

## Agencies Give Unified BSA Guidance

by Cheyenne Hopkins

To make anti-money-laundering enforcement more consistent among examiners and transparent to bankers, five federal agencies on Thursday spelled out which compliance deficiencies will trigger cease-and-desist orders.

UnionBanCal became the first example of the new, unified procedures, announcing late Thursday that it faces a cease-and-desist for BSA violations as well as a fine that it estimated to be \$10 million. The San Francisco bank, a unit of Mitsubishi UFJ Financial Group Inc., apparently did not sufficiently fix problems identified in a March 2005 memorandum of understanding that required it to strengthen anti-money-laundering controls and processes.

Not fixing problems identified by examiners is one of two sure paths to a cease-and-desist order, regulators said.

The agencies' 10-page document says cease-and-desist orders will also be issued when institutions do not establish, implement, and maintain a "reasonably designed" BSA compliance program. To meet this standard, a program must be able to identify risky customers, designate and train compliance employees, and be subjected to independent testing.

Though this was the first unified guidance on how to obey the Bank Secrecy Act, industry sources said they do not expect major changes in the way the banking, thrift, and credit union agencies apply the 1970 law.

"This is a significant piece of guidance that's helpful to bankers to understand how agencies will apply their enforcement standards," said Richard Riese, director of the American Bankers Association's Center for Regulatory Compliance. "Banks can pay attention to the big issues and not worry about being singled out for small items.

"The big message here is, sound systems and not minor technicalities."

**David Caruso**, the chief executive officer and managing director of **Dominion Advisory Group LLC** in Centerville, Va., said the joint statement raises the bar on compliance.

"Anytime a regulator issues a document like this it's a little like a college professor giving an open book test; he expects the answers to be better," said **Mr. Caruso**.

"The agencies are saying, we are telling you what we care about," he said, "so if we find a violation in the future no institution will credibly say they were unaware what it was the regulatory agencies found to be most important."

But Stephen Kroll, a former Financial Crimes Enforcement Network official and Democratic counsel for the Senate Banking Committee who now lectures at American University, had a different take.

"I find it troubling that apparently no matter how serious the violation, there will be a chance to correct," he said. "Giving people a chance to correct rather than giving them a cease and desist is a mistake."

The guidance gives detailed examples and also reminds bankers of their responsibilities to supply the government with the law's two main anti-money-laundering tools: suspicious activity and currency transaction reports. The industry filed 567,080 SARs last year and a significant chunk of the nearly 16 million CTRs, a compliance load many complain is too burdensome. But lobbying to raise the thresholds for filing both kinds of report has gone nowhere on Capitol Hill.

Carl Gold, a lawyer at the Federal Deposit Insurance Corp., acknowledged industry complaints that examiners nit-pick SARs filings. But he said, "The point here is, what we're looking at is their overall program."

"For example, individual SAR filings that are missed or late generally wouldn't trigger a formal action," he said. "There would have to be something about them that was so severe that indicated the whole program was defective."

The Federal Reserve Board took the lead on drafting the statement, but discussions among the five agencies on presenting a unified approach had been going on since 2004, after several large anti-money-laundering fines, including a \$25 million fine against Riggs National Bank for BSA violations and \$50 million against AmSouth Bancorp. for failure to file SARs.

While the Office of Thrift Supervision was unable Thursday to quantify its BSA-related cease and desist orders, the Office of the Comptroller of the Currency said it issued 53 from 2002 to 2006 while the Fed said issued 13 over the same period. The FDIC said it handed out 37 from 2004 through 2006.

The Comptroller's Office, in particular, came under fire for its BSA enforcement. It was criticized for its oversight of Riggs, in which it repeatedly found the problems but did not demand fixes.

The agency also took heat for its handling of BSA problems at Wells Fargo & Co. Examiners recommended a formal enforcement action against the San Francisco banking company but were overruled by the agency's leaders in Washington.

Dan Stipano, the OCC's deputy chief counsel, conceded that the Riggs case, which led to congressional hearings, had focused attention on the way the agencies enforced the BSA.

Both the OCC and the OTS released similar guidance in 2004, but the Fed and the FDIC did not. "It's become increasingly important for the agencies to be consistent, especially on BSA," Mr. Stipano said.

Fincen Director James Freis praised the agencies Thursday.

"The federal financial regulators are making great efforts to eliminate uncertainty about what they expect in a solid, risk-based, [anti-money-laundering] program," he said in a statement. "Myths about major penalties for minor lapses in BSA requirements should be dispelled."

Bob Serino, a former anti-laundering officer at the OCC and now a counsel at Buckley Kolar LLP, generally endorsed the statement.

"There still is a potential for second-guessing, but overall I think it's a good thing to have this guidance out there so banks understand what they need to do to prevent a problem and how they can present their case," he said. "It does give the banks the opportunity to present to the agency why [a problem] was not caused by a defect in our program but because our risk-based program said only review this set of our accounts," he added.

Rob Rowe, a regulatory counsel at the Independent Community Bankers of America, said many bankers have been worried that a small misstep could lead to a formal enforcement action.

"This is nice because it sets it out these are the things that are going to cause a cease-and-desist," he said. "It reassures banks that an inadvertent slip or a one-time slip is not going to lead to a cease-and-desist. And there was a little insecurity among banks on a small slip."

Still, on Thursday House Financial Services Committee Chairman Barney Frank, D-Mass., and the panel's ranking Republican, Spencer Bachus, R-Ala., asked the Government Accountability Office to study BSA enforcement. The lawmakers said they want to know whether Fincen has the staff and the technology it needs to carry out its mission and whether the burgeoning volume of SAR and CTR filings makes sense. The committee held a hearing on the topic May 10.