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REGULATORS INTENSIFY BANK SECRECY ACT ENFORCEMENT

Introduction

The recent enforcement action against Riggs Bank by the Comptroller of the Currency and the associated hearings on Capitol Hill should leave no doubt that Bank Secrecy Act ("BSA") compliance is a top priority for the federal banking regulators. The consequences of having BSA compliance deficiencies can include the issuance of a formal order, the assessment of civil money penalties against an institution, its board of directors and/or management, and the termination of any proposed corporate transaction (*e.g.*, mergers and acquisitions, mutual holding company formations, mutual-to-stock conversions and charter conversions).

This Regulatory Alert is intended to summarize the basic BSA requirements and the current federal regulatory interpretations of that law, and to provide suggestions on how to avoid BSA violations.

Basic BSA Requirements

The BSA and its implementing regulations impose four general requirements on depository institutions. These are: (1) written policies and procedures, (2) appointing a compliance officer, (3) training, and (4) annual auditing of the BSA program. Each of these requirements and the concerns of the federal banking regulators are addressed below.

Policies and Procedures. The banking regulators are reviewing BSA policies and procedures to ensure that they (1) are in writing and have been approved by a majority of a bank's board of directors, (2) are updated and correctly state the law, and (3) actually represent the procedures followed by the institution.

Compliance Officer. The banking regulators want to ensure that an institution has properly designated a compliance officer, that the officer is properly trained, and that this function is properly staffed. The compliance officer must have the requisite authority and support from senior management and the board of directors to carry out the functions of the position.

Training. The banking regulators are reviewing the frequency and content of an institution's training program to ensure it complies with regulations.

Auditing. The banking regulators are reviewing the results of annual audits or tests of an institution's BSA program to ensure its effectiveness under the law. In particular, the regulators are looking for weaknesses or areas of non-compliance identified in such audits.

Federal Law and the Regulators' Position

Federal law requires that the federal banking regulators take formal enforcement action to correct certain violations of the BSA. In this regard, 12 U.S.C. § 1818(s)(3) provides that:

> If the appropriate federal banking agency determines that an institution has failed to –
>
> (A) establish and maintain required currency transaction and record-keeping procedures; or
>
> (B) correct any problem with the procedures maintained by such institution which was previously reported to the institution by such agency,
>
> the agency *shall issue* an order requiring the institution to cease and desist from its violation of law.

Accordingly, under a strict reading of the law, the federal banking agencies *are required* to issue a formal cease and desist order for violations of certain provisions of the BSA. In addition to the issuance of a formal order, the federal banking agencies have the discretion to assess civil money penalties against the institution, its board or management for such violations of law.

How to Protect Your Bank

Since *any* BSA compliance deficiencies can trigger enforcement action, banks need to be proactive in their BSA compliance programs. There are a number of things that banks can do to ensure compliance with the basic requirements of the law. These include:

√ reviewing your BSA policies and procedures to ensure that they are current, correct and reflect what is actually being done at your bank;

√ reviewing your federal regulator's examination procedures and guidelines to understand how they will examine your bank for compliance with BSA (*e.g.*, the federal banking agencies recently issued joint procedures for examining compliance with the Customer Identification Program requirements of the USA PATRIOT Act);

√ talking to your federal regulator to determine what their expectation of BSA compliance is for your bank (*e.g.,* the regulator's view of BSA compliance may differ based on the location of a bank and the risk profile of its customers);

√ talking to your compliance officer to ensure that he/she has the necessary authority to carry out the job and the appropriate staff support, and discussing with such officer any perceived weaknesses in your BSA program;

√ reviewing with your compliance officer and the board of directors the results of the annual audit of the effectiveness of your BSA program;

√ reviewing with your compliance officer the last report of examination to ensure that any action necessary to correct a deficiency has been taken and is satisfactory;

√ immediately addressing any deficiencies in your BSA program including addressing deficiencies *before* your federal regulator concludes an exam; and

√ documenting all actions taken to ensure compliance with the BSA.

Conclusion

Compliance with the BSA and the USA PATRIOT Act will be with us for years. While banks have traditionally done an excellent job in complying with the anti-money laundering requirements of federal law, in today's environment the federal banking regulators and Congress have determined that there is little or no acceptable margin of error for violations of BSA. Accordingly, the federal banking regulators are "scrubbing" their regulated institutions for any possible violations of the BSA. The consequences of noncompliance can be significant. In addition to formal enforcement action and civil money penalties, institutions may be prevented from undertaking corporate reorganizations, charter conversions, mutual-to-stock conversions, acquisitions and similar transactions. By taking preventive steps now, institutions can avoid protracted regulatory issues and their consequences.

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