

Process for Taking Administrative Enforcement Actions Against Banks Based on BSA Violations

Overview

Effective bank supervision requires clear communications between the OCC and a national bank's senior management and board of directors. The OCC uses a variety of methods to communicate problems or weaknesses in a bank's systems and controls, including BSA deficiencies, and to obtain corrective action. However, as explained in this bulletin, when these deficiencies rise to the level of a BSA compliance program violation (12 CFR 21.21), a statutory mandate exists that requires the OCC to issue a Cease and Desist Order. Even when the facts do not support citation of a BSA compliance program violation, the OCC may take a formal or informal enforcement action to secure corrective action.

In view of BSA's elevated statutory requirements, and to ensure that the process for taking administrative enforcement actions based on BSA violations is measured, fair, and fully informed, the OCC's process includes the following stages:¹

Preliminary Assessment of the Facts and Discussion with Bank Management

During the examination process, preliminary facts and findings are discussed with bank management. Management has an opportunity to provide additional information throughout the examination process in response to the preliminary findings. The examiner-in-charge (EIC) will evaluate whether the preliminary findings include any BSA compliance program weaknesses or other BSA issues that need to be forwarded to the next stage of review for further consideration.

Additional Reviews

Potential BSA compliance program violations are considered by a review group that is generally comprised of representatives from bank supervision, compliance policy and legal, with expertise in BSA issues. The review group may request additional information from the EIC and the bank, if necessary. If a BSA compliance program violation is thought to exist, the EIC will discuss the violation (and potential consequences) with bank management, and if needed, direct that immediate corrective action be taken.

Written Findings

If there appears to be a BSA compliance program violation, the EIC prepares a document in draft form describing the basis for the apparent violation. This may take the form of a report of

¹These procedures provide only internal OCC guidance. They are not intended, do not, and may not be relied on to create rights, substantive or procedural, enforceable at law or in any administrative proceeding.

While these procedures set forth the general process to be followed in enforcement cases based on BSA violations, the OCC may nonetheless deviate from them in certain cases, *e.g.*, where a developing situation in a bank requires immediate action, other unusual or exigent circumstances are present, or intervening developments require a different course of action.

examination (ROE), a supervisory letter, or the description of the violation of law excerpted from these documents. The bank is given a copy of the draft document and an opportunity to respond. The bank's response is then considered by the review group.

Washington Supervision Review Committee (SRC)

If the decision of the review group is to affirm a BSA compliance program violation, the supervisory office and the Law Department will prepare a case for the Washington SRC describing, among other things, the facts, the bank's response (if any), any corrective actions taken by the bank or other mitigating factors, and the recommended action. The case is then brought before the Washington SRC for its recommendation. For community banks, the case is first brought before the appropriate district SRC for its recommendation (and district deputy comptroller concurrence) prior to coming before the Washington SRC. The recommendation of the Washington SRC on whether to cite a BSA compliance program violation and to pursue the proposed enforcement action will be conveyed to the appropriate senior deputy comptroller. In the absence of a consensus, the views of the Washington SRC members will be conveyed to the appropriate senior deputy comptroller.

Final Decision

The final decision to cite a BSA compliance program violation is delegated to the senior deputy comptroller for Large Bank Supervision or the senior deputy comptroller for Mid-Size and Community Bank Supervision, as appropriate. Any recommendation of the Washington SRC is considered by the appropriate senior deputy comptroller, but it is not determinative, and the appropriate senior deputy comptroller considers all information he or she deems pertinent, in reaching a decision. If the senior deputy comptroller decides to cite a BSA program violation, bank management is contacted and informed of the decision.

Initiating BSA Enforcement Actions

The final examination report and draft enforcement action are forwarded to the bank, and the proposed enforcement action is finalized with the bank's representatives. If civil money penalties are warranted, the Financial Crimes Enforcement Network (FinCEN) is contacted and a 15-day letter will be sent to the bank or the appropriate institution-affiliated parties. *See* PPM 5000-7 (REV), Civil Money Penalties, dated June 16, 1993.

Coordination with Other Agencies

FinCEN is notified of all formal and informal enforcement actions under the terms of the Memorandum of Understanding between the Federal Bank Regulators and FinCEN. In cases involving potential criminal violations of the BSA or the money laundering laws, the OCC will ensure that suspicious activity reports are filed and will coordinate with the appropriate law enforcement agencies.