

Remarks by
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I would like to thank both ABAs for inviting me here today to address this important conference. Both groups have a long and impressive history of good work in the Bank Secrecy Act/Anti-Money Laundering area. As is apparent from the number of people in this room, there is no denying the importance of this subject matter or the success of this conference in educating bankers, lawyers, and other professionals about BSA/AML issues.

Before I get to the forward-looking part of my remarks, let me step back and talk briefly about where we've been in order to understand where we're going. Without question, for decades banks have been the leaders in BSA compliance. While other types of financial institutions have only recently become subject to requirements for compliance programs and Suspicious Activity Reporting, banks have been complying with these types of requirements for years. Not surprisingly, today most banks have BSA/AML programs in place that set the standard for all financial institutions to follow.

Banks have also repeatedly stepped up to the plate in times of crisis. There are many examples of this throughout history, but there is no better example than the role banks played in helping safeguard our financial system following the terrible attacks of 9/11.

Most recently, we have seen another outstanding example of banks' resiliency and commitment in the aftermath of the disasters caused by Hurricanes Katrina, Rita, and Wilma. In

the midst of widespread destruction and devastation, banks located in the affected areas were up and running within days and even hours, bringing necessary financial services to people who were literally left with nothing more than the clothes on their back. It was and is a truly amazing effort.

But with success comes challenges, and in the BSA/AML area we are all challenged like never before. Surely there has never been a period like the last several years, with high-profile enforcement and criminal actions, congressional hearings, and concerns about regulatory excess and defensive SAR filings. But we have also seen many positive developments recently, including most notably the publication of a comprehensive interagency examination manual and the training sessions that followed it. This is an example of cooperation and coordination within the Government, and between the Government and the banking industry, that is both unprecedented and extraordinary. I know that some of you may be concerned by the length and level of detail in the manual. But this is one instance in which I think “more” is better – given all the criticism about uneven examinations and inconsistent application of regulatory standards, I believe it was imperative for all of the agencies to be on the same page and to communicate clearly to you exactly what we expect. That’s why the manual captures in one place all of the relevant guidance in the BSA/AML area, along with uniform examination procedures.

The post-9/11 world is profoundly different in many ways from what it used to be, and that is certainly true in the BSA area. Whether we like it or not, the traditional concerns of the BSA, that is, disrupting the money flow of the drug trade and other illicit activity, have been joined with concerns about combating the financing of terrorism. This elevates BSA compliance to a heightened level of importance, giving it a place in the public consciousness like never before. I can tell you from first hand experience that this issue has the attention of Congress.

And, there are now many other agencies and Departments within the Government, as well as financial institutions and other businesses in the private sector, that have a stake in the outcome of this battle. The OCC works in close cooperation with many of these other Government agencies, like FinCEN, OFAC, the Department of Justice, and other law enforcement and regulatory agencies.

The result is that, today, neither banks nor their regulators can afford to adopt a “business as usual” approach when it comes to BSA compliance. We have to not only take a hard look at ourselves to better understand our weaknesses, but also make needed changes where deficiencies are found.

So, in this highly charged environment, what is it that banks should be doing? Let me offer the following four-step approach:

First: *Establish a culture of compliance that begins at the very top and permeates all layers of your organization.*

In the current era, banks need to care as much about being good at compliance, and compliance risk management, as they traditionally have cared about credit risk and credit risk management. In the BSA area, that means it is absolutely necessary that banks have a firm commitment to BSA compliance that starts at the board and senior management level, and runs through all levels and departments of the institution. Not surprisingly, we have repeatedly found that the banks that get into trouble in this area are those institutions that lacked this commitment, doing the bare minimum that needed to be done to comply with the law. In the current environment, that approach to BSA compliance is simply unacceptable as it subjects the institution to substantial legal and reputational risks.

This is not to suggest that banks' boards of directors are expected to become technical experts in the BSA area, or to assume functions, such as writing policies and designing compliance programs, that have traditionally been the province of management. The board's role was, and is, an oversight function. We expect directors to set clear expectations for management, establish strategic goals and risk limits, evaluate management's performance, and stay abreast of significant issues. But it is entirely appropriate and expected that directors will delegate day-to-day management functions to experts within the organization.

And while I'm on the subject, let me add that this important role of director oversight of BSA compliance – not management – applies even in the enforcement context, notwithstanding a recent article you may have read to the contrary. OCC enforcement documents regarding both BSA and other matters have long used standard language requiring directors to ensure that corrective action is taken. This language does not prevent directors, however, from delegating this responsibility to appropriate management officials within the bank. In fact, our documents typically contain standard language making it clear that such delegation is entirely appropriate. Of course, the ultimate accountability for ensuring that management follows through remains with the board.

Second: *Know your risks.*

BSA supervision is risk-based, and so is effective BSA compliance. It is axiomatic that, in order to have a risk-based approach to BSA compliance, you first have to know what risks and vulnerabilities your institution has. While there is no single way to do this, and different approaches may be appropriate for different institutions, I would suggest starting with a thorough and honest assessment of your institution's products, customers, and geographies served. Without such an assessment, it is impossible to design an effective BSA/AML compliance

program. Banks are already experts at assessing risk; it's what you do. But, historically, your risk focus has been on the asset side of your balance sheets. With money laundering, the risks are on the *liability* side of the balance sheet, in customer accounts, deposits, and transactions. Accordingly, that is where your risk focus should be.

At the OCC, we have continued to refine our risk assessment tools to better target institutions, and areas within institutions, that may be vulnerable to money laundering or terrorist financing. In fact, we are currently implementing on a nationwide basis a new BSA/AML risk assessment process that I will talk about shortly. That process focuses on products, customers, and geographies as sources of money laundering and terrorist financing risk and, we believe, provides a good starting point for banks to conduct their own risk assessments.

Third: *Design and implement a BSA/AML compliance program that is commensurate with your risks.*

This is the most critical element of an effective BSA/AML program. The common thread that runs through most enforcement actions based on BSA violations and deficiencies is the lack of systems and controls that are strong enough to manage the bank's risks. The strength of a bank's systems and controls needs to be commensurate with the level of risk presented. In other words, if your bank is a "10" on the risk scale, then you need to have a compliance program that is also a "10". The point is that one size does not fit all in the BSA area, and it goes without saying that the banks that get in the most trouble are those that score high on the risk scale, but whose BSA systems and controls are insufficiently robust to handle that risk.

Fourth: *Pay attention to what your examiners tell you.*

When it comes to communication, the examination process should be a two-way street; however, supervisory warnings are ignored at your peril. In saying this, I am not suggesting that

bankers should accept everything their examiners tell them at face value – quite the opposite, really. Bankers should always be free to ask questions, provide their feedback, and even challenge the examiners’ conclusions through appropriate channels. But, when those avenues have been exhausted, and examiners’ criticisms have been reduced to some form of supervisory warning, failing to correct the problem will only result in stronger and more forceful action by the agency.

It is important to understand that, in the present era, the regulators don’t get off easy, either. The Riggs hearings and their aftermath were a wake-up call for the OCC. While the agency had previously done a great deal to implement effective BSA supervision, it became clear that, in the post-9/11, post-PATRIOT Act, post-Riggs world, we needed to do more. The agency recognized this before I became Comptroller, and embarked on a comprehensive review of its supervision to better understand where weaknesses existed, and how to improve them. This has been a laborious and at times difficult process, but one that was absolutely necessary to ensure that our supervision meets the high standards that we have set for ourselves.

For example, in 2004, the OCC evaluated all 2000 banks that we supervise to identify those institutions presenting the greatest risk. We then began examining each of those identified banks, and I am pleased to report that that process is largely completed. For most of these banks, there were few serious problems noted. In some, we found minor problems that were corrected through informal means. In others, where we found problems that were more serious, more significant action was required such as cease and desist orders and other formal actions.

Still, it is important that we continue to look for ways to improve our supervision. During my confirmation hearing before the Senate Banking Committee, I committed to conduct a review of the OCC’s supervision in the BSA area by the end of this year, and to make any

needed changes. While that review is still underway, I would like to share with you some of the initiatives that the agency has already undertaken, quite apart from my review.

First, as I mentioned previously, we have developed methods for enhanced risk assessment of banks' products, customers, and geographies. Specifically, we are using technological means to assess potential BSA/AML risk across and within national banks and to prioritize examination strategies. These include enhanced risk identification and analysis tools to identify potentially high-risk banks and activities that warrant greater scrutiny. These tools will permit examiners to identify banks that have a significant amount of potentially high-risk activities or significant business in high-risk jurisdictions.

Second, along with the other federal banking agencies, we are applying the new uniform examination procedures in all of our examinations. As I mentioned previously, I believe that these new procedures, and the accompanying guidance, will go a long way toward clarifying expectations and improving consistency in the examination process. But the new manual is not a panacea. While it gathers a great deal of interpretive guidance under one cover, it does not provide answers to every question that bankers and examiners might have. The new procedures also do not eliminate examiners' discretion – nor should they, in my view. Effective supervision in any subject area will always require the sound exercise of examiner judgment. And, for some banks, application of the new procedures will result in more rigorous examinations due to the increased number of mandatory procedures and the requirement to conduct transaction testing at every examination. While I am sensitive to the attendant burdens, I nonetheless believe that clear, consistent, and effective supervision is the best way to ensure that all banks have reasonable anti-money laundering programs in place.

Finally, to help ensure that there is timely and effective follow-up, we have adopted improved processes to identify and correct deficiencies and weaknesses and to initiate enforcement actions when appropriate. For example, the agency has established review teams to ensure that BSA compliance program violations are properly cited. We have also implemented improved processes to track and analyze “Matters Requiring Attention” cited by examiners, so that follow-up can be monitored on a systematic and programmatic basis. And, we have issued a revised policy to better ensure consistency in citing BSA compliance program violations and taking enforcement actions.

In the past year, the agency has taken a number of steps to increase our BSA/AML resources and expertise. These include creating and filling a new position of Director for BSA and AML Compliance and increasing the number of BSA staff in Headquarters. We have also contracted with former OCC examiners with BSA expertise to assist with examinations. As we move ahead, we will continue to look for ways to enhance our supervision resources and expertise.

The OCC has heard the industry’s plea for clear and consistent messages and expectations in the BSA/AML area loud and clear, and taken steps to respond to it. For example, the agency has held nationwide conference calls with its field staff to clarify senior management’s expectations and ensure that there is no “disconnect” between the views of Headquarters and the field. Along with our colleagues in the other federal banking agencies and FinCEN, we have also participated in a series of telephone and video conferences and regional outreach sessions with examiners and bankers to highlight portions of the new BSA/AML manual. In total, those sessions reached an audience of approximately 23,000 individuals, which is really a remarkable number. And, along with the other agencies, we created a CD-ROM that

explains the new BSA/AML manual and provides guidance and resources to the banking industry.

I believe that these are all very good steps in the right direction, and that both the agencies and the industry are on the right track. That said, I believe that it is critical that you and we maintain our heightened focus on BSA compliance - - not just in the short term, but consistently in the years to come.

As we do so, let me assure you that I am personally committed to continuing our dialogue with the banking industry on these matters and ensuring that the OCC strikes the right balance in our supervision. While we fully expect that national banks will have strong BSA programs, we must also be measured and fair in how we address potential problems and weaknesses. A key element of my message back to the Senate Banking Committee will be our commitment to regular, ongoing communications by the OCC with the banking industry to tell you what we expect and to ensure that we are sensitive to your concerns. Consider this speech today to be the first step in that process.

While I firmly believe that we will be successful in the fight against money laundering and terrorist financing, I have no illusions. This is a marathon, not a sprint, and there is no finish line. Without question, there will be future cases where criminals will use our banking system for illicit purposes that banks will fail to detect despite having sound and rigorous anti-money laundering compliance programs. And there will be other cases where a bank's efforts to comply with the BSA will fail to meet our expectations, or where our own supervisory efforts could have been more proactive earlier. When we identify situations like the latter, as we inevitably will, and take corrective action, it should be looked upon as a success, not a failure. Our job and your job is to continually improve to ensure that you have reasonable programs in place to prevent and

deter money laundering and terrorist financing - - all the while recognizing that even the best programs in the world will not completely eradicate illicit activity from the banking system.

In closing, let me say that we at the OCC believe that the banking industry as a whole has made great progress in improving their programs to get them better in line with regulatory expectations. While the events of the past year have been challenging and even difficult at times for both bankers and regulators, I am confident that we all share the common goal of better BSA/AML supervision and compliance. And we all are committed to work together as we always have as partners to achieve that goal. There will be more challenges along the way, and the road may be rocky at times. But I believe that, through our collective efforts, we will achieve and sustain a level of BSA/AML compliance and supervision that better ensures our nation's financial institutions are not used as vehicles for money laundering, terrorist financing, or other illicit activity. And I believe that the banking industry, and the nation, will be better for it.

Thank you very much.