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TESTIMONY OF

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Before the

COMMITTEE ON BANKING, HOUSING, & URBAN AFFAIRS

of the

U.S. SENATE

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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 Johnson, Ranking Member Crapo, and members of the Committee, I appreciate the opportunity to appear before you today to discuss the importance of effective Bank Secrecy Act and Anti-money Laundering (BSA/AML) compliance programs at U.S. financial institutions and the role the OCC plays in examining financial institutions for compliance in this area.

The OCC is committed to ensuring that the institutions under its supervision have effective controls in place to safeguard them from being used as vehicles to launder money for drug traffickers and transnational and other criminal organizations, or to facilitate the financing of terrorist acts. Together with the other federal banking agencies and the law enforcement community, the OCC's goal is to deter money laundering, terrorist financing, and other criminal acts and prevent the misuse of our nation's financial institutions.

National banks and federal savings associations (hereafter referred to as "banks" or "bank") have been required to have a BSA compliance program since 1987, and to monitor, detect, and report suspicious activity since the 1970s. However, regulatory requirements and supervisory expectations under the BSA have increased significantly since that time, and most institutions have had to make substantial improvements in their compliance programs. In response, many of the largest institutions have implemented highly sophisticated programs and systems that screen transactions to identify and report suspicious activity to law enforcement, and to ensure that such transactions do not involve entities subject to Office of Foreign Assets Control (OFAC) sanctions. The suspicious activity reports (SARs) that are filed have provided law enforcement with access to critical information needed to initiate and conduct successful investigations and prosecutions. There are now more than 5.6 million SARs in the centralized database that is maintained by the Financial Crimes Enforcement Network (FinCEN). The majority of these SARs have been filed by national banks and federal thrifts.

BSA compliance is inherently difficult, combining the challenges of sifting through large volumes of transactions to identify features that are suspicious, with the presence of criminal and possibly terrorist elements dedicated to, and expert in, concealing the true nature of the transactions they undertake. As financial institutions' BSA compliance programs have evolved and changed over time, so have the sophistication and determination of money launderers, terrorist financiers, and other criminals in finding other ways to gain access to our institutions. The technology, products, and services offered by institutions to give customers better and quicker access to financial services can also be used by criminals to instantaneously and anonymously move money throughout the world, sometimes through the simple click of a keypad or the use of a cell phone app. Risks are constantly mutating, as criminal elements alter their tactics to avoid detection. They move quickly from one base of operations to another, finding sanctuary in places where law enforcement, or sympathy for U.S. policy objectives, is weakest. Furthermore, money laundering schemes are becoming more complex, involving entities and individuals located in numerous jurisdictions worldwide. Consequently, banks, thrifts, and other financial institutions have had to devote increasingly larger amounts of resources to maintain effective programs, and the OCC has likewise significantly increased its attention in this area.

My testimony today will cover our assessment of industry trends and concerns; the OCC's supervisory approach to BSA/AML; our process for taking supervisory and enforcement actions and a description of some of our recent actions; improvements the OCC has made or is in the process of making to our supervisory and enforcement practices; and our recommendations for regulatory and legislative improvements.

Specifically, in response to the Committee's questions in its letter of invitation, the OCC believes that corporate governance weaknesses, combined with the effects of austerity programs banks instituted during the financial crisis, are among the biggest reasons for recent BSA/AML compliance breakdowns. In response, the OCC has implemented a number of changes to our policies and internal review processes to strengthen our supervision in this critical area, and we are considering additional changes to our policy guidance, regulations, and enforcement documents to clarify regulatory expectations and improve bank compliance in this area. For example, while we believe that our cease and desist (C&D) authority is as effective and more efficient than the use of civil injunctions, we are exploring the possibility of regulatory changes that would enhance our ability to take removal and prohibition actions against bank officers, directors, and employees that engage in violations of the BSA. Finally, we have inserted language in some of our recent enforcement documents that is designed to improve enterprise-wide compliance with AML requirements when banks engage in transactions with their overseas affiliates. All of these points are further addressed in the testimony.

II. Industry Trends and Concerns

Many of the practical problems we have seen in recent years with respect to BSA compliance can be attributed to four root causes: (i) culture of compliance within the organization, (ii) commitment of sufficient and expert resources, (iii) strength of information technology and monitoring processes, and (iv) sound risk management. These root causes have led to breakdowns in the fundamentals and mechanics of sound management of operational risks. For example, our examination and enforcement activities have identified a number of trends and concerns in the BSA/AML area that warrant continued attention by supervisors and banks:

- Corporate Governance – Some recent cases have involved the lack of strong corporate governance principles necessary to create a “culture of compliance” within the organization. These cases reflected an imbalance in both the independence of the compliance function and organizational incentives that emphasized revenues and growth over balanced risk management. Proper incentives across both BSA/AML compliance and the line of business ensure that there is accountability throughout the organization and employees are motivated to do the right thing through compensation structures, performance standards, promotions, and a strong compliance culture.
- Compliance Resources – Recent cases have identified a lack of sufficient staffing, high turnover rates, and cutbacks in the compliance area as common factors that have impeded the effectiveness of banks' BSA/AML programs. In some cases, banks have inappropriately reduced staffing and resources in the BSA area due to austerity programs initiated during the financial crisis. In other cases, banks' compliance department staff and expertise have failed to keep pace with the growth of the institution.

- International Focus or Component – Foreign correspondent banking, cross border funds transfers, bulk cash repatriation, remote deposit capture, and embassy banking have all been high-risk areas that some banks have not managed effectively.
- Bulk Cash and Structured Deposits – Bulk cash transactions continue to present significant BSA/AML challenges for banks in determining legitimate from illegitimate sources. In addition, as a result of the changes to the Mexican currency laws, we have seen an increase in suspicious activity along the southwest border flowing from funnel accounts associated with drug cartels, increased use of non-bank financial institutions, and increased structuring of cash deposits.
- Migration to Smaller Banks – As some large or midsize banks have attempted to lower their risk profiles, higher risk products and customers have migrated to community banks. These institutions must be mindful of the resources and personnel necessary to successfully manage higher risk activities.
- New Technologies and Evolving Payments Activities – When banks introduce new technologies and products, they must appreciate or understand the compliance risks. Prepaid access, mobile phone banking, smart ATM machines and kiosks, mobile wallets, and Internet cloud-based payment processes are all technologies that are developing rapidly, and senior bank compliance personnel need to be engaged in the product development processes. OFAC monitoring is especially important and challenging in this area. In addition, products that have evolved through technology need to be periodically re-evaluated (e.g., prepaid access money transfers, and payroll cards).
- Third-Party Relationships and Payment Processors – The OCC and the other banking agencies have been reviewing closely third-party and payment processor relationships and a number of enforcement actions have been taken in recent years. Banks need to be especially aware of the risks presented by payment processors and the extent of their franchising relationships (routing transit numbers (RTNs), bank identification numbers (BINs), and ATM machines).

The OCC will continue to identify significant trends, communicate them to the industry, and ensure that BSA/AML supervision stays current.

III. OCC BSA/AML Supervisory Policies and Practice

Legal Framework and the OCC's Risk-based Supervisory Approach

The Money Laundering Control Act of 1986 provides the framework for BSA/AML supervision and enforcement. It requires the federal banking agencies to: (i) prescribe regulations to require banks to establish and maintain procedures that are reasonably designed to assure and monitor compliance with the BSA; (ii) review those procedures at every examination; (iii) report problems with the procedures to the bank; and (iv) issue a C&D order if the financial institution fails to establish and maintain the procedures or fails to correct a problem that was previously

reported to it.¹ On January 27, 1987, the OCC and the other federal banking agencies issued virtually identical regulations to implement this requirement. The OCC's regulation, codified at 12 C.F.R. § 21.21 for national banks and at 12 C.F.R. § 163.177 for federal savings associations, requires every bank to have a written program, approved by the board of directors, and reflected in the minutes of the bank. The program 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 USA PATRIOT Act² requires that every bank adopt a customer identification program as part of its BSA compliance program.

The OCC has worked with the other Federal Financial Institutions Examination Council (FFIEC) agencies,³ FinCEN, and OFAC to review and develop BSA examination and enforcement policies and procedures for use at every examination. The publication of the Interagency BSA/AML Examination Manual (Manual) in 2005 effectively standardized examination procedures for the federal banking agencies. The Manual reinforces the agencies' position that sound BSA/AML risk management enables a banking organization to identify BSA/AML risks and better direct its resources, with the ultimate goal of helping safeguard its operations from money laundering, terrorist financing, and other illicit activities. The Manual has been revised three times since its initial publication so that it remains current with the latest technological and payment system innovations and emerging threats and vulnerabilities.

The OCC monitors compliance with the BSA and its implementing regulations by applying the examination procedures set forth in the Manual during a bank's examination. Community banks are examined either on a 12 or 18-month cycle, and large banks and midsize banks are examined on an annual cycle. These procedures are risk-based and direct examiners to focus examination resources on high-risk areas within banks. Examiners use the procedures to assess the implementation and effectiveness of the bank's policies, procedures, systems, and controls. Every BSA/AML examination includes, at a minimum, a review of the bank's risk assessment and its BSA/AML compliance program (focusing on internal controls, training programs, independent testing, and BSA officer independence and qualifications). We also assess the effectiveness of the bank's OFAC compliance program.

OCC examiners perform ongoing supervision and conduct targeted testing in areas that may present higher money laundering and terrorist financing risks. The Manual includes supplemental procedures that cover specific BSA requirements (*e.g.*, currency transaction reporting, suspicious activity reporting, foreign correspondent bank, private banking, and funds

¹ 12 U.S.C. § 1818(s).

² Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, P.L. 107-56, 115 Stat. 272 (2001) (USA PATRIOT Act).

³ The FFIEC is a formal interagency body empowered to prescribe uniform principles and standards for the federal examination of financial institutions by the OCC, the Board of Governors of the Federal Reserve (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, and the Consumer Financial Protection Bureau. The FFIEC's primary goal is to promote uniformity in the supervision of financial institutions.

transfer recordkeeping) and specific examination procedures covering risks from products and services and persons and entities (e.g., correspondent banking, private banking, trade finance, electronic banking, third-party payment processors, bulk shipments of currency, pouch activities, politically exposed persons, and business entities).

The OCC routinely analyzes BSA data, currency transaction reports and SARs to identify unique risks and augment our examinations. This information permits examiners to scope and plan examinations to ensure that the bank's higher risk activities are evaluated. Such activities may be reflected in accounts associated with repetitive SAR filings, significant cash activity, or activity that is inconsistent with the type of business of the customer, and are examples of the types of accounts that would be selected for transaction testing and further examiner review. In cases where examiners identify areas of concern, deficiencies, or violations, they typically expand the examination scope and perform transaction testing in targeted areas to ensure they identify and evaluate all pertinent issues.

In community banks, the OCC uses a risk identification and analytical tool called the Money Laundering Risk (MLR) System, which enables the OCC to identify potentially high-risk banks and activities that warrant increased scrutiny and supervisory resources. This combination of our ongoing supervision and targeted examinations allows us to determine the adequacy of a bank's BSA/AML compliance program at every exam.

Training and Internal Communications

The OCC provides comprehensive BSA training to our examiners and organizes a BSA compliance conference every three years to inform our examiners of emerging money laundering and terrorist financing threats and vulnerabilities. A critical component of examiner training is also provided on an interagency basis by the FFIEC and the OCC works with the FFIEC and other federal government agencies to develop advanced AML courses for examiners, as well as periodic internal and external seminars, conferences, and teleconferences. Representatives of the law enforcement community are regular participants in these conferences and training sessions, establishing an ongoing dialogue with our examiners concerning criminal typologies, schemes and arrangements. Such forums allow our examiners to be continually aware of the risks facing the banks, to scope examinations accordingly, and to provide timely guidance to the industry in addressing those risks. OCC examiners also attend other FFIEC training courses, external courses and industry conferences to remain abreast of the latest trends in the areas of money laundering, payments systems, fraud, and cybercrime.

The OCC Compliance Policy Department leads our National Anti-Money Laundering Group (NAMLG), which is an internal forum that serves as the focal point for BSA/AML issues within the agency. The NAMLG facilitates intra-agency communication; promotes cooperation and information sharing with national and district office AML groups; identifies emerging risks, best practices, and possible changes in anti-money laundering policies and procedures; discusses legislative proposals; and serves as a clearinghouse for ideas developed throughout the OCC. The NAMLG's resource sharing program initiative provides BSA policy expert resources to complex banks, higher risk banks, or examinations in need of specialized expertise. The

resource-sharing program promotes BSA/AML knowledge transfer and examiner development, and improves the allocation of BSA resources.

Interagency Cooperation

The OCC cooperates and coordinates on an interagency basis to address BSA/AML issues. For example, we are participating in the interagency Task Force on the U.S. AML Framework, led by Undersecretary of the Treasury David Cohen, which will take a close look at the BSA and its requirements to ensure that this forty-year old statutory framework remains relevant in today's world. The OCC also participates in several interagency groups, including the Bank Secrecy Act Advisory Group (BSAAG);⁴ the newly formed BSAAG Delta Team;⁵ the FFIEC BSA Working Group;⁶ and the National Interagency Bank Fraud Working Group.⁷

The OCC works closely with the U.S. Treasury's Office of Terrorism and Financial Intelligence (TFI), FinCEN, and OFAC to promote the implementation of sound international anti-money laundering and counter terrorist financing (AML/CFT) standards. In addition, the OCC annually hosts two AML schools to train our foreign counterparts, and we are active participants in the U.S. delegation to the Financial Action Task Force (FATF) that is led by TFI. We have participated in various State and Treasury Department missions to assist foreign governments in their anti-money laundering efforts.

The OCC has a long history of cooperation with law enforcement and we work closely with law enforcement agencies when there are ongoing parallel investigations involving a national bank or thrift by providing documents, information, and expertise that is relevant to a potential criminal violation. As described in the Appendices to this testimony, OCC examination findings have been instrumental in developing some of the most significant BSA/AML cases, and have resulted in criminal charges and convictions of bank officials.

IV. OCC's BSA/AML Supervisory and Enforcement Process

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

⁴ The BSAAG is chaired by FinCEN and is composed of policy, legal, and operations representatives from the major federal and state law enforcement and regulatory agencies involved in the fight against money laundering, as well as industry representatives.

⁵ The BSAAG Delta Team is co-chaired by FinCEN and an industry representative. The purpose of the BSAAG Delta Team is for industry, regulators, and law enforcement to come together and examine the variance between compliance risks and illicit financing risks. The goal is to reduce the variance between the two and build a smarter, more effective, and more cost efficient regulatory framework.

⁶ The FFIEC BSA Working Group, similar to the FFIEC itself, has a rotating chair and is composed of representatives of federal and state regulatory agencies.

⁷ The National Interagency Bank Fraud Working Group is chaired by the Department of Justice, and composed of representatives of the federal law enforcement and regulatory agencies (the OCC has been an active member of this group since its founding in 1984).

and obtaining management's commitment to take corrective action. A Report of Examination, or Supervisory Letter (used for large or midsize banks), documents the OCC's findings and conclusions with respect to our supervisory review. 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 are important factors in determining whether more forceful action is needed.

Enforcement Remedies and Process

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 to 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 civil money penalties (CMPs). C&D orders and formal agreements may be entered into consensually by the OCC and the bank and require the bank to take 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 or IAPs). Possible actions against institution-affiliated parties include removal and prohibition from the banking industry, CMPs, and personal C&D orders.

As previously mentioned, when deficiencies in the BSA/AML area rise to the level of a BSA compliance program violation (12 C.F.R. §§ 21.21 or 163.177), or when a bank fails to correct problems with the program that had been previously reported to the bank, we are required under 12 U.S.C. § 1818(s) to use our C&D authority to correct the problem. The OCC worked with the other federal banking agencies to develop and issue an interagency policy on citing BSA compliance program violations and taking enforcement actions, and our enforcement decisions are framed by that policy. The Interagency Statement on Enforcement of BSA/AML Requirements (Interagency Statement) was issued in 2007 and it sets forth the agencies' policy on the circumstances in which an agency will issue a C&D order to address noncompliance with certain BSA/AML requirements, particularly in light of the statutory mandate in Section 1818(s). The Interagency Statement provides that a compliance program violation occurs where either of the following conditions exists:

The bank fails to adopt or implement a written BSA compliance program that adequately covers the required program elements: (1) internal controls (including customer due diligence, procedures for monitoring suspicious activity or appropriate risk assessment); (2) independent testing; (3) designated compliance personnel; and (4) training; or

The bank has defects in its BSA compliance program in one or more program elements indicating that either the written program or its implementation is not

effective. For example, program deficiencies indicate ineffectiveness where the deficiencies are coupled with other aggravating factors such as evidence of: (i) highly suspicious activity creating a significant potential for unreported money laundering or terrorist financing; (ii) patterns of structuring to evade reporting requirements; (iii) significant insider complicity; or (iv) systemic failures to file currency transaction reports, suspicious activity reports, or other required BSA reports.

A program violation may occur where customer due diligence, monitoring of suspicious activity, risk assessment, or other internal controls fail with respect to a “high risk area,” or to “multiple lines of business that significantly impact the bank’s overall BSA compliance.” The agency will also consider the application of the bank’s program across its business lines and activities. In the case of banks with multiple lines of business, deficiencies affecting only some lines of business or activities would need to be evaluated to determine if the deficiencies are so severe or significant in scope as to result in a conclusion that the bank has not implemented an effective overall program.

The Interagency Statement also specifically addresses repeat problems for purposes of the statutory mandate for a C&D order in 12 U.S.C. § 1818(s). It provides that in order to be considered a “problem” within the meaning of section 1818(s), the deficiency reported to the institution would ordinarily involve a serious defect in one or more of the required components of the institution’s BSA compliance program or implementation thereof. In addition, it sometimes takes a considerable period of time to correct BSA/AML deficiencies especially when large institutions merge system platforms and information technology changes are required. As a result, with regard to repeat problems, the Interagency Statement provides that a C&D is not required if the agency determines that the institution has made “acceptable substantial progress” toward correcting the problem at the time of the examination immediately following the examination where the problem was first identified and reported to the institution.

To ensure that the OCC’s process for taking administrative enforcement actions based on BSA violations is measured, fair, and fully informed, in 2005, the OCC adopted a process for taking administrative enforcement actions against banks based on BSA violations, including situations where a bank fails to correct a problem that was previously brought to its attention. This process includes the following stages:

- (1) Preliminary assessment of the facts and discussion with bank management.
- (2) Additional reviews by cross-functional review groups, including the OCC’s Large Bank Review Team.
- (3) Written findings provided to the bank and an opportunity for the bank to respond.
- (4) Major Matters Supervision Review Committee or Washington Supervision Review Committee review.⁸

⁸The MMSRC was established by the Comptroller late last year to further strengthen and enhance the review process for significant enforcement cases, including large bank BSA/AML cases, to include the most senior staff within the OCC. The MMSRC is chaired by the OCC’s Senior Deputy Comptroller for Bank Supervision Policy and Chief National Bank Examiner, and includes the Chief of Staff, the Senior Deputy Comptrollers for Midsize and Community Bank and Large Bank Supervision, as well as the Chief Counsel. The MMSRC reviews all large bank

- (5) Final decision by the MMSRC or an appropriate Senior Deputy Comptroller.

Recent Enforcement Actions

Since September 11, 2001, the OCC has issued over 195 public formal enforcement actions based in whole, or in part, on BSA/AML violations (including formal agreements, C&D orders, and CMP actions). Some of the more significant recent cases were actions against Wachovia Bank, N.A., HSBC Bank USA, N.A., Citibank, N.A., and JPMorgan Chase, N.A. A brief description of these actions is set forth in Appendix A to this testimony. Each of these cases have been discussed extensively at public forums and they underscore the OCC's commitment to ensuring that all national banks and federal savings associations have a strong BSA/AML function that keeps pace with changing technologies and threats.

The OCC has also brought enforcement actions against responsible individuals for BSA/AML violations, and OCC examination findings have been instrumental in bringing successful criminal actions against bank insiders, including a Vice-President of Riggs Bank and the Chairman of the Board of Directors of Broadway National Bank. Some of the more significant BSA/AML cases involving bank insiders are discussed in Appendix B to this testimony. In addition, the OCC's Enforcement & Compliance Division has also brought countless actions against bank insiders for insider fraud and abuse over the years. While establishing the culpability of individuals in cases of institutional failures such as BSA compliance program breakdowns can be challenging, the OCC is committed to taking such actions where they can be supported. To this end, the OCC conducts a review of individual misconduct as part of all significant investigations into BSA noncompliance. As further described below, the OCC is exploring possible regulatory changes that would enhance its ability to take removal and prohibition actions in appropriate cases.

V. Actions Undertaken to Improve BSA/AML Supervision and Enforcement

The OCC is committed to rigorous supervision, strong enforcement, and continuous improvement to our supervisory approach to BSA/AML compliance. While the OCC has made substantial progress in improving its supervision in the BSA/AML area, we recognize that there remains work to be done, and that BSA/AML supervision can never be static. 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 financiers, as well as to address aspects of the process where shortcomings were evidenced. To this point, we have recently made, or are in the process of making a number of enhancements to our supervisory processes which are described below:

- We have established a MMSRC comprised of the most senior level staff within the OCC to review high profile and complex BSA/AML enforcement matters;

enforcement actions that include articles addressing BSA, all BSA CMPs involving large banks and all prohibitions/removals against individuals for violations of the BSA. The Washington Supervision Review Committee (WSRC) continues to review BSA enforcement actions proposed by the OCC to be taken against midsize and community banks.

- We no longer reflect BSA/AML findings in the FFIEC consumer compliance rating, rather, we fully consider BSA/AML findings in a safety and soundness context as part of the management or “M” component of a bank’s CAMELS rating;
- We are clarifying the operation of our BSA Large Bank Review Team to ensure we bring different perspectives to bear and react more quickly when a bank has multiple matters requiring attention (MRAs), or apparent violations of its BSA/AML program;
- We have provided more flexibility for citing BSA/AML violations for individual “pillar” violations (*i.e.*, internal controls, BSA officer, testing, and training) and will be issuing additional guidance to the examination staff shortly;
- We are in the process of identifying steps we can take in our examinations to obtain a holistic view of a bank’s BSA/AML compliance more promptly;
- We have implemented an internal bank supervision appeals program that supports the open discussion of concerns, reinforces our expectations that examiners and other supervisory staff should identify potential problems they see at the banks and thrifts we regulate, and provides the opportunity to escalate those issues when necessary;
- We are reviewing the manner in which MRAs are reported to ensure that banks with high numbers of MRAs in one particular CAMELS/ITCC area are receiving additional supervisory attention and, in the case of BSA/AML, consideration of formal enforcement action; and
- We are annually updating the OCC’s community bank MLR System and considering whether similar tools should be implemented in our large bank and midsize bank portfolios.⁹

The OCC has also made, or is considering making, the following changes in the areas of corporate governance, enterprise-wide compliance, and removal and prohibition authority. In addition, there is one possible regulatory change that we believe should be considered, and the OCC supports two legislative changes in the BSA/AML area. Each is discussed below:

Corporate Governance

A number of recent BSA/AML enforcement actions involving large complex banking organizations have highlighted the need for strong internal controls and corporate governance.¹⁰ To address this, recent OCC enforcement actions have included the following requirements:

- (1) A designated BSA Officer with sufficient knowledge, funding, authority, independence, compensation, and supporting staff to perform his or her assigned responsibilities and maintain effective compliance with the BSA and its implementing regulations;

⁹ The OCC recently requested Office of Management and Budget (OMB) approval and invited public comment for this additional MLR data collection. See *Office of the Comptroller of the Currency; Agency Information Collection Activities; Submission for OMB Review; Comment Request; Bank Secrecy Act/Money Laundering Risk Assessment*, 77 FR 70544 (Nov. 26, 2012). An additional 30-day request for OMB approval and comment letter will be published in the Federal Register that will provide a summary of the comments received.

¹⁰ See, *e.g.*, *In the Matter of JPMorgan Chase Bank, N.A., Columbus Ohio*, OCC 2013-002 AA-EC-13-04, Art. IV, p.8 (Jan. 14, 2013); *In the Matter of Citibank, N.A., Sioux Falls, South Dakota*, OCC 2012-52 AA-EC-12-18, Art. IV, p.7. (April 4, 2012)); *In the Matter of HSBC Bank USA, N.A., Mclean, VA*, OCC 2010-199 AA-EC-10-98, Art. VI, p.10 (Sept. 24, 2010); *In the Matter of Wachovia Bank, National Association, Charlotte, N.C.*, OCC 2010-37 AA-EC-10-17, Art. II, p.5. (Mar. 12, 2010).

- (2) An effective governance structure to allow the BSA Officer and the compliance function to administer the program independently by reporting directly to the board of directors, or a committee thereof, with clear lines of responsibility beginning with senior management and including each line of business that is required to comply with the BSA;
- (3) Clearly defined channels for informing the board of directors, or a committee thereof, and senior management, of compliance initiatives, compliance risks, new product development, identified compliance deficiencies, and corrective actions undertaken;
- (4) Compliance staff with the appropriate level of authority and independence to implement the BSA/AML compliance program and, as needed, question account relationships, new products and services and business plans;
- (5) Policies and procedures that clearly outline the BSA/AML responsibilities of senior management and relevant business line employees, and that hold senior management and line of business management accountable for effectively implementing bank policies and procedures, and fulfilling BSA/AML obligations;
- (6) A well-defined succession plan for ensuring the program's continuity despite changes in management, staffing, or structure, and policies and procedures to ensure that problems with excessive turnover of compliance staff or the BSA Officer function are identified, investigated and appropriately addressed by the board;
- (7) Policies and procedures to ensure that the bank's risk profile is periodically updated to reflect higher risk banking operations (products, services, customers, entities, and geographic locations) and new products and services;
- (8) An enterprise-wide management information system that provides reports and feedback that enables management to more effectively identify, monitor, and manage the organization's BSA risk on a timely basis; and
- (9) A strong BSA/AML audit function that ensures that identified deficiencies are promptly addressed and corrected.

The OCC is in the process of drafting detailed guidance to banks on sound corporate governance processes that will incorporate many of these concepts, including business line accountability for BSA/AML compliance and the independence of the compliance function.

Enterprise-wide Compliance and Limitations on Activities

Recent OCC enforcement actions have contained articles that address enterprise-wide compliance to ensure that the banking company's global AML program is commensurate with the risks and that all relevant affiliated institutions are included in the global risk assessment. Although current BSA/AML automated monitoring systems do not have the capability to ensure enterprise-wide monitoring on a real time global basis, the OCC expects banks to have strong customer due diligence processes and understand the extent that a particular customer may have accounts or transactions flowing through other segments of the organization. The OCC also expects that the extent and scope of this activity should be periodically reviewed on a risk basis by the bank's compliance staff and included within the audit.

Recent enforcement actions have also contained provisions that limited or restricted a bank's products and services due to inadequate BSA/AML controls with respect to those products and

services.¹¹ In some cases, banks ceased engaging in a particular line of business as a result of the OCC examination (e.g., correspondent banking or bulk cash repatriation) and the OCC article required OCC approval should the bank decide to restart that particular line of business or service. In other cases, the OCC affirmatively took action to restrict certain high-risk lines of business or reduce the risk profile of the institution.¹² This authority is similar to civil injunctive relief to limit bank activities for a period. The OCC will continue to use this C&D authority when warranted.

Removal and Prohibition Authority

As previously noted, the OCC has the statutory authority to issue an order of removal and prohibition from office against an IAP of a bank whenever the OCC determines that the IAP has committed a violation of the BSA and such violation was not inadvertent or unintentional, or the insider has knowledge that an IAP has violated any provision of the BSA. 12 U.S.C. § 1818(e)(2)(A)(ii). In addition, the OCC may remove an officer or director of a bank who has knowledge that an IAP of the bank has violated any provision of the BSA, taking into account whether the officer or director took appropriate action to stop, or to prevent the recurrence of the violation. 12 U.S.C. § 1818(e)(2)(A)(ii) and (B). The OCC is currently reviewing these provisions and exploring whether a regulation or other agency issuance interpreting these sections of the statute would be helpful in bringing such actions and providing notice to the industry regarding the type of conduct or wrongdoing that is subject to a removal or prohibition action.

Enhanced Information Sharing

Financial intelligence, criminal typologies, and information sharing between government agencies, regulators, and financial institutions is essential to the prevention and deterrence of money laundering and other financial crimes. In particular, financial institutions can benefit from improved and consistent access to information concerning money laundering and terrorist financing schemes and typologies, vulnerabilities, and red flags to ensure that they can appropriately manage their risks. Such information is also valuable to examiners in preparing for and performing examinations. In addition, active knowledge sharing processes will discourage situations described as a possible “commodification” of BSA reporting by banks that focuses on the quantity, rather than the quality or actual risk associated with a transaction, including with respect to SAR filings.

To this end, the OCC supports efforts to enhance information sharing, including the provision of information from the government to financial institutions. The OCC is interested in exploring all

¹¹ See, e.g., *In the Matter of JPMorgan Chase Bank, N.A., Columbus Ohio*, OCC 2013-002 AA-EC-13-04, Art. XI, p.22 (Jan. 14, 2013); *In the Matter of Citibank, N.A., Sioux Falls, South Dakota*, OCC 2012-52 AA-EC-12-18, Art. VIII & XI, pp. 15, 21 (April 4, 2012); *In the Matter of HSBC Bank USA, N.A., Mclean, VA*, OCC 2010-199 AA-EC-10-98, Art. XII, p.17 (Sept. 24, 2010); *In the Matter of Wachovia Bank, National Association, Charlotte, N.C.*, OCC 2010-37 AA-EC-10-17, Art. IX, p. 13. (Mar. 12, 2010); *In the Matter of Arab Bank, PLC, New York, N.Y.*, OCC 2005-14 AA-EC-05-12, Art. III & IV, pp. 4, 9 (Feb. 24, 2005).

¹² *In the Matter of Arab Bank, PLC, New York, N.Y.*, OCC 2005-14 AA-EC-05-12, Art. VII, p.15 (Feb. 24, 2005)(Federal branch conversion to an agency).

possible methods and means of accomplishing this, including changes in the way that communication channels established to implement section 314(a) of the USA PATRIOT Act are presently used.

Possible Legislative Changes – Expansion and Clarification of Safe Harbors

The OCC recognizes the importance of ensuring that the agencies' enforcement authorities remain current and relevant in this area. We think there are opportunities to modify existing BSA safe harbors to encourage institutions to share information without incurring liability, and to file SARs without running the risk that the bank will be exposed to litigation for simply complying with federal law. The OCC would support legislation to expand the information sharing safe harbors in Section 314(b) of the USA PATRIOT Act beyond money laundering and terrorist financing, and to eliminate or modify the notice requirement to FinCEN, which may be limiting the ability of financial institutions to share information. The OCC would also strongly support legislation that clarifies that the safe harbor from liability for filing SARs is absolute and there is no good faith requirement.

VI. Conclusion

The OCC is committed to rigorous BSA/AML and OFAC supervision, strong enforcement, and continuing improvement in our supervision in this important area. While there are many challenges in this area, we will continue to work with Congress, the other financial institutions regulatory agencies, law enforcement agencies, and the banking industry to develop and implement a coordinated and comprehensive response to the threat posed to the nation's financial system by money launderers, terrorist financiers, and criminal organizations.

Appendix A
Notable OCC BSA/AML Enforcement Actions against Banks

Wachovia Bank, N.A., Charlotte, North Carolina (Wachovia) – In March 2010, the OCC assessed a \$50 million penalty and issued a C&D order against this bank for violations of the BSA as part of a coordinated action with the Department of Justice (DOJ), FinCEN, and other federal agencies. Wachovia also entered into a deferred prosecution agreement with the U.S. Attorney's Office in the Southern District of Florida and the DOJ Asset Forfeiture and Money Laundering Section (AFMLS) and agreed to a \$110 million forfeiture to the U.S. government. Additionally, FinCEN assessed a \$110 million civil money penalty that was deemed satisfied by the forfeiture. The OCC's enforcement action focused attention on the bulk cash repatriation money laundering scheme. The OCC played a lead role in this case and linked remote cash letter instrument processing to the bulk cash scheme. Because of the Wachovia investigation and findings, the OCC took the lead in integrating bulk cash processing and the RDC implications into the Manual and commenced horizontal reviews of bulk cash activity and RDC at all national banks in the OCC's Large Bank supervision program, including HSBC's banknote activity. There were also significant corporate governance issues identified at Wachovia that prompted the OCC to include several corporate governance provisions in the C&D order.

Shortly after the Wachovia case, the government of Mexico implemented significant restrictions on U.S. dollar transactions at Mexican financial institutions and made significant changes to its AML laws and regulatory processes. In response, the drug cartels have adjusted their money laundering schemes and techniques to adapt to this change, and the OCC continues to work with law enforcement to identify new areas of vulnerability.

HSBC Bank USA, N.A., Mclean, VA (HSBC) – In October 2010, the OCC issued a C&D order against HSBC for compliance program and BSA violations. This was followed in December 2012 with a \$500 million penalty against the bank -- the largest penalty the OCC, or any other federal banking agency, has ever assessed. In addition, the DOJ entered into a deferred prosecution agreement with the bank, which admitted to criminal violations of the BSA. The DOJ imposed a \$1.256 billion forfeiture action against the bank and HSBC Holdings plc (London) (HSBC Group); and the Federal Reserve assessed a \$160 million penalty against the bank's parent company, HSBC North American Holdings Inc. (HNAH), and HSBC Group. The assessed penalties and forfeiture amounts totaled \$1.92 billion. FinCEN, the New York County District Attorney's Office, and OFAC also assessed penalties that were satisfied by the monetary sanctions levied by the OCC and DOJ. Additionally, the Financial Services Authority in the United Kingdom entered into an agreement with HSBC Group to enhance its BSA/AML compliance and will assist the DOJ and the Federal Reserve in monitoring HSBC Group's compliance with the deferred prosecution agreement and the Federal Reserve's order.

In mid-2009, because of the bulk cash findings in the Wachovia investigation, the OCC launched horizontal examinations of banknote operations in other large national banks supervised by the OCC that included HSBC and its transactions with HSBC Mexico. After meeting with law enforcement and obtaining additional information on this activity, the OCC developed a detailed action plan to expand the scope of the ongoing examination of banknote customers. As a part of the examination, the OCC notified the bank in March 2010 that it had violated OCC regulations

due to a significant backlog of unprocessed alerts. The bank's compliance program and its implementation were found to be ineffective and the OCC issued a C&D order against the bank in October 2010.¹³ Concurrent with the OCC's enforcement action, the Federal Reserve issued a C&D order upon consent with HNAH to ensure the adequacy of the parent company's firm-wide compliance risk management program. The OCC and the Federal Reserve coordinated closely in drafting the respective orders. The OCC's C&D order required the bank to submit a comprehensive BSA/AML action plan to achieve full compliance, ensure that the bank has sufficient processes, personnel, and control systems to implement and adhere to the order. The order also contains restrictions on growth, new products, and high-risk lines of business, and it requires OCC approval to reenter the bulk cash repatriation business.

Citibank, N.A., Sioux Falls, South Dakota (Citibank) – In April 2012, the OCC entered into a C&D order with Citibank, N.A., to address BSA deficiencies involving internal controls, customer due diligence, audit, monitoring of its RDC and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reporting relating to that monitoring. These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file SARs, and conduct appropriate due diligence on foreign correspondent accounts. Among its requirements, the order directs the bank to: (i) ensure the independence of the bank's compliance staff; (ii) require new products and services be subject to high level compliance review; (iii) ensure that all customer due diligence processes are automated and accessible; and (iv) conduct a look back review of the RDC cash letter activity.

JPMC Bank, N.A., Columbus, Ohio (JPMC) – In January 2013, the OCC entered into a C&D order with JPMC Bank, N.A., and two of its affiliates, to address deficiencies involving internal controls, independent testing, customer due diligence, risk assessment, and SAR processes (monitoring, investigating and decision-making). The bank also did not have enterprise-wide policies and procedures to ensure that foreign branch suspicious activity involving customers of other bank branches is effectively communicated to other affected branch locations and applicable anti-money laundering operations staff. Additionally, the bank did not have enterprise-wide policies and procedures to ensure that, on a risk basis, customer transactions at foreign branch locations can be assessed, aggregated, and monitored. OFAC deficiencies were also identified. These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file SARs, and conduct appropriate due diligence on foreign correspondent accounts. Among its requirements, the consent order directs the bank to: (i) ensure the independence of the bank's compliance staff; (ii) ensure that there are clear lines of authority and responsibility for BSA/AML and OFAC compliance with respect to lines of business and corporate functions; (iii) require new products and services be subject to high level compliance review; (iii) ensure that all customer due

¹³ Some of the critical deficiencies in the Bank's BSA/AML compliance program cited in the OCC's order included the following: (i) lack of effective monitoring of wire activity; (ii) failure to perform any BSA/AML monitoring for banknote (or "bulk cash") transactions with Group Entities (affiliates) or maintain customer due diligence information on Group Entities; and (iii) serious weaknesses in Bank's systems and controls constituting violations of 12 C.F.R. 21.21 (program), 21.11 (SAR), and 31 CFR 103.176 (correspondent banking).

diligence processes are automated and accessible; and (iv) conduct a look back review of certain account/transaction activity and SAR filings.

Appendix B
Notable OCC BSA/AML Enforcement Actions against IAPs

Jefferson National Bank, Watertown, New York (Jefferson) - During the 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 reports with law enforcement pertaining to this cash activity and 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. Additionally, the OCC brought a removal action against a director and issued a personal C&D order against the President. 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. Seven bank officers and directors were ultimately convicted of crimes.

Broadway National Bank, New York, New York (Broadway) - The OCC received a tip from law enforcement that this bank may be involved in money laundering. The OCC immediately opened an examination that 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 that shut down the money laundering and required the bank to adopt 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, and the former Chairman of the Board of the bank pled guilty to structuring transactions through the bank using an import/export company that he owned. 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. In 2003, the OCC assessed civil money penalties against the former President and the former Chief Executive Officer.

Riggs Bank, N.A., Washington, D.C. (Riggs) - In April 2002, 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. The OCC review and subsequent investigation revealed that, among other things, the Pinochets and their private investment companies received approximately \$1.9 million in funds. Shortly after these issues were discovered, the OCC brought the Pinochet accounts to the attention of the DOJ and the Department of the Treasury, conducted additional examination work and issued a C&D order against the Bank in July 2003. The OCC also discovered that the bank's vice president and 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. The OCC reported these findings to law enforcement and the relationship manager and his wife were ultimately convicted of bank fraud and money laundering. As a result of the conviction, the OCC issued a notice to the relationship manager advising him that he was prohibited from banking under 12 U.S.C. § 1829. The OCC also assessed a \$25 million CMP against the bank, as did FinCEN (FinCEN's penalty was satisfied by a single \$25 million payment to the Department of the Treasury). The bank also pled guilty to one felony count of failure to file suspicious activity reports and agreed to pay a \$16 million criminal penalty.

Pacific Bank, N.A., Miami, Florida (Pacific) – In March 2011, the OCC and FinCEN assessed \$7 million civil money penalties against Pacific National Bank, Miami, Florida for violations of the BSA as part of a coordinated action. The OCC conducted two examinations of the Bank in 2009 and 2010 and determined that the Bank: (i) continued to be in non-compliance with an OCC C&D Order that was issued in December 2005 and which contained specific articles requiring enhancement to the bank's BSA compliance program, and (ii) continued to violate the requirements of the BSA and OCC regulations. The OCC shared its examination findings with FinCEN and issued a revised C&D Order against the Bank on December 15, 2010. In March 2011, the OCC issued civil money penalties against four Pacific National Bank board members and the bank's former CEO. The penalties were assessed for the failure of these responsible directors and officers to take the necessary actions to ensure the bank's compliance with the C&D order issued by the OCC in 2005.

Security Bank, N.A., North Lauderdale, Florida (Security) - In August 2010 the OCC initiated an investigation into the affairs of this bank after issuing a C&D order against the bank in May 2010. The Order related to safety and soundness concerns as well as BSA deficiencies, including a violation of the compliance program regulation and the SAR regulation. The investigation revealed that, among other things, former officers and directors of the bank failed to ensure that the bank complied with BSA/AML requirements and failed to comply with the C&D order issued by the OCC. In addition, the former Chief Executive Officer played a significant role in bringing high-risk business to the bank starting in 2007 even though he knew or should have known that the bank was ill equipped to monitor and control such accounts. In January 2013, the OCC assessed civil money penalties and personal C&D orders against five former directors and officers of the bank, including the former CEO. The personal C&D orders addressed, among other things, the Bank's BSA deficiencies, and required each respondent to: (i) fully comply with all laws, regulations and policies applicable to any insured depository institution which employs him; (ii) exercise safe and sound banking practices; (iii) observe fiduciary duties of loyalty and care; (iv) adhere to written policies and procedures of any insured depository institution to which he may become affiliated; (v) obtain appropriate BSA/AML

training; and (vi) provide appropriate BSA/AML training for bank officers and directors within his supervision and control.