

Remarks by
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Let me begin by expressing my appreciation to Pat Roth and the Florida International Bankers Association for inviting me to join you at this important conference. At the same time, I want to extend the OCC's very sincere appreciation for the outstanding work FIBA has done over more than two decades to promote training and understanding in the field of Bank Secrecy Act and anti-money laundering compliance.

There can be no doubt that, for years, banks have done their part to close off the U.S. financial system to those who would try to use it for money laundering and other illicit activities. But today, the challenges we face are much greater. BSA compliance is no longer just a matter of disrupting the proceeds of the drug trade, as important a goal as that is. It is now also about preventing terrorist financing, a matter that directly affects the national security of the United States and the protection of its citizens. Without question, this is an enormous challenge, and the burdens it imposes on banks and their regulators is correspondingly greater. But it's a challenge that America's bankers and bank regulators can and must meet. What all of us must do to meet that challenge is the subject of my remarks.

I'm confident that challenge will be met, because bankers have a long history of coming through for America in times of national crisis. In every war we have ever

fought, bankers have been on the front lines— mobilizing the nation’s savings and financing a vast conversion of industry to meet our materiel needs, not just of Americans in uniform but of millions of our allies at arms. And you’re on the front lines today. Make no mistake about that.

Today, our country faces national security challenges different in kind but not in degree from those that threatened our way of life in the past. So does this industry.

To be clear, I am not saying that it is the job of bankers to “catch” money launderers and terrorist financiers. That is the job of law enforcement. But neither bankers -- nor bank regulators -- can abdicate their legitimate roles in the process. By having strong systems in place to identify and report suspicious transactions, banks play a critical role in getting timely and accurate information into law enforcement’s hands. And, while most banks have always been willing partners when it comes to combating money laundering, it is clear that what was good enough in the past may not be good enough now. The stakes are much, much higher than ever before, and a “business as usual” approach is not going to be sufficient to meet the challenges at hand.

Regulators, too, play a key role in ensuring that our nation’s financial institutions have systems in place to combat money laundering and terrorist financing. I am proud of the record of my agency as a leader in developing BSA-related training, examination policies and procedures, and enforcement remedies. But it is also clear that the current challenges our nation faces require us to do more. As regulators, we simply have to do our jobs better than ever before or the consequences for the nation could be dire. We understand that at the OCC, and we are working diligently to improve our supervision in this most critical area.

In order to do our jobs effectively, banks – and bank regulators – need to be acutely sensitive and responsive to risk. For banks, that means establishing and maintaining BSA/AML systems and controls equal to their risk exposure. For bank regulators, it means testing and validating bank systems and controls and then focusing supervisory resources on institutions we’ve deemed “high-risk” because their systems and controls have been found wanting.

The question I’m frequently asked is what specific BSA attributes – or shortcomings -- are likely to place an institution in the high-risk category. In certain respects, this is not as simple a question as it might appear. The OCC’s examination procedures for BSA/AML compliance, which were last published in September 2000 and are currently undergoing revisions as part of an interagency effort to develop uniform interagency guidance, recognizes that “certain products and services, types of entities, and geographic locations are more vulnerable to money laundering,” and offers a list of “High-Risk Products and Services” likely to attract special notice from an OCC examiner. These include such things as international correspondent banking relationships, wire transfers, pouch activities, payable through accounts, international brokered deposits, special use accounts, and private banking.

The OCC handbook also lists inherently “High-Risk Entities,” such as money-services businesses and currency exchange houses, casinos, offshore corporations, travel agencies, pawnbrokers, and other cash-intensive businesses. We recognize that, depending upon the characteristics of the particular business, the risks presented are not the same. However, when banks have significant relationships with such entities, it does increase the likelihood that they’ll wind up on regulators’ “high risk” list.

Similarly, it should come as no surprise to financial institutions that have extensive dealings with companies that operate in countries that are known bank secrecy havens – or with those countries themselves – that they will come in for a heightened level of regulatory scrutiny. The same holds true for dealings with countries that have been implicated in the international drug trade or countries identified in FinCEN advisories.

But let me be very clear about the OCC's position concerning these categories of businesses, products, and locales. They present different degrees of higher risk, and thus warrant different degrees of enhanced risk controls. We absolutely are not saying that because a particular type of business or product is high risk, that a national bank should not be involved with it. We absolutely are saying, however, that national banks must have systems commensurate with – and adequate to – monitor, manage, and control those risks. Some money-services businesses, for example, have been specifically licensed and subjected to regulatory scrutiny for anti-money laundering, while others have operated relatively free from regulatory oversight. The former may not present heightened risk or require enhanced due diligence while the latter clearly does. Other factors also may be appropriate to distinguish the risks presented by different types of money-services businesses.

Similarly, we do not determine whether an institution represents a high risk for BSA noncompliance by the number of suspicious activity reports it has filed – or not filed – during some arbitrary period. There's no question that many bankers, encouraged by their lawyers, have taken a defensive posture in their approach to SAR filings. If the hugely elevated SAR numbers – a more than three-fold filing increase between 1997 and

2003, system-wide – reflected a heightened awareness of AML/BSA compliance requirements, that’s all to the good. But these numbers alone do not tell us much about a particular institution’s BSA risk profile. A bank that files few SARs may be no different from the expert police force that has effectively run the criminals out of town -- and whose complaint logs show it. Or, they may have developed their Know Your Customer processes to a point where they have a legitimate explanation for an unusual transaction, obviating the need for a SAR filing. Conversely, a bank that files many SARs may be doing so because its KYC procedures are so weak that they are unable to differentiate between transactions that may on the surface appear unusual, but are in fact consistent with a particular customer’s legitimate use of their account. The point is that we just can’t tell from the numbers alone.

That’s why the OCC made a point in its recent BSA enforcement guidance to note that the act of filing SARs is an inherently subjective judgment, and that banks should not be cited for a decision not to file – provided that the decision was made in good faith and the bank has an adequate SAR reporting process in place. I should hasten to add, however, that this does not mean that clearly mistaken non-filing decisions do not need to be corrected, or that repeated mistaken non-filing decisions will be without consequences, regardless of the bank’s intentions.

From all that I’ve said, it should be obvious that a high-risk institution for purposes of BSA compliance cannot be defined in terms of a single factor. A high-risk institution is not one that simply offers high-risk products or has operations in high-risk locations – in fact, a bank can be considered high-risk even if it does not offer high-risk products or operate in a high-risk location, if its systems and controls are not strong

enough to manage the risks it is taking on. Nor is it an institution that fails to meet a certain threshold number of SAR filings. But when a bank fails to have appropriate systems and controls to effectively manage its risks, whatever those risks are, then we have the profile of an institution that will almost certainly attract a high level of regulatory scrutiny, especially where we perceive a lack of a sincere, thoroughgoing commitment to BSA compliance.

Let me give that last point the emphasis it deserves. Time has shown that nothing matters more than management's commitment to its AML effort – a commitment that must start at the top, must permeate the entire organization, and must be geared to the risks that institution has taken on. It must include internal controls, independent testing, responsible personnel, and appropriate training.

Even where the other red flags I've mentioned were not in evidence, we might consider an institution as warranting special attention if we noted that its actions were not truly supportive of its AML effort. To operate in the current BSA environment, banks need to promote and reward BSA and anti-money laundering compliance. Examiners are expert at spotting the difference between a bank management that's truly committed to the cause of preventing money laundering and BSA violations, and one that's merely paying lip service to it.

The OCC has undertaken a systematic effort to evaluate the banks we supervise based on the degree of AML risk they present. Banks that fall into this high-risk category can expect to receive a more thorough examination than they have received before -- in fact, many institutions have already received such an examination or are in the process of receiving one. We will, of course, also examine those institutions that we

believe present less risk of noncompliance but, without question, our greatest focus will be on those institutions presenting the greatest risk.

Having said all this, there's no question that current events dictate that the bar on BSA/AML performance has been raised. Banks are being held to a higher standard than ever before – and so are bank regulators. I've already mentioned the ongoing interagency work to revise the banking agencies' BSA examination procedures. At the OCC, we've also modified and expanded examiner skill building activities to include new on-the-job training opportunities and nationwide teleconferences, and we've conducted a wide variety of industry outreach efforts to keep you apprised of your responsibilities – and our expectations -- under the law.

Under auspices of the OCC's National Anti-Money Laundering Group, which plays a key role in all BSA-related supervisory initiatives, we completed expanded-scope examinations for compliance with the USA PATRIOT Act at the 25 largest national banks. We are planning to augment our staff dedicated to BSA compliance and we have created a new senior-level position of director for Bank Secrecy Act activities to consolidate anti-money laundering activities within the OCC. The first incumbent to this position should be named shortly.

Of course, there is also the previously mentioned enforcement guidance, which the OCC released in November. Some industry leaders have interpreted the guidance as requiring examiners to impose harsh penalties, regardless of the magnitude of the mistake or the extenuating factors that may have contributed to it.

But others – albeit an industry minority -- have suggested that the guidance should be helpful to bankers in various ways, noting that it requires review at the highest

levels of the agency before a violation of the BSA program requirement can be cited, as well as clarifications on such issues as the standard for citing violations of the SAR rule.

Given these differing viewpoints, this seems like a good opportunity to try to set the record straight – to let you know what has changed and what has not – what we hoped to accomplish with our new guidance and how we believe you should interpret it.

I should begin by pointing out that since 1999 the OCC has been conducting its BSA enforcement program under rules very similar to those spelled out in the recent guidance. Although the new guidance does depart in certain respects from our previous practice, what I think is most notable is that we have chosen to codify our practice and release it to the industry in order to encourage discussion and promote understanding of our rules and expectations. And thus far, we are the only agency to do so.

The vast majority of bankers – those that have systems and policies in place that are equal to the BSA risk embedded in their institutions and that have responded constructively to regulatory criticism, if any -- will be unaffected by the changes spelled out in the new guidance. And for those relative few that have a BSA compliance problem, the goal of our guidance was not only to ensure that all such institutions promptly correct the problem, but that they also receive fair and consistent treatment.

It has been suggested that the guidance limits examiners' freedom of action when it comes to citing an institution for a BSA violation. But it must be realized that the law – 12 U.S.C. 1818(s) -- requires the OCC (and each of the other banking agencies) to issue a cease and desist order whenever a bank fails to establish and maintain a BSA compliance program as required by regulation or fails to correct any significant problem with its BSA

compliance program that was previously cited in the bank's Report of Examination or other correspondence.

But while the law limits discretion as to the remedy once an institution has been cited, regulators have considerable flexibility in determining whether the threshold for citation has been met. Precisely because the OCC recognizes the gravity of citing a violation, we have put in place a process of requiring all proposed citations to be considered by our Washington Supervision Review Committee, which reports directly to the Senior Deputy Comptrollers for Bank Supervision. Thus, a bank cannot be cited for a BSA compliance violation without approval at the very highest level of the agency. If that approval is not granted, then examiners have a variety of informal remedies at their disposal.

A look at the enforcement actions taken since our guidance was issued illustrates my point: when cease and desist orders have been imposed on banks, they have not been imposed lightly. In each case, the offending institution was found to be lacking the systems and controls necessary to effectively manage its risks. And, while the OCC may take enforcement actions against banks that have weak systems and controls, regardless of whether they were engaged in high risk businesses, each of the institutions in question were in fact offering high risk products and services.

Take the case of a recently sanctioned Federal branch of a foreign bank. In just one year, this branch originated 162,000 wire transactions, totaling \$208 million, to individuals and entities in countries that had been designated by the Financial Action Task Force and FinCEN as non-cooperating countries or territories. It engaged in extensive pouch activity, moving \$8 million in one typical eight-day period. The OCC

identified 47 large remittances for customers whose occupations did not justify the size of the transactions, including \$222,000 over a single three-day period. Despite previous warnings, the branch had no process to review aggregate activities, and violated many of the BSA policies that it did have.

Or consider the case of a relatively small community bank. We found that this institution did not require any financial information from commercial customers making large cash deposits, did not monitor its large-volume international wire transfer business (much of which involved non-cooperating countries), performed no transaction testing of wire remittance activities, and had sampled only ten accounts for suspicious activities during its most recent external audit.

Similarly, we took action against another bank that failed to analyze wire activity and currency transaction report filings for trends, patterns and reasonableness, did not consistently generate account opening information sufficient to rate the account risk level, and did not review high risk accounts on a periodic basis for suspicious activity. Indeed, only eight of 1600 high-risk accounts had been reviewed by the bank. Moreover, the institution was not reviewing pouch activity and was not monitoring the accounts of politically exposed persons for suspicious activity.

Most recently, the OCC issued a cease and desist order against Banco de Chile, a Federal branch of a foreign bank in New York that not only had serious deficiencies in its BSA compliance program, but had permitted former Chilean dictator Augusto Pinochet to transfer millions of dollars in deposits and credits to accounts controlled by persons acting under Pinochet's direction and authorization. That information was concealed from the OCC's examiners.

In short these institutions are representative of the types of institutions that are likely to be subject to a cease and desist order under our new enforcement guidance. I doubt that any would say that these are cases of “technical” violations that did not warrant the issuance of an order. When banks have failed to implement an effective program, we will take swift and forceful action. But these actions should also make it clear that the OCC does not exercise enforcement authority arbitrarily or indiscriminately.

One last point. Without question, responsibility for ensuring compliance with the BSA is shared among many organizations both in the private and public sectors. Neither banks nor their regulators can be effective in this area by going it alone. Long-term success is going to require a coordinated effort involving the free flow of information among and between all financial institutions, as well as their regulators and law enforcement agencies. To be sure, great strides have been made in this area since passage of the USA PATRIOT Act. But to be truly effective, we recognize that there must be a greater flow of information from the law enforcement and intelligence community to banks and their regulators, or else we run the risk of turning the fight against money laundering and terrorist financing into a costly and ineffective “needle in a haystack” exercise.

Clearly, times have changed -- for banks and for regulators. The challenges we face will require the highest level of vigilance, in addition to all the modern tools and technology we can bring to bear. Surely, we share a common goal. And thus the OCC looks forward to continued cooperation with the banking industry in the effort to assure the integrity of our nation’s financial system.