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Bank Regulatory Law

Bank Secrecy Act, Money Laundering and Compliance and Enforcement

At the Fall Meeting of the Banking Law Committee of the American Bar Association Christine Carnavos, Assistant Director, Office of Compliance, Regulatory and Enforcement Financial Crimes Enforcement Network of the Department of the Treasury, provided insight into the thought process of the Department of the Treasury with regard to the Bank Secrecy Act and money laundering violations. For example, she indicated that during a compliance investigation, an institution which defends itself by saying it did not understand the statute or regulation would be a prime target for enforcement action. Institutions have a duty to know their responsibilities under this Act. However, she tempered this statement with the recognition that if a large segment of the industry does not understand how a particular provision is intended to work, the Department would not take action against an individual institution but would rather try to clarify the issues.

Ms. Carnavos pointed out that a blatant failure to comply with the Bank Secrecy Act frequently occurs when the person or officer at a bank responsible for compliance either transfers to another job or leaves the employ of the bank and no new person is appointed to take over the responsibilities. When this occurs, no internal controls exist at the institution. She has seen this situation continue for months at a time with no effort made to comply with the Bank Secrecy Act. Upon discovery of such a situation the Department will take swift enforcement action.

Ms. Carnavos pointed out a number of other items worthy of note. She indicated that when an institution, on its own, finds a violation of the Bank Secrecy Act, it should report the violation to the Treasury Department. In virtually every case in which a bank finds and reports its own error, no enforcement action was taken. However, she cautioned that a senior officer should make the call to the Department to report the problem. If a senior person makes the call the Department assumes the bank is taking the matter seriously. If a junior officer or non-officer calls, the Department assumes that the institution is not seriously concerned with compliance with the Bank Secrecy Act and may investigate further.

After an institution makes a report to the Treasury that it may have violated the Bank

Secrecy Act, the Treasury will send a cautionary letter to the person who contacted the Agency. This letter explains the steps to be taken to correct the deficiency. Ms. Carnavos strongly urged institutions to pay close attention to this letter and to take the actions suggested. Generally, if the appropriate actions are taken, no further enforcement actions will be forthcoming.

If, however, the appropriate actions are not taken the Department will follow up with a *warning letter* to senior management. If, after receipt of the *warning letter*, the institution fails to taken corrective action, aggressive enforcement action will be pursued by the Department.

Of note is the Department of the Treasury's newsletter *Money Laundering Strategy*. Two issues have already been published. A third one is due in February 2001. These newsletters are worth reading and may be found on the Department's web site at: <http://www.ustreas.gov/press/release/docs/ml2000.pdf>.

Another speaker at this segment of the conference was Robert Serino, Deputy Chief Counsel for the Comptroller of the Currency. He had a number of suggestions for actions which banks should take to avoid violations of the Bank Secrecy Act. He indicated that 11 international banks have drafted guidelines for compliance. The guidelines focus on the *know your customer* rule under the Bank Secrecy Act. These principals suggest that banks, among other things, establish the true identity for the ownership of each account they hold, understand thoroughly the business and activities of the account holder, establish an expected level of account activity and then monitor for activity that is outside the norm. When activity outside the norm is found, the bank should investigate further to determine the reason for the deviation. Mr. Serino strongly urged banks to follow these principals to avoid problems with the Bank Secrecy Act.

Another warning from the Comptroller of the Currency is that all banks should evaluate their offshore correspondent banks, particularly those in small island countries which profess very strong bank secrecy laws, to confirm that the correspondent banks are legitimate. Finally, and in that same vein, banks should be mindful of *red flags* when dealing with financial institutions located in offshore jurisdictions that do not enforce anti-money laundering laws. Ignoring warning signs can result in serious problems for a U.S. bank.

In all, it was clear that the federal government is continuing to emphasize compliance with the Bank Secrecy Act as part of its comprehensive efforts against drugs and drug dealers. Banks that fail to comply with the Bank Secrecy Act could find themselves in significant legal trouble, not only their immediate regulator but with the Department of the Treasury and the Department of Justice.