

SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

The Special Supervision division of the Mid-Size/Community Bank Supervision department supervises the resolution of critical problem banks through rehabilitation, orderly failure management, or through the forced sale, merger, or liquidation of the problem institution. The Special Supervision division monitors the supervision of nondelegated and delegated problem banks, provides training, disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem-bank and related issues.

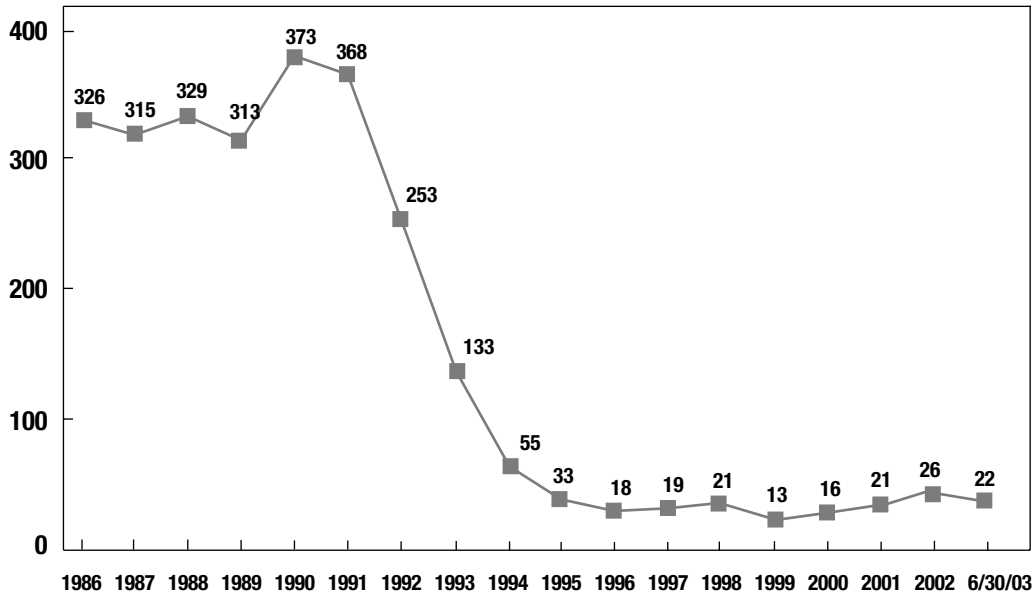
This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by the OCC's Special Supervision division and the FDIC's Department of Resolutions in Washington. Information on enforcement actions is provided by the Enforcement and Compliance division (E&C) of the law department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

Problem banks continue to represent approximately 1 percent of the national bank population as of June 30, 2003. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been relatively stable for several years. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks is 22 at June 30, 2003, down from 26 at December 31, 2002. One national bank failure occurred through June 30, 2003, out of two commercial bank failures.

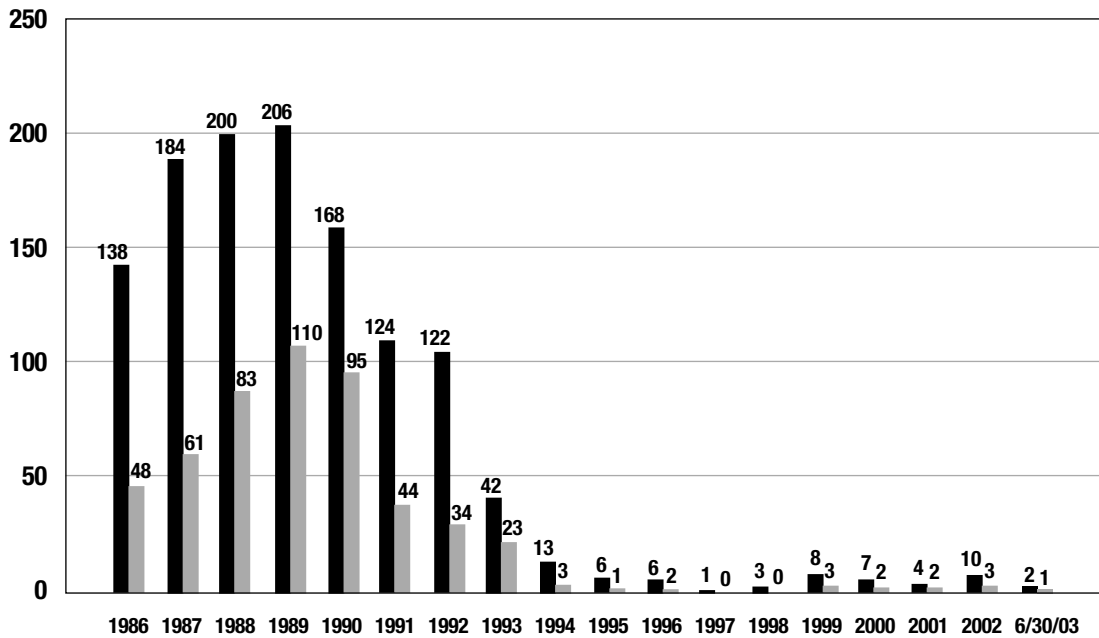
SPECIAL SUPERVISION/FRAUD AND ENFORCEMENT ACTIVITIES

Figure 1—Problem National Bank Historical Trend Line



Source: Special Supervision

Figure 2—Total Bank Failures Compared to OCC Failures



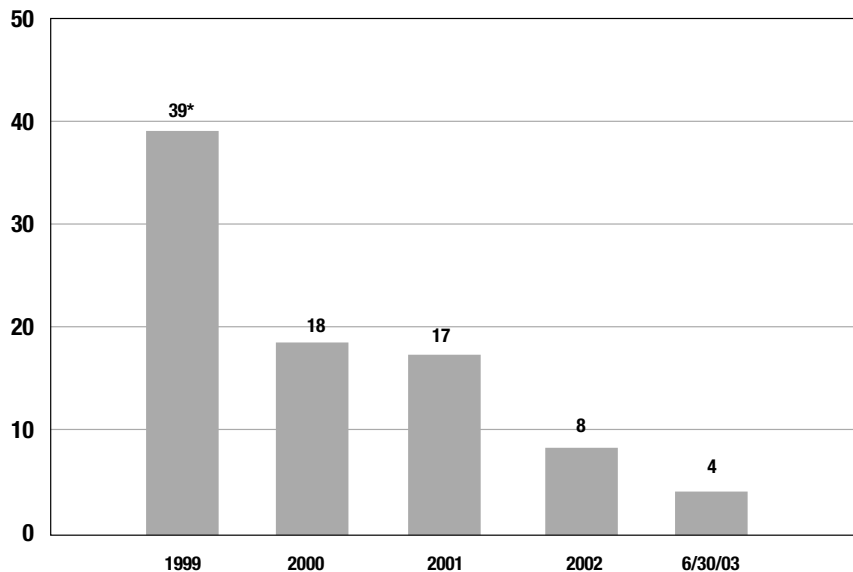
Source: Federal Deposit Insurance Corporation

Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

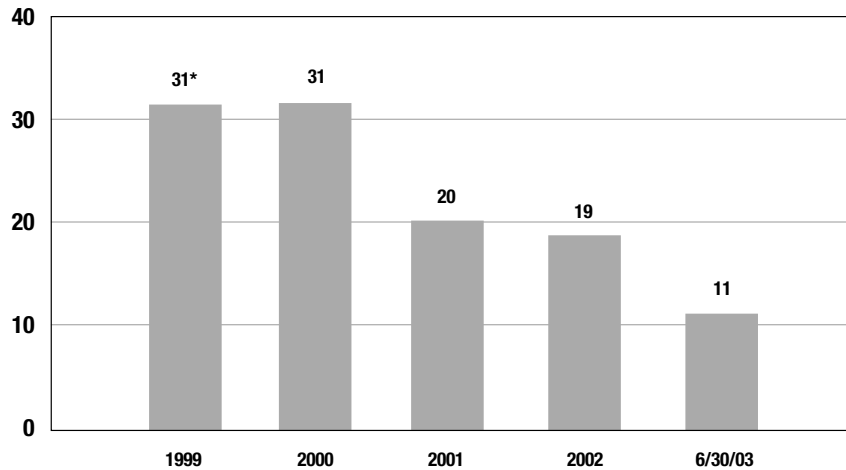
The OCC takes enforcement actions against national banks, individuals affiliated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of informal enforcement actions completed by the OCC against banks in the last several years. (Year-2000–related actions taken in 1999 are noted in the figure footnotes.)

Figure 3—Commitment letters



Source: OCC Supervisory Monitoring System (SMS). Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

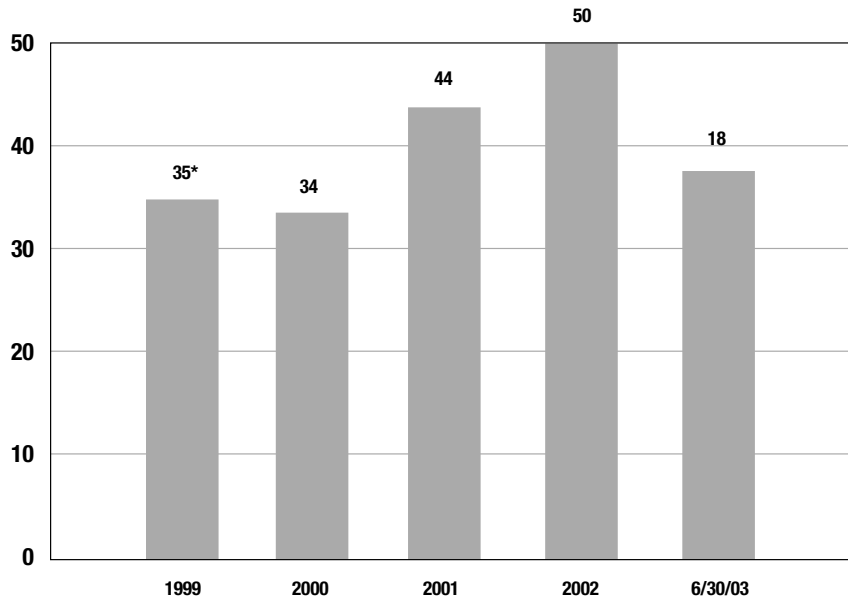
*6 of which are for year-2000 problems

Figure 4—Memorandums of understanding

Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.
*6 of which are for year-2000 problems

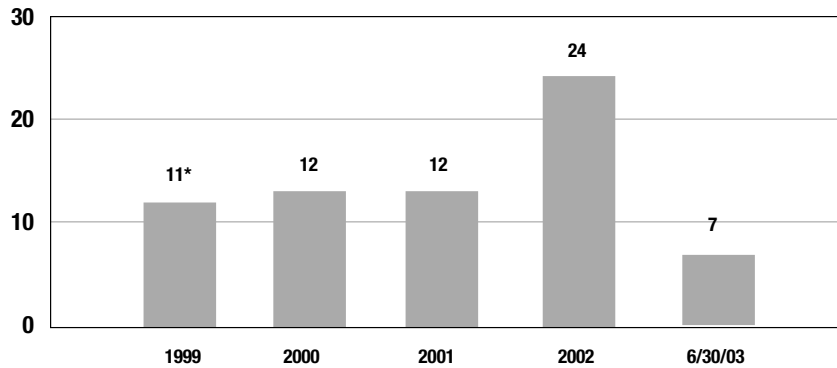
The most common types of formal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements, but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court. The OCC may also assess CMPs against banks, and as of June 30, 2003, the OCC assessed CMPs against three banks. The OCC also issued three CMPs against national banks as of June 30, 2003.

Figure 5—Formal agreements



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.
*2 of which are for year-2000 problems

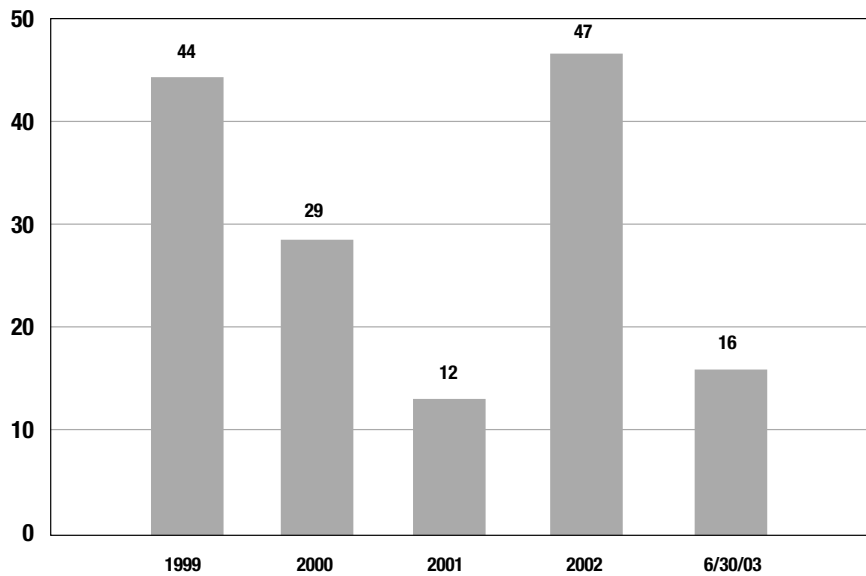
Figure 6—Cease-and-desist orders against banks



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.
*1 of which is for year-2000 problems

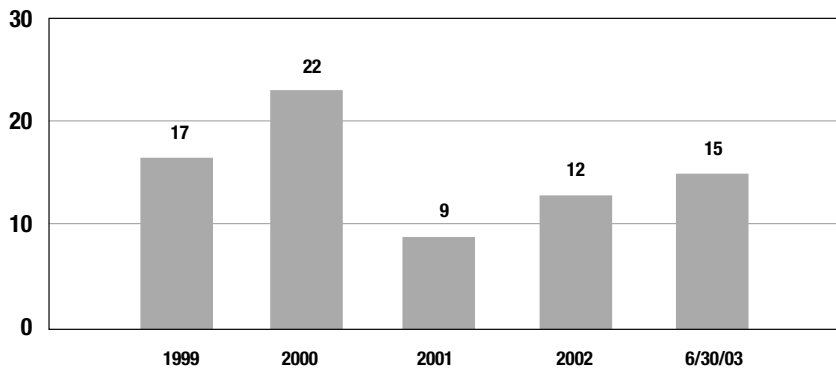
The most common enforcement actions against individuals and other institution-affiliated parties are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, unsafe or unsound banking practices, and breaches of fiduciary duty. Personal C&Ds may be used to restrict individuals' activities, to order payment of restitution, or to require institution-affiliated parties to take other affirmative action to correct the results of past conduct. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

Figure 7—Civil money penalties against individuals

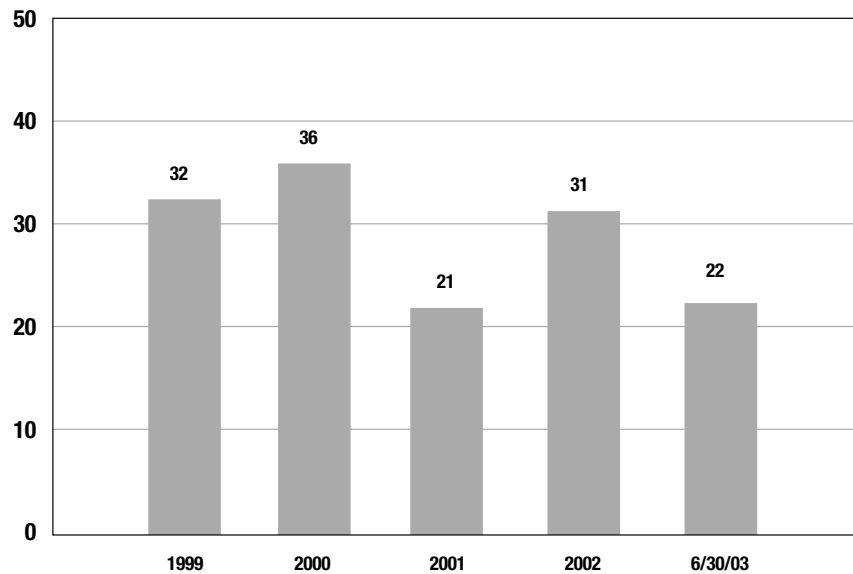


Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 8—Cease-and-desist orders against individuals



Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 9—Removal and prohibition orders

Source: SMS. Note that SMS totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Recent Enforcement Cases

Below are summaries of the significant cases completed between January 1 and June 30, 2003.

Actions Involving Payday Lending

By the end of the second quarter of 2003, all national banks with known payday lending activities through third-party vendors were ordered to exit the payday lending business. By undertaking enforcement actions against these banks, the OCC addressed safety and soundness concerns in the management of these payday loan programs, and ended significant consumer protection violations. For example, in January 2003, the OCC entered into consent orders with a bank in Texas, and its' third-party vendor, which included civil money penalties against both the bank and the vendor. OCC examiners documented that the bank and its vendor had routinely violated multiple consumer protection laws and regulations. The vendor was ordered to terminate its payday lending relationship with the bank, and to not contract with another national bank without the OCC's prior non-objection. The bank itself was also ordered to exit the payday lending business. In another matter in January 2003, the OCC entered into a consent cease-and-desist order with a bank in South Dakota. In addition to finding a variety of deceptive acts or practices and conflicts of interest within the bank, the OCC determined that the bank's oversight of its payday lending

operation was weak, resulting in significant data integrity errors. The bank failed to correct deficiencies identified by bank audits. Therefore, the OCC required the bank to terminate its payday lending business through its two payday vendors.

Actions Involving Unfair or Deceptive Acts and Practices

The OCC has continued to address improper business practices of national banks that are abusive, unfair, or deceptive, thereby promoting fair treatment of bank customers and fair access to financial services for all Americans. The OCC took several enforcement actions in the first two quarters of 2003 to address such acts and practices. For example, in January, the OCC entered into a consent cease-and-desist order with a bank in South Dakota. The OCC determined that the bank's credit card programs violated section 5 of the Federal Trade Commission Act. The bank's program included a message that the card had "no annual fee," when a monthly fee was charged. Under the terms of the consent order, the OCC required the bank to establish a \$6 million reserve to fund restitution payments to consumers. In another matter, in March 2003, the OCC entered into a formal agreement with a Nevada credit card bank. The bank issued private label cards that were used to finance purchases of heating and air conditioning units sold by a third-party air conditioning firm to Spanish-speaking residents in three states. Installation and operations of the units were problematic; the bank, through its third-party vendor, provided faulty disclosures; and its remediation program was further flawed. Pursuant to the formal agreement, the bank is providing restitution to affected customers.

In another matter related to a credit card bank in Oregon, in April 2003, the OCC and the credit card bank entered into a consent cease-and-desist order, settling a notice of charges and a temporary cease-and-desist order issued in March 2003. The temporary order and the consent order resulted from the bank's entering into contracts to service securitized trusts, which contracts the OCC deemed unsafe and unsound pursuant to 12 USC 1831(g). The OCC found the contracts to be unsafe and unsound because they provided for servicing fees to the bank that were significantly below industry standards and placed the bank, as the servicer, in a very disadvantageous and low priority position in the event of an early amortization, which was also contrary to industry standards applicable to similarly situated servicers. The consent order required the bank to (1) cease servicing credit card accounts upon the appointment of a successor servicer or upon the expiration of 30 days, whichever occurred first; and (2) immediately, and as long as the bank remained a servicer, withhold a servicing fee appropriate for the type of service it was performing, in accordance with a schedule of fees set forth in the consent order.

Actions Involving Insider Abuse or Breach of Duty

In other OCC actions, in January 2003, the OCC entered into consent orders with two directors of a Kentucky bank, in connection with the directors' breaches of fiduciary duty and conflicts of interest in approving loans, which resulted in substantial losses to the bank. The directors agreed to prohibitions and civil money penalties.

In April 2003, the OCC entered into personal cease-and-desist orders with three directors of a Kentucky bank in connection with the directors' unsafe and unsound practices and breaches of fiduciary duty. Each of the directors withheld financial information from the bank related to an accountholder with whom they had personal financial relationships, preventing the bank from determining whether the accountholder was engaging in suspicious activity within the meaning of the Bank Secrecy Act (BSA). The personal cease-and-desist orders require the directors to indemnify the bank for any uninsured liability the bank may incur as a result of their conduct, or, for all expenses such as reasonable legal fees that the bank incurs after recovery of any insurance proceeds as a result of defending itself from any lawsuits or other proceedings related to the account in question.

Between April and May 2003, the OCC entered into consent orders with two former officers and one former director of a failed Florida bank. The former director consented to a prohibition and a civil money penalty in connection with the OCC's allegations of unsafe and unsound practices, breaches of fiduciary duty, and violations of law related to a large loan made by the bank that appears to have been fraudulent. In addition, the two former officers both consented to personal cease-and-desist orders that limit their conduct as employees of any insured depository institution, and that require them to disclose the existence of their orders to any institution they become employed by. One of the officers also agreed to pay a civil money penalty to the OCC. Also, in May 2003, the OCC issued temporary cease-and-desist orders to three of the four individuals. The temporary orders seek to prevent the former officers and directors from dissipating their assets in anticipation of administrative proceedings seeking significant restitution and civil money penalties from the individuals. One of the temporary orders also requires one former officer and director to post a bond for approximately \$1.4 million to secure his potential restitution obligation.

Actions Involving Customer Privacy

In April 2003, the OCC entered into consent orders with two former bank insiders of a Colorado bank in connection with the insiders' violation of the OCC's newly promulgated privacy regulations at 12 CFR Part 40. The OCC determined that the insiders violated the privacy regulations and engaged in unsafe or unsound practices in connection with the theft of over 2,200 electronic loan files from the bank. The consent orders included prohibitions, civil money penalties, and personal cease-and-desist orders against each insider. The personal cease-and-desist orders place restrictions on the insiders' future employment with employers other than national banks.

Actions Against Professional Firms

In May 2003, the OCC entered into formal agreements with the law firm that represented a failed bank formerly located in West Virginia, and with one of the firm's partners. The formal agreement with the law firm represents the first enforcement action of its kind taken by the OCC against a law firm acting as counsel for a national bank. The enforcement actions were the result of the law firm's and the partner's failure to inform the bank's board of directors of important information

about bank management's activities and conflicts of interest involving the firm's representation of the bank and other clients. The law firm, by entering into the formal agreements, which will last for a period of three years, agreed to take certain actions with respect to the firm's representation of insured depository institutions. Specifically, the formal agreement requires the firm to comply with all federal banking laws and to ensure that firm attorneys representing insured depository institutions have sufficient experience in banking matters. The firm also agreed to correct any documents that it prepares on behalf of a banking client if the firm learns that the document omits or misstates material facts, and if it knows that the document will be, or has been, submitted to or relied upon by a federal banking agency. Furthermore, the firm agreed not to represent both an insured depository institution and any other client in the same transaction if such representations would cause a conflict of interest. In addition, the agreement provides that a firm attorney must advise the employees, officers, or directors of insured depository institution clients of their fiduciary duties to the institution. The firm also agreed to report potential misconduct by bank insiders to senior management and, if necessary, to the institution's board of directors, unless the insider takes appropriate action. By entering into the formal agreement with the OCC, the firm's partner agreed not to provide legal services to insured depository institutions. Furthermore, if the partner leaves the firm and joins an insured depository institution, another law firm, or any business that performs legal services for an insured depository institution in the next five years, he is required to provide a copy of the agreement to the new employer and notify the OCC and the FDIC of the change in employment.

Actions Involving Safety and Soundness

In May 2003, the OCC entered into a consent cease-and-desist order with a Florida bank, which was designed to prevent the recurrence, and correct the results of, the bank's already-defunct relationship with a company that served the bank as an advisor in a nationwide mortgage lending operation. Among other things, the consent order requires the bank to implement a consumer compliance program and, prior to offering any significant new product or service, perform a detailed analysis of the proposed product or service and obtain a finding of no supervisory objection from OCC. Pursuant to the consent order, the bank also agreed not to enter into or renew contracts with third parties without performing a detailed analysis of the proposed contract and to present that contract to the OCC. The order also requires the bank to conduct a file search to identify loan applicants who did not receive, or received inadequate, adverse action notices and to send complete and accurate notices to those applicants.

Actions Involving Anti-Money Laundering and Bank Secrecy Act

Also in 2003, the OCC has continued to ensure that national banks and their institution-affiliated parties comply with federal anti-money-laundering provisions. Cases in 2003 included restrictions on a bank's acceptance of cash payments on private-label credit cards, as well as improvements to BSA policies and procedures. For example, in April 2003, the OCC entered into consent cease-and-desist orders with an Illinois bank and its corporate parent, requiring the entities to adopt new

policies and procedures to ensure the bank's compliance with BSA.

In February 2003, the OCC entered into a formal agreement with the federal branch of a foreign bank. The formal agreement addressed the federal branch's strategic plan, management, management information systems, credit risk controls, and its BSA, anti-money-laundering, and Office of Foreign Assets Control (OFAC) compliance.

Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks, but who are not being criminally prosecuted, are prohibited from working in the banking industry. As part of the Fast Track Enforcement program, E&C secured 17 consent prohibition orders against institution-affiliated parties between January 1 and June 30, 2003. Three of these orders also incorporated restitution payments to the appropriate banks for losses incurred, and two of the orders incorporated civil money penalties against the individuals. In addition, one of the orders included a personal C&D. The OCC also obtained one separate consent personal C&D. During the same period, E&C sent out notifications to 137 former bank employees, who were convicted of crimes of dishonesty, informing them that under federal law they are prohibited from working again in a federally insured depository institution.