

January 10, 2005

Federal Deposit Insurance Corporation
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550 – 17th Street, NW
Washington, DC 20429

Federal Reserve Board
Chairman Alan Greenspan
Board of Governors
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John W. Snow
Secretary of the Treasury
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Financial Crimes Enforcement Network
Director William J. Fox
P.O. Box 39
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Ladies and Gentlemen:

The ABA and the undersigned state banking associations have been long-time partners with the Treasury Department and the federal banking regulators in the effort to prevent money laundering and, more recently, terrorist financing. We are proud of the commendations our industry has received from a number of agency and Administration officials, such as Treasury Under Secretary for Terrorism and Financial Intelligence, Stuart Levey, who stated: "The financial industry has been tremendously helpful in combating terrorist financing and is eager and willing to do more." However, we are concerned that our industry's efforts are being complicated, and in some cases undermined, by a lack of clarity in regulatory examination and enforcement.

While we recognize that there are individual instances where financial institutions may have fallen short and needed to improve their AML (anti-money laundering) and BSA (Bank Secrecy Act) programs and procedures, the lack of consistency in examination oversight and compliance guidance is a major theme of regulatory complaints received by ABA and the state banking associations.

In general, our members report that no standard appears to exist for a proper AML compliance program. What we hear from the regulatory leadership in Washington is often at odds with the information banks receive from field examiners. During conferences, seminars, and examinations throughout the country, bankers have heard language that indicates a "zero tolerance policy" for AML deficiencies. With the millions of daily transactions in the banking industry, a zero tolerance threshold is simply unachievable, as has been recognized by Administration and regulatory officials in Washington.

Certainly the federal banking agencies and the Treasury Department understand that there is a strong "culture of compliance" in the U.S. banking industry. Our bankers want to work with regulators to address deficiencies wherever they occur, although it is difficult to do this when the standards are unclear and moving. Our compliance professionals are well trained in a variety of regulatory areas, but they are being overwhelmed by the sheer volume of obligations for regulatory compliance.

It must be emphasized that this massive regulatory burden has been so exacerbated by mandates such as Sarbanes-Oxley and the unclear rules on BSA that it is literally driving some community banks to sell to larger institutions. In addition, the difficulty of attracting individuals to serve on bank boards of directors has been increasing due to concerns about regulatory costs and the potential for punitive enforcement actions. It is clear that guidance and communication are essential.

One major area in need of guidance is the filing of suspicious activity reports (SARs). SARs, a major tool for law enforcement to investigate crimes against banks, are in danger of becoming routine filings that simply dilute FinCEN's database. The increase can be attributed to "defensive filing" by banks that fear regulatory criticism or, worse, enforcement actions because of failing to file a SAR. FinCEN Director William Fox has also recognized this problem and urged that BSA compliance be handled correctly by bank examiners.¹

To achieve that goal, Director Fox has directed the Treasury's Bank Secrecy Act Advisory Group (BSAAG) to look at methods to improve the current examination process. ABA co-chairs this subcommittee and continues to compile examples of what we believe to be erroneous interpretations of the BSA and AML requirements by bank examiners. These examples will be used by the BSAAG subcommittee. We are pleased to note that one crucial goal – to achieve consistent, common examination procedures – is currently being pursued by the bank regulatory agencies through interagency procedures, due mid-year 2005. We respectfully recommend that this process be completed as quickly as possible.

In addition, ABA and the undersigned associations urge the Treasury Department and the bank regulators, to also consider:

- joint industry/government training of bankers and examiners on BSA/AML obligations when the procedures are released;

¹ Director Fox spoke to the American Bankers Association and American Bar Association in October 2004 and addressed defensive filing of SARs: "We all know this phenomenon is occurring – we have both empirical and anecdotal evidence we can cite. We have seen financial institutions file reports in ever increasing numbers – often upon the recommendation of their lawyers or risk management teams – when the facts as presented do not meet this standard. I suspect that this over compliance is occurring for a reason. It is occurring because financial institutions are – justifiably in my view – unwilling to accept the regulatory or reputational risk associated with an action by the government that would make it appear that the institution is soft on anti-money laundering or, even worse, on terrorist financing."

- a BSA staff commentary, FAQs and/or centralized regulatory guidance to achieve consistency in BSA/AML interpretations; and
- establishment of a BSAAG subcommittee to look at the variety of issues arising from the SAR process, particularly the problem of defensive filing.

The banking industry remains committed to work with the government in any way possible to further our joint goal of fighting money laundering and terrorist financing. The banking industry has always been a willing partner in stemming the flow of illegal funds through legitimate financial institutions. Continued joint efforts in this area must, and will, continue. However, we urge the Administration and the regulatory agencies to address the inconsistency and uncertainty that the industry is facing. Thank you for considering our concerns.

Sincerely,

American Bankers Association	Montana Bankers Association
Alabama Bankers Association	Nebraska Bankers Association
Alaska Bankers Association	Nevada Bankers Association
Arizona Bankers Association	New Hampshire Bankers Association
Arkansas Bankers Association	New Jersey Bankers Association
California Bankers Association	New Mexico Bankers Association
Colorado Bankers Association	New York Bankers Association
Connecticut Bankers Association	North Carolina Bankers Association
Delaware Bankers Association	North Dakota Bankers Association
Florida Bankers Association	Ohio Bankers League
Georgia Bankers Association	Oklahoma Bankers Association
Hawaii Bankers Association	Oregon Bankers Association
Idaho Bankers Association	Pennsylvania Bankers Association
Illinois Bankers Association	Puerto Rico Bankers Association
Indiana Bankers Association	Rhode Island Bankers Association
Iowa Bankers Association	South Carolina Bankers Association
Kansas Bankers Association	South Dakota Bankers Association
Kentucky Bankers Association	Tennessee Bankers Association
Louisiana Bankers Association	Texas Bankers Association
Maine Bankers Association	Utah Bankers Association
Maryland Bankers Association	Vermont Bankers Association
Massachusetts Bankers Association	Virginia Bankers Association
Michigan Bankers Association	Washington Bankers Association
Minnesota Bankers Association	West Virginia Bankers Association
Mississippi Bankers Association	Wisconsin Bankers Association
Missouri Bankers Association	Wyoming Bankers Association