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Dear Readers,

Whence the Harshness

Our lead story today helps us understand why and how bank examiners may still be a factor preventing banks from re-opening their doors to our industry. Due to the confidential nature of regulatory proceedings and the sensitive nature of the topic, anecdotes and armchair analysis are as close as we are ever likely to come to finding the proverbial smoking gun. The author is a former Chairman of the FDIC, so his take as a former regulator carries some weight.

The author, William Isaac, also touches on how Congress had a hand in creating the current atmosphere.

When the Wells Fargo story broke, my first impulse was, ironically, to defend OCC management. Here they were, trying to be reasonable and moderate, while the 'whistle-blower' just seemed vindictive. Since he was urging management to get as tough on everyone as the toughest they have ever been on anyone, instead of the opposite, I assumed he had an axe to grind.

The question is, among his peers, was he a hawk, or was he mainstream? How pervasive is the problem? We may never know for sure.

Size is one balancing challenge. Everyone is in favor of the fair administration of regulatory justice. No one wants to see large institutions get away with things that small institutions are nailed for, either in the bank or the non-bank sector. Rules and reactions should be commensurate with size, yet fair and equal, despite those differences in size. We should make sure the rules are simple enough that the small can follow them as well as the large. Then, we must assure the small are treated as well as the large.

The other balancing challenge is severity of punishment. Enforcement is needed, but I feel we need to hold the reins a little bit looser. Apparently, so does Mr. Isaac. For too long, the only tool in our toolbox has been a hammer, and to a hammer, everything looks like a nail.

But let's move away from examining the examiners, for a moment. It is not fair to heap blame on examiners and not look any further. Where did all this tough talk come from? Even if we knew for sure how pervasive the examiner problem is, what could or should be done? More clarifying of guidelines perhaps will never solve the problem, since one cannot anticipate the particulars of every case, and the problem may be more in the general approach we are taking, rather than in the specifics, anyway.

Considering Congressional oversight may have helped lead to the present fix, we must petition Congress to reverse the trend. Finding the incitement to harshness in the laws Congress has written, sounds like a good place to start.

OCC Bulletin 2004-50 "Enforcement Guidance for BSA/AML Program Deficiencies" (<http://www.occ.treas.gov/ftp/bulletin/2004-50.doc>) sounds pretty tough, and comes from a regulator. But looking deeper, it refers to and derives from another pretty scary document written, at some earlier point, by Congress, 12USC1818s (<http://www.nmta.us/main/Docs/Posted/12USC1818.doc>):

"(s) Compliance with monetary transaction recordkeeping and report requirements....(3) Order to comply with requirements, *If the appropriate Federal banking agency* determines that an insured depository institution--(A) has failed to establish and maintain the procedures described in paragraph (1); or (B) has failed to correct any problem with the procedures maintained by such depository institution which was previously reported to the depository institution by such agency, the agency shall issue an order in the manner prescribed in subsection (b) or (c) of this section requiring such depository institution to *cease and desist* from its violation of this subsection or regulations prescribed under this subsection (emphasis added.)"

Congress obviously meant to leave much discretion in the hands of the regulators. But Congress could not have anticipated that this statute would be interpreted as forcing the regulators' hand. Nor was Congress mindful at the time of how fateful the words 'cease and desist' sound to the banking community's ears.

Somewhere in the law, there are more smoking guns to be found, more incentives to harshness, to be sure. For example, Sections 1502 and 1503 of Annunzio-Wylie spoke of Factors for 'Revocation and Termination' (<http://www.federalreserve.gov/boarddocs/srletters/1993/SR9351.HTM>), which make any criminal conviction (or by extension, even the threat of criminal prosecution) into a virtual death sentence for the affected bank. Was it necessary to write this in a statute?

The power of government is an awesome thing and must be wielded with kindness where possible, and always with pragmatism. So we have to rely on Congress now to set the pace, to balance their oversight a little more in the direction of fairness and access to our financial system, and a little less in the direction of 'let's-get-tough' measures.

Above all, state-licensed MSBs must be seen and defined as filters at the gates of our financial system, not as wide-open, out-of-control 'portals.'

Once the signals are clear from Congress, and we let the professionals do their job, I am confident in the justice of the regulators. We look to Congress now for leadership in guaranteeing fair access to banking services for all consumers and businesses. Our nation's anti-money laundering goals cannot require the denial of accounts without due process and, in our case, the crushing of an entire industry. Especially if Congress is going to let Federal pre-emption stand, it is crucial that we have some consumer protections hard-wired into the circuits.

Until the correct balance is struck between severity and forgiveness, and until the right degree of statutory guidance is found, everyone out there will unfortunately still be left to improvise their interpretations on the spot, as best as he or she can.

For the sake of speed, one would have hoped the regulators could sort this out by themselves. But since Congress had a hand in starting the problem, Congressional action will be needed to help solve the problem.

And we could use it sooner, rather than later.

Regards,

-David

Industry News and Trends

Perspective: Harsh Approach to Regulation is Backfiring (Subscription required)

October 04, 2005... By William M. Isaac... American Banker

"The regulators, for understandable reasons, are in something close to panic mode when it comes to supervising banks for such compliance. Regulators have suffered through a great deal of criticism from Congress for lax enforcement in this area. And supervisory personnel have been fired or sent into exile for their perceived failure to be tough enough. As a consequence, examiners in the field are very much inclined to shoot first and ask questions later."

<http://www.americanbanker.com/article.html?id=20051003CNJEB9NL&from=SpecialReports>

MSB Registration Program is Reviewed by Treasury Inspector General

<http://www.ustreas.gov/inspector-general/audit-reports/2005/oig05050.pdf>

Banks Come Up Short in Channeling Remittances into Products ...

October 6, 2005... By Ken Parks... Business News Americas - Santiago, Chile... Wednesday. Most of the remittances come from US-based Mexicans and amount to billions of dollars each year, the conference heard. ...

<http://www.bnamericas.com/story.jsp?sector=3¬icia=331847&idioma=I>

Migrants Send Home \$150 Bn A Year: UN Report

October 06, 2005... Expatica - Netherlands... The official annual remittances of USD 150 billion amounted to three times the total amount of funds provided by governments for developments around the world...

http://www.expatica.com/source/site_article.asp?subchannel_id=52&story_id=24285&name=Migrants+send+home+%24150bn+a+year%3A+UN+report

Relearning Old Tricks to Reach Unbanked Consumers

October 06, 2005... by Tracy Kitten, editor... ATM marketplace.com (press release) - Louisville, KY, USA... As well, the notion that remittance products should target recent immigrants to the US also is based on false assumptions, said Manuel Orozco of The Dialogue...

http://atmmarketplace.com/news_story_24187.htm

U.S. Banks Hope Money Transfers Attract Hispanics

October 06, 2005... By Krissah Williams... Washington Post Staff Writer

"Mexican immigrants living in the United States have less expensive ways to send money to relatives in Mexico, using private and government money-transfer programs aimed at encouraging immigrants to join the U.S. banking system."

<http://www.washingtonpost.com/wp-dyn/content/article/2005/10/05/AR2005100502029.html>

B of A Reconfigures SafeSend (Subscription required)

September 29, 2005... By David Breitkopf and Isabelle Lindenmayer...

Bank of America Corp. is abandoning its automated teller machine-based remittance program in Mexico in favor of the more traditional approach of having recipients pick up money in person.

<http://www.americanbanker.com/article.html?id=20050928SEPO83TK&from=cards&e=y>

Latin American Globalization Index

October 2005... Latin Business Chronicle - Miami, FL, USA... Special Report... investment, tourism receipts and internet penetration should pose no surprise in a globalization survey, including a factor such as remittances may surprise some...

<http://www.latinbusinesschronicle.com/reports/reports/1005/laji.htm>

From the World Bank site, scroll down to the bottom of the page to see:

Recent and Upcoming Bank Publications on Migration and Remittances

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20648762~menuPK:34480~pagePK:64257043~piPK:437376~theSitePK:4607,00.html>

Experts Call for Coherent Policies on Migration

October 07, 2005... Financial Express - Bombay, India... "In developing countries, the remittances provided by migrants living abroad amount to \$150 billion a year, three times of critical development assistance...

http://www.financialexpress.com/fe_full_story.php?content_id=104786

Awash in a Sea of Money

October 6, 2005... By Rebecca Wakefield... Miami New Times - Miami, FL, USA... Intriago heads the Miami-based Alert Global Media, which publishes the Money Laundering Alert newsletter, a subscriber-based publication that explains in...

<http://www.miaminewtimes.com/Issues/2005-10-06/news/feature3.html>

With FinCEN Input, CTR-Reduction Measure Gathers Steam

(Subscription required)

October 2005... Money Laundering Alert... U.S. bankers' complaints about having to file endless numbers of currency transactions reports that are of little value to the government have been heard at the top.

A senior Treasury official has given support to a measure that would let financial institutions dramatically cut back on the number of CTRs they must file by allowing banks to exempt "seasoned customers" from the requirements.

<http://www.moneylaundering.com/ArticleDisplay.aspx?id=3223>

Joint Intelligence Effort to Curb Money Laundering

October 06, 2005... TODAYonline - Singapore

Financial intelligence experts from 47 countries met in Sofia to discuss efficient ways to curb money laundering in a joint effort within the international...

<http://www.todayonline.com/articles/76504.asp>

The following three stories were inadvertently left out of last week's Bulletin:

New GAO Study

Immigration Enforcement

Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts GAO-05-813

<http://www.gao.gov/new.items/d05813.pdf>

Afraid to Get Help - For Illegal Immigrants, Some Aid Is Too Risky

Fears Abound as Government Won't Promise Immunity From Deportation

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/19/AR2005091901398.html?referrer=email&referrer=email>

Immigration Nominee's Credentials Questioned

September 20, 2005... By Dan Eggen and Spencer S. Hsu... Washington Post Staff Writers

<http://www.washingtonpost.com/wp-dyn/content/article/2005/09/19/AR2005091901930.html?referrer=email&referrer=email>

Related News Items

US FDIC Seeks Comment on State Bank Law Preemption

October 06, 2005... Reuters - USA

... argue the health of the dual-banking system has been threatened since a national bank regulator -- the US Office of the Comptroller of the Currency -- issued a...

http://today.reuters.com/investing/financeArticle.aspx?type=bondsNews&storyID=uri:2005-10-06T185355Z_01_N06179166_RTRIDST_0_FINANCIAL-BANKING-PREEMPTION.XML&pageNumber=0&summit=

Service Test for Banks. Midtown Report Card

September 22, 2005... by Lore Croghan... Daily News Business Writer...

Bank analyst Mark Fitzgibbon decided to put down his calculator, close his spread sheet and test out service at midtown banks for himself.

<http://www.nydailynews.com/business/story/348931p-297729c.html>

International News

New EU Rules on Money Laundering

September 30, 2005... Hindustan Times - India

The European Union has published new rules against money laundering and terrorist financing and invited financial institutions to submit comments by October 21...

http://www.hindustantimes.com/news/181_1505377,00020008.htm

Australia to Fund Anti-Money Laundering Project in Myanmar

October 03, 2005... People's Daily Online - Beijing, China

Australia will fund Myanmar's anti-money laundering project and help develop guidelines for financial investigators of the country, the Myanmar Times reported...

http://english.people.com.cn/200510/03/eng20051003_212241.html

Bid to Break IRA Money Laundering

October 07, 2005... By Chris Thornton... Belfast Telegraph - United Kingdom... and other financial experts stepped into the front line of the battle against IRA criminality today in a bid to unlock the Provos' huge money laundering network...

<http://www.belfasttelegraph.co.uk/news/story.jsp?story=664271>

Anti-Laundering Campaign

October 07, 2005... Kommersant - Moscow, Russia

Russia's top enforcement and financial monitoring officials unveiled the results of their actions against money laundering in the country. ...

<http://www.kommersant.com/page.asp?id=615586>

Money Laundering Organization Broken Up

October 07, 2005... Focus News - Sofia, Bulgaria

The organization dealt with grand crime activity of distribution and printing of false EURO bills, credit cards and money laundering on the territory of Europe...

<http://www.focus-fen.net/index.php?focus=scan&sid=786>

Bangladesh Origin Brothers Set Up Money Transfer Business

October 07, 2005... Webindia123 - India

Two brothers of Bangladesh origin have broken new ground by setting up the first money transfer enterprise between Wales and Bangladesh. ...

<http://news.webindia123.com/news/showdetails.asp?id=131341&cat=Business>

Not a Deterrent to Money Laundering

October 07, 2005... Bishwajit Bhattacharyya...Economic Times - India

The Prevention of Money Laundering Act, 2002 (PML Act) has been made effective from July 1, 2005. The new law, it is believed, will curb money laundering. ...

<http://economictimes.indiatimes.com/articleshow/1255091.cms>

Survey Finds Remittances to Bolivia Will Total \$860 Million in...

October 05, 2005...Washington File - Washington, DC, USA... in North America, Europe and other Latin American nations will total an estimated \$860 million in 2005, the Inter-American Development Bank (IDB) has announced...

<http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2005&m=October&x=20051005133411AEnerG0.2405512&t=livefeeds/wf-latest.html>

The Future of the Somali Financial Global Services

October 01, 2005... Geeska Afrika - Somalia

According to the UN, money transfer companies remit approximately US \$750 million annually into the country from Somalis living in the Diaspora. ...

http://www.geeskaafrika.com/igad2020_1oct05.htm

Only 12 Cases Investigated for Money Laundering Last Year

October 04, 2005... By Dwight Bellanfante... Jamaica Observer - Kingston, Jamaica...

Jamaican investigators are slow in examining suspicious money transactions under the Money Laundering Act, even though the country is a likely target for money...

http://www.jamaicaobserver.com/news/html/20051003T220000-0500_89696_OBS_ONLY_CASES_INVESTIGATED_FOR_MONEY_LAUNDERING_LAST_YEAR.asp

EU Banks Ask When are Politicians Risky Clients?

October 01, 2005... Stuff.co.nz - Wellington, New Zealand... But many bankers at a conference held in Spain this week by specialist publication Money Laundering Alert complained that the definition is far too wide. ...

<http://www.stuff.co.nz/stuff/0,2106,3429097a6026,00.html>

Crimes & Cases

Former Judge Surrenders to Charges of Money Laundering

October 05, 2005... NBC6.net - Miami, FL, USA

Miami Beach, Fla. -- A former South Florida judge turned himself in Wednesday after being charged with aggravated white-collar crime and money laundering. ...

<http://www.nbc6.net/news/5060954/detail.html>

Russian Police Open Money-Laundering Probe

October 06, 2005... MSN Money - USA

Moscow (AP) - Russian police are investigating a number of Russian banks and companies on suspicion of money-laundering, Russian news agencies quoted the head...

<http://news.moneycentral.msn.com/provider/providerarticle.asp?feed=AP&Date=20051006&ID=5170049>

Russia Searches Yukos Offices As Part Of Money-Laundering Probe

Forbes - USA... general's office said it has carried out searches of several financial institutions and law firms in connection to suspected money-laundering by employees of...

Inspector Convicted of Money Laundering

October 05, 2005... Bryan College Station Eagle - TX, United States

McAllen - A senior US Customs inspector pleaded guilty Tuesday to money laundering and conspiring to smuggle drugs from Mexico through his lane at an...

http://www.theeagle.com/stories/100505/texas_20051005044.php

Woman Pleads Guilty to Illegally Wiring Money to Ecuador

October 04, 2005... Newsday - Long Island, NY, USA... Huertas pleaded guilty in US District Court in Bridgeport to structuring monetary transactions and operating an unlicensed money transmitting business. ...

<http://www.newsday.com/news/local/wire/connecticut/ny-bc-ct-brf--cashcrimes1004oct04,0,3411429.story?coll=ny-region-apconnecticut>

Patriot Act Used to Shutdown Illicit Money Transfer Businesses

by Jim Kouri, CPP... TheRealityCheck.Org - Shelton, CT, USA... In 1996, for example, ICE agents executed search warrants on three locations affiliated with Tele-Austin, a small money transfer firm in Queens, New York. ...

<http://www.therealitycheck.org/GuestColumnist/jkouri060105.htm>

Man Pleads Guilty to Charges Related to Laundering Money Sent to ...

October 03, 2005... New York Newsday - New York, NY, USA.

New York (AP) _ A man who owned and operated four unlicensed money transfer businesses in Chinatown and Chelsea pleaded guilty Monday to charges that accused...

<http://www.nynewsday.com/news/local/wire/newyork/ny-bc-ny--moneylaundering1003oct03,0,2978065.story?coll=ny-region-apnewyork>

Police Shut Down Somali Money Transfer Networks

Addis Tribune - Addis Ababa, Ethiopia

As part of the crack down on illegal money transfer businesses across the world, which could be possible channels of finance for terrorists, the Ethiopian...

<http://www.addistribune.com/Archives/2001/11/16-11-01/Police.htm>

Company Announcements

Western Union Launches Online Transfers

October 05, 2005... Sydney Morning Herald (subscription) - Sydney, New South Wales, Australia. Sending money around the globe just got a bit easier with the launch of Western Union's online money transfer service in Australia. ...

<http://www.smh.com.au/news/Business/Western-Union-launches-online-transfers/2005/10/05/1128191764122.html#>