that examination. Our guidance stresses that this immediate recusal is required even if the employment discussions were initiated by the bank. And even if the examiner immediately terminates such discussion, he or she must advise his or her supervisor that an employment contact was made during an examination.

When an OCC employee is scheduled to leave the agency, the employee's ethics official is advised of the departure and conducts an exit interview, which includes a discussion of the employee's future employment plans and how the ethics post-employment rules are likely to apply to the employee.

Additional procedures that are not required by the regulation have been implemented by the OCC and are applicable when an employee is leaving the OCC to work for a bank. These additional procedures - the Bank Employment Questionnaire and the Workpaper Review – are designed to provide additional safeguards against conflicts of interest.

The OCC's ethics procedures require any examiner or other financial disclosure filer who is planning to work for a bank after leaving the OCC to complete a Bank Employment Questionnaire that requires the employee to disclose among other things:

- The date the employee first discussed prospective employment with the bank;
- The date when the employee last worked on matters related to the bank;
- Whether the employee at the time of, or at any time prior to, his or her resignation was involved in the examination or other supervision of the bank or any affiliate of the bank; and

- With whom within the OCC and the bank the offer of employment was discussed.

OCC procedures further require that a workpaper review be conducted if an examiner worked on the last examination of the bank. A workpaper review is conducted on the work products of departing OCC examiners who worked on the most recent examination of the bank where they accept a position. The review is conducted by an independent commissioned National Bank Examiner.

The examiner conducting the workpaper review determines: (1) whether the judgments and decisions made by the departing employee are reasonable and supported; (2) whether any examiner judgments were unduly detrimental or beneficial to the bank or the OCC; and (3) whether there was any evidence of undue influence over the employee's work or the employees staff's work if the departing employee was in a supervisory role.

In the event of an unfavorable conclusion, a secondary review is conducted. If the secondary review supports conclusions from the workpaper review, the Deputy Comptroller, District Counsel and Ethics Counsel will determine if the following actions should be taken: (1) referral to the Inspector General; (2) re-examination of the institution; and/or (3) re-examination of the area of the bank upon which the conclusions were based.

The OCC's ethics program is periodically reviewed by the Office of Government Ethics. In the most recent review in 2000, the agency received an Outstanding Ethics Program Award for outstanding achievement in developing and managing the ethics program.

Application of Ethics Rules to the Riggs EIC

The Riggs EIC was subject to these pre- and post-departure ethics statutes and regulations, and agency procedures were carefully and promptly followed in the period leading up to his retirement from the OCC. Upon unilaterally being approached by the Bank concerning the possibility of employment with the Bank, the Riggs EIC promptly contacted his immediate supervisor and his ethics official, and received a recusal letter informing him that he was prohibited from participating in any matters involving Riggs Bank. A copy of this recusal letter was sent to his supervisor.

Upon acceptance of a position with the Bank, the Riggs Bank EIC completed the OCC's Bank Employment Questionnaire, the OCC ethics official issued a memorandum to the Riggs EIC reviewing the post-employment rules and a workpaper review was conducted by an independent examiner who found that there was no evidence of potential conflicts of interest. This workpaper review by the examiner was then reviewed both by the Northeast District Deputy Comptroller and the appropriate ethics official. Both of these individuals concurred with the recommended conclusion of the independent examiner.

VII. Improvements Undertaken to Improve BSA/AML Supervision

While we believe that our overall supervisory approach to BSA/AML compliance has been rigorous and is working well, 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 financers, as well as to address aspects of the process where shortcomings were evidenced in the Riggs situation. Recent and current initiatives include the following:

- As previously mentioned, together with the other federal banking agencies, we recently developed revised examination procedures for several key sections of the USA PATRIOT Act and we expect to be issuing a revised version of our BSA Handbook by the end of the year.

- Together with the other federal banking agencies, we issued an Interagency Advisory providing guidance to the banking industry concerning the acceptance of accounts from foreign governments, foreign embassies and foreign political figures. In conjunction with this Interagency Advisory, the Department of the Treasury issued a Statement of Policy on Accepting Accounts from Foreign Governments, Foreign Embassies and Foreign Political Figures.

- We plan to develop our own database of national bank-filed SARs with enhanced search and reporting capabilities for use in spotting operational risk including in the BSA/AML area. This database will be compatible with the OCC's supervisory databases and will enable us to: (1) generate specialized reports merging SAR data with our existing supervisory data, (2) sort SAR information by bank asset size and line of business, and (3) provide enhanced word and other search capabilities.

- We are developing and will implement nationwide, a new risk assessment process to better identify high-risk banks. This system will use standardized data on products, services, customers, and geographies to generate reports that we will use to identify potential outliers, assist in the allocation of examiner resources, and target our examination scopes (e.g., particular products or business lines).

- We are exploring with FinCEN and the other agencies better ways to use BSA information in our examination process, so that we can better pinpoint risks and secure corrective action. We are currently working with FinCEN to help develop their BSA Direct initiative. We expect that this system will allow us to make better and more effective use of FinCEN's SAR database.

- We are also exploring how we can systematically capture BSA/AML criticisms in examination reports so that we can track situations where no follow-up formal action has been taken.

- Our Committee on Bank Supervision also has sent an alert to remind OCC examination staff of the need to recognize accounts and transactions that appear to be anomalous or suspicious or that have other characteristics that should cause them to be considered high-risk in nature, and to conduct additional transaction testing and investigation in such situations.

- We are amending our existing enforcement policy to clarify areas where statutory mandates exist to take certain types of enforcement actions under specified events or conditions.

- We endorsed the formation of, and will actively participate in, the Federal Financial Institutions Examinations Council's new interagency working group that is charged with enhancing the coordination of BSA/AML training and awareness. This coordination will include improving coordination between the banking agencies and FinCEN.

In addition, specifically with regard to Riggs, the Comptroller has directed our Quality Management Division to immediately commence a review and evaluation of our BSA/AML supervision of Riggs. This review will include an assessment of whether we took appropriate and timely actions to address any shortcomings found in the bank's processes and in its responses to matters noted by the examiners, and the extent and effectiveness of our coordination and interaction with other regulators and with law enforcement. The review will also seek to determine whether there were any inappropriate influences that may have affected our supervisory activities in this case. The Comptroller has also asked for recommendations for improvements to our BSA/AML supervision and our enforcement policy with regard to BSA/AML violations.

Conclusion

The OCC is committed to preventing national banks from being used, wittingly or unwittingly, to engage in money laundering, terrorist financing or other illicit activities. We stand ready to work with Congress, the other financial institution regulatory agencies, the law enforcement agencies, and the banking industry to continue to develop and implement a coordinated and comprehensive response to the threat posed to the nation's financial system by money laundering and terrorist financing.