

THE BANKING LAW JOURNAL

VOLUME 129

NUMBER 5

MAY 2012

HEADNOTE: A QUESTION OF CAPITAL Steven A. Meyerowitz	385
RESPONDING TO CAPITAL DIRECTIVES AND RELATED ENFORCEMENT ACTIONS Joseph T. Lynyak III	387
THE FRAMEWORK FOR BUYING A COMMUNITY BANK Pinchus D. Raice and Robert C. Lamonica	405
A SIFI IN THREE EASY STEPS? FSOC APPROVES FINAL RULE FOR NONBANK SIFI DESIGNATIONS Heath P. Tarbert, Sylvia A. Mayer, and Derrick D. Cephas	419
FROM COLLATERAL DAMAGE TO CAUTIOUS OPTIMISM: THE U.S. CLO MARKET FORGES AHEAD Deborah Festa, Andrew R. Walker, and James Warbey	432
THE FUTURE OF THE INTERCREDITOR AGREEMENT Robert Sullivan, Geoffrey Maibohm, and Elizabeth Murphy	440
THE <i>BANKATLANTIC BANCORP</i> DECISION — ROADBLOCK OR DETOUR TO OPEN BANK SALE OF DISTRESSED BANKS? J. Mark Fisher	446
BORROWER'S BREACH OF COVENANT TO REMAIN SOLVENT SPRINGS FULL RECOURSE LIABILITY UNDER NON-RECOURSE CMBS MORTGAGE LOAN Robert E. Helpem and Eric S. Schoenfeld	454
COMPTROLLER IDENTIFIES CITIBANK'S BSA/AML DEFICIENCIES, ORDERS CORRECTIVE ACTION Steven A. Meyerowitz	459
BANKING BRIEFS Terence G. Banich	472

EDITOR-IN-CHIEF

Steven A. Meyerowitz

President, Meyerowitz Communications Inc.

BOARD OF EDITORS

Paul Barron

*Professor of Law
Tulane Univ. School of Law*

George Brandon

*Partner, Squire, Sanders & Dempsey
LLP*

Barkley Clark

*Partner, Stinson Morrison Hecker
LLP*

John F. Dolan

*Professor of Law
Wayne State Univ. Law School*

Stephanie E. Kalahurka

Hunton & Williams, LLP

Thomas J. Hall

Partner, Chadbourne & Parke LLP

Michael Hogan

Ashelford Management Serv. Ltd.

Kirk D. Jensen

Partner, BuckleySandler LLP

Mark Alan Kantor

Washington, D.C.

Satish M. Kini

Partner, Debevoise & Plimpton LLP

Douglas Landy

Partner, Allen & Overy LLP

Paul L. Lee

Partner, Debevoise & Plimpton LLP

Jonathan R. Macey

*Professor of Law
Yale Law School*

Martin Mayer

The Brookings Institution

Julia B. Strickland

*Partner, Stroock & Stroock & Lavan
LLP*

Heath P. Tarbert

Partner, Weil, Gotshal & Manges LLP

Marshall E. Tracht

*Professor of Law
New York Law School*

Stephen B. Weissman

Partner, Rivkin Radler LLP

Elizabeth C. Yen

Partner, Hudson Cook, LLP

Bankruptcy for Bankers

Howard Seife

Partner, Chadbourne & Parke LLP

Regional Banking Outlook

James F. Bauerle

*Keevican Weiss Bauerle & Hirsch
LLC*

Recapitalizations

Christopher J. Zinski

Partner, Schiff Hardin LLP

Banking Briefs

Terence G. Banich

*Member, Shaw Gussis Fishman
Glantz Wolfson & Towbin LLC*

Intellectual Property

Stephen T. Schreiner

Partner, Goodwin Procter LLP

THE BANKING LAW JOURNAL (ISSN 0005 5506) (USPS 003-160) is published ten times a year by A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207. Periodicals Postage Paid at Washington, D.C., and at additional mailing offices. Copyright © 2012 THOMPSON MEDIA GROUP LLC. All rights reserved. No part of this journal may be reproduced in any form — by microfilm, xerography, or otherwise — or incorporated into any information retrieval system without the written permission of the copyright owner. Requests to reproduce material contained in this publication should be addressed to A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207, fax: 703-528-1736. For subscription information and customer service, call 1-800-572-2797. Direct any editorial inquires and send any material for publication to Steven A. Meyerowitz, Editor-in-Chief, Meyerowitz Communications Inc., PO Box 7080, Miller Place, NY 11764, smeyerow@optonline.net, 631.331.3908 (phone) / 631.331.3664 (fax). Material for publication is welcomed — articles, decisions, or other items of interest to bankers, officers of financial institutions, and their attorneys. This publication is designed to be accurate and authoritative, but neither the publisher nor the authors are rendering legal, accounting, or other professional services in this publication. If legal or other expert advice is desired, retain the services of an appropriate professional. The articles and columns reflect only the present considerations and views of the authors and do not necessarily reflect those of the firms or organizations with which they are affiliated, any of the former or present clients of the authors or their firms or organizations, or the editors or publisher.

POSTMASTER: Send address changes to THE BANKING LAW JOURNAL, A.S. Pratt & Sons, 805 Fifteenth Street, NW, Third Floor, Washington, DC 20005-2207.

COMPTROLLER IDENTIFIES CITIBANK'S BSA/AML DEFICIENCIES, ORDERS CORRECTIVE ACTION

STEVEN A. MEYEROWITZ

A cease and desist order issued against Citibank, N.A., by the Comptroller of the Currency (the "Comptroller") contains a roadmap for other institutions to follow to ensure compliance with the Bank Secrecy Act and anti-money laundering rules.

On April 5, 2012, the Office of the Comptroller of the Currency ("OCC") issued a cease and desist order (the "Order") against Citibank, N.A., for violating the Bank Secrecy Act ("BSA") and its underlying regulations. The order requires Citibank (the "Bank") to take comprehensive corrective actions to improve its BSA compliance program.

The OCC found that the Bank's BSA compliance program had deficiencies with respect to internal controls, customer due diligence, the independent BSA and anti-money laundering ("AML") audit function, monitoring of its remote deposit capture and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reporting related to that monitoring. These findings, according to the OCC, resulted in violations by the Bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, file suspicious activity reports, and conduct appropriate due diligence on foreign correspondent accounts.

The Order is essentially a roadmap that banks should keep in mind for their own BSA/AML compliance. Toward that end, this article discusses the

Steven A. Meyerowitz, the Editor-in-Chief of *The Banking Law Journal*, can be reached at smeyerow@optonline.net.

OCC's findings (which the Bank neither admitted nor denied) and the steps that the OCC required the Bank to take.

THE FINDINGS

First, the Comptroller found that the Bank had deficiencies in its BSA/AML compliance program that resulted in a BSA/AML compliance program violation under 12 U.S.C. § 1818(s) and its implementing regulation, 12 C.F.R. § 21.21 ("BSA Compliance Program"). In addition, the Bank violated 12 C.F.R. § 21.11 ("Suspicious Activity Report Filings"); and 31 U.S.C. § 5318(i) and its implementing regulation, 31 C.F.R. § 1010.610 ("Correspondent Banking").

Second, the Bank failed to adopt and implement a compliance program that adequately covered the required BSA/AML program elements due to an inadequate system of internal controls and ineffective independent testing. The Bank did not develop adequate due diligence on foreign correspondent bank customers and failed to file Suspicious Activity Reports ("SARs") related to its remote deposit capture/international cash letter instrument activity in a timely manner.

Third, the Comptroller found that some of the critical deficiencies in the elements of the Bank's BSA/AML compliance program included the following:

- The Bank had internal control weaknesses including the incomplete identification of high risk customers in multiple areas of the Bank, inability to assess and monitor client relationships on a bank-wide basis, inadequate scope of periodic reviews of customers, weaknesses in the scope and documentation of the validation and optimization process applied to the automated transaction monitoring system, and inadequate customer due diligence;
- The Bank failed to adequately conduct customer due diligence and enhanced due diligence on its foreign correspondent customers, its retail banking customers, and its international personal banking customers and did not properly obtain and analyze information to ascertain the risk and expected activity of particular customers;

- The Bank self-reported to the OCC that from 2006 through 2010, the Bank failed to adequately monitor its remote deposit capture/international cash letter instrument processing in connection with foreign correspondent banking;
- As a result of that inadequate monitoring, the Bank failed to file timely SARs involving remote deposit capture/international cash letter activity in its foreign correspondent banking business; and
- The Bank's independent BSA/AML audit function failed to identify systemic deficiencies found by the OCC during the examination process.

The Comptroller then ordered the Bank to take the following significant actions to meet its BSA/AML obligations.

COMPLIANCE COMMITTEE

With respect to the Bank's Compliance Committee, the Order requires that the Bank's board of directors (the "Board") maintain a Compliance Committee of at least three directors, of which at least two may not be employees or officers of the Bank or any of its subsidiaries or affiliates. The Compliance Committee is to be responsible for monitoring and coordinating the Bank's adherence to the provisions of the Cease and Desist Order. The Compliance Committee is required to meet at least monthly and to maintain minutes of its meetings.

Second, the Compliance Committee regularly must submit a written progress report to the Bank's Board setting forth in detail the actions taken to comply with the Order, and the results and status of those actions.

Next, the Board is required to forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge within 10 days of receiving such report.

Comprehensive BSA/AML Action Plan

The Order also requires that the Bank submit to the Deputy Comptroller and the Examiner-in-Charge a plan containing a complete description of a

BSA/AML Action Plan. The Bank is required to implement the BSA/AML Action Plan upon the Deputy Comptroller's issuance of a written determination of no supervisory objection. In the event the Deputy Comptroller asks the Bank to revise the plan, the Bank must immediately make the requested revisions and resubmit the plan to the Deputy Comptroller and Examiner-in-Charge. Following implementation, the Bank may not take any action that will cause a significant deviation from, or material change to the BSA/AML Action Plan unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

The Board is required to ensure that the Bank achieve and thereafter maintain compliance with the Order, including, without limitation, successful implementation of the BSA/AML Action Plan. The Board must further ensure that, upon implementation of the BSA/AML Action Plan, the Bank achieves and maintains an effective BSA/AML compliance program, in accordance with the BSA and its implementing regulations. To comply with these requirements, the Board must:

- (a) require the timely reporting by Bank management of such actions directed by the Board to be taken under the Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any noncompliance with such actions.

In addition, the Bank's BSA/AML Action Plan must specify timelines for meeting the Order's requirements.

Moreover, the Bank must ensure that it has sufficient processes, personnel, and control systems to implement and adhere to the Order. The BSA/AML Action Plan must specify in detail budget outlays and staffing, including aggregated staff compensation information in a format acceptable to the Examiner-in-Charge, that are necessary to achieve and maintain full compliance the Order.

Finally, the Order requires the Bank to designate an officer to be responsible for coordinating and submitting to the OCC the written plans, reports, and other documents required to be submitted under the terms and conditions of the Order.

Management and Accountability

The detailed Order also contains provisions regarding what it referred to as the Bank's "management and accountability."

Toward that end, it required that the Bank ensure there are "clear lines of authority and responsibility" for compliance management and BSA/AML compliance, and that competent and independent compliance management is in place on a full-time basis.

The Bank also must ensure that compliance staff has the appropriate level of authority to implement the BSA/AML Compliance Program and, as needed, question account relationships and business plans. Compliance staff must maintain "independence from the business line," and not be subject to any form of evaluation or performance input from the business line.

Next, the Order requires that the Bank ensure that senior management and line of business management are accountable for effectively implementing bank policies and procedures, and fulfilling BSA/AML and Office of Foreign Assets Control ("OFAC") obligations. The Board must incorporate BSA and OFAC compliance into the performance evaluation process for senior and line of business management. Additionally, written Bank policies and procedures must clearly outline the BSA/AML and OFAC responsibilities of senior management, and relevant business line employees, including, but not limited to, relationship managers, foreign correspondent banking personnel, private banking staff, and business development staff.

In addition, the Bank is required to develop appropriate objectives and means to measure the effectiveness of compliance management officers and compliance management personnel within each line of business and for those with responsibilities across lines of business.

Evaluation and Risk Assessment

The Order requires that the bank evaluate its BSA/AML Compliance Program.

Toward that end, the Bank is required to review its engagement with its current independent consultant on BSA/AML issues to review and ensure that the consultant's evaluation of the Bank's BSA/AML Compliance Program satisfied the Order's requirements. This evaluation had to include assessments of the

function's organizational structure, enterprise-wide effectiveness, the competency of management, accountability, staffing requirements, internal controls, customer due diligence processes, risk assessment processes, suspicious activity monitoring systems, audit/independent testing, and training.

Under the Order, this evaluation also had to include a comprehensive assessment of the Bank's BSA/AML risk, including detailed quantification of risk to accurately assess the level of risk and the adequacy of controls. The comprehensive assessment had to include:

- (a) An assessment of the AML risk associated with each line of business, and an enterprise-wide assessment of AML risk for higher risk products, customers, and services. This review had to include, but was not limited to, an assessment of risk associated with foreign correspondent banking, pre-paid cards and mobile banking, cash-intensive businesses, remote deposit capture, private banking, and other higher risk products, services, customers, or geographies. The purpose of the enterprise-wide assessment was to identify systemic AML risk that may not be apparent in a risk assessment focused on line of business or assessment units.
- (b) Evaluation of the Bank's current methodology for quantifying the level of BSA/AML risk associated with specific customers. This evaluation had to result in the development of a comprehensive approach to quantifying BSA/AML risk for new and existing customers. The quantification of risk had to encompass a customer's entire relationship with the Bank, include the purpose of the account, actual or anticipated activity in the account (e.g., type and volume (number and dollar) of transaction activity engaged in), nature of the customer's business or occupation, customer location (e.g., customers' geographic location and where they transact business), types of products and services used by the customer, material changes in the customer's relationship with the Bank, as well as other factors discussed within the *FFIEC BSA/AML Examination Manual*.
- (c) The identification of specific lines of business, geographies, products or processes where controls were not commensurate with the level of AML risk exposure.
- (d) The risk assessment must be refreshed periodically, the timeframe for which may not exceed 12 months, or whenever there is a significant

change in AML risk within the bank or line of business. The AML risk assessments also must be independently reviewed for the adequacy of methodology and accuracy of findings.

- (e) The aggregation of the Bank's enterprise-wide AML risk must be "logical and clearly supported in the work papers." The work papers and supporting documentation must be readily accessible for a third party review.

Under the Order, the Bank is required to have a separate OFAC risk assessment performed annually, including the same criteria.

The Bank also is required to submit the BSA/AML Compliance Program evaluation, including the comprehensive BSA/AML risk assessment and the OFAC risk assessment, to the Examiner-in-Charge for supervisory non-objection. If the Examiner-in-Charge recommends changes to the evaluation or the assessments, the Bank must incorporate those changes or suggest alternatives that are acceptable to the Examiner-in-Charge.

Customer Due Diligence

The Order requires that the Bank ensure that appropriate customer due diligence policies, procedures, and processes are developed. These controls must be implemented and applied on a bank-wide basis. Minimum corporate standards must provide general guidance, and individual lines of business and AML compliance management are required to develop standards based on their client base, products, services, geographic risk, and other AML risk factors. Customer due diligence has to be commensurate with the customer's risk profile, and sufficient for the bank to develop an understanding of normal and expected activity for the customer's occupation or business operations. The Order provides that the customer due diligence process include the following items:

- (a) Information regarding the client's relationships with the Bank, all lines of business within the Bank, and all Bank subsidiaries. This includes accounts within other lines of business, regions, and countries (as permitted by jurisdiction).
- (b) An electronic due diligence database that is readily accessible to the rela-

- tionship manager or other parties responsible for the customer relationship, AML compliance personnel, suspicious activity monitoring alert analysts and investigators, and quality control personnel.
- (c) Customer due diligence has to be periodically updated to reflect changes in the customer's behavior, activity profile, derogatory information, periodic reviews of the customer relationship, or other factors that impact the AML risk for the client. The periodic update of due diligence has to be documented and subject to quality assurance processes.
 - (d) The client relationship AML risk score has to be detailed in the customer due diligence record, along with the supporting factors, including transaction activity, geographies involved, and suspicious activity monitoring alert and filing history among others.
 - (e) Specialized or enhanced due diligence for higher risk clients and/or products and services must be implemented enterprise-wide. These due diligence standards must comply with the *FFIEC BSA/AML Examination Manual*, the Interagency Guidance on Beneficial Ownership Information (OCC 2010-11), as well as industry standards.
 - (f) Management processes to periodically review the type and volume of customer activities where the size and nature of the account are such that a relationship manager is involved in supervising the account. The purpose of these reviews is to determine if the customer's activity is reasonable, that customer due diligence is current and complete, and the customer risk rating is accurate. These reviews are to be documented and quality assurance processes must ensure the reviews are comprehensive and accurate. Standards and processes must be established for elevating reviews for additional management consideration regarding increased monitoring, additional due diligence, or account closure.

SUSPICIOUS ACTIVITY IDENTIFICATION AND REPORTING

The Order also requires that the Bank develop and thereafter maintain a written program of policies and procedures to ensure, pursuant to 12 C.F.R. § 21.11, the timely and appropriate review and dispositioning of suspicious activity alerts, and the timely filing of SARs.

In addition, under the Order, the Bank must retain one or more independent consultants acceptable to the Examiner-in-Charge, or continue an existing or newly revised relationship with one or more independent consultants acceptable to the Examiner-in-Charge, to evaluate its suspicious activity identification processes to ensure they are effective and provide comprehensive coverage to the Bank. This evaluation must include an assessment of the capabilities of any surveillance and transaction monitoring systems used; the scope of coverage provided by the systems; and the management of those systems. Upon completion the Bank is required to submit this evaluation to the Examiner-in-Charge for supervisory non-objection. The evaluation must address, but not be limited to, the following issues:

- (a) An assessment of the functionality of automated transaction monitoring systems used to determine if the systems are sufficiently robust to provide for the timely identification of potentially suspicious activity. A comprehensive listing of weaknesses or deficiencies in the system and the risks presented by these deficiencies must be highlighted for management consideration.
- (b) Management's implementation of each surveillance and transaction monitoring system must ensure the following:
 - i. The integrity of data feeding the transaction monitoring systems;
 - ii. The system has been sufficiently tailored to the bank's risk profile and operations;
 - iii. The system's functionality is being fully utilized;
 - iv. The scenarios or rules selected for automated monitoring are appropriate and effective in identifying client activity that is unreasonable or abnormal given the nature of the client's occupation or business and expected activity;
 - v. Sufficient management information and metrics are used to manage and adjust the system, as necessary;
 - vi. Statistically valid processes are used to validate and optimize monitoring system settings and thresholds, and to measure the effectiveness of the automated system and individual scenarios, where appropriate;

- vii. Alert scoring methodology is used to prioritize work flows and to facilitate management of the system and the ongoing validation and optimization of system settings;
- viii. The adequacy of staffing to investigate and clear alerts;
- ix. The quality and completeness of information available to analysts working transaction monitoring alerts and conducting investigations;
- x. The standards for dispositioning different types of alerts are reasonable, communicated in writing to relevant staff and are adhered to by the alert investigators;
- xi. Adequate documentation is maintained to support the disposition of alerts;
- xii. The availability and adequacy of information to investigate potentially suspicious activity, including, if applicable, information from multiple lines of business a customer transacts with or information from bank subsidiaries;
- xiii. Standards that ensure accounts with high volumes of alerts are identified, elevated and properly categorized as high risk, and subject to enhanced due diligence and monitoring; and
- xiv. Sufficient quality control processes to ensure the surveillance and transaction monitoring system, alert management process, and SAR decisioning and filing are working effectively and according to internal standards.

Cash Letter Services/Remote Deposit Capture

Under the Order, the Bank must develop, implement, and maintain clear written policies, procedures and processes governing the use of cash letter services (“CLS”) and remote deposit capture (“RDC”) by all Bank clients. In particular, all CLS, including RDC, must be properly monitored for suspicious activity and reported as necessary based upon the guidance set forth in the *FFIEC BSA/AML Examination Manual*. Data feeds for this automated monitoring must be tested for accuracy, and the logic employed in testing for

suspicious activity must be clearly supported, reasonable, and independently validated.

The Order also requires that the Bank establish and thereafter implement and maintain controls, commensurate with its BSA/AML risk, over the usage of RDC by all customers, and the Bank's monitoring of RDC transactions. These controls must include:

- (a) policies and procedures consistent with the January 14, 2009 Interagency Guidance on "Risk Management of Remote Deposit Capture" published by the FFIEC (OCC 2009-4);
- (b) policies and procedures for identifying, investigating, and resolving transactions that are identified as unusual;
- (c) policies and procedures for reporting suspicious activity;
- (d) periodic evaluations of line of business and compliance personnel knowledge of and adherence to Bank policies and procedures for identifying transactions that pose greater than normal risk for compliance with the BSA and its implementing regulations, in order to determine whether additional or enhanced training should be conducted; and
- (e) periodic evaluations of the sufficiency of staffing resources that support the line of business for the purpose of identifying and investigating unusual and/or suspicious activities.

The Bank was required to automate the monitoring of CLS and RDC transactions for suspicious activity to the extent practicable.

Account/Transaction Activity Review

The Order required that the Bank retain one or more independent consultants acceptable to the Examiner-in-Charge to supervise and certify an independent review of account and transaction activity ("look-back") covering areas to be specified in writing by the Examiner-in-Charge. The purpose of the look-back is to determine whether suspicious activity was timely identified by the Bank, and, if appropriate to do so, was then timely reported by the Bank in accordance with 12 C.F.R. § 21.11.

The look-back must be supervised and certified by independent consultant(s) with expertise in the review of CLS and RDC activity. The look-back has to be risk-based, including the risks identified in the Bank's current risk assessment, and must identify the sampling, software screening, or analytical techniques used to identify transactions that are subject to review for suspicious activity.

Upon completion of the look-back, the written findings are required to be reported to the Board, with a copy to the Examiner-in-Charge. The Bank must file SARs, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during this review.

Based upon the results of the look-back, the Order provides that the OCC, at its sole discretion, may expand the scope of the independent review or require a longer look-back period. If an additional look-back is deemed appropriate by the OCC, the Bank is required to complete it.

BSA Independent Testing and Audit

Next, the Order required that the Bank develop and maintain an effective program to audit the Bank's BSA/AML compliance program ("Audit Program"). The Audit Program must include, at a minimum:

- (a) a formal process to track and report upon Bank management's remediation efforts to strengthen the Bank's BSA/AML compliance program;
- (b) testing of the adequacy of internal controls designed to ensure compliance with the BSA and its implementing regulations;
- (c) a risk-based approach that focuses transactional testing on higher-risk accounts or geographic areas of concern; and
- (d) a requirement for prompt management response and follow-up to audit exceptions or other recommendations of the Bank's auditor.

The Audit Program also is required to evaluate internal controls and effectively and timely identify non-compliance with policy, laws, rules, and regulations across lines of business and within each line of business. At least annually, the Audit Program must evaluate the adequacy of the Bank's BSA

Program based on the results of the independent testing, and considering changes in the quantity of AML risk or AML risk management.

The Order requires that the Bank's audit function be adequately staffed with respect to experience level, specialty expertise regarding BSA/AML and OFAC, and number of the individuals employed.

Moreover, the Bank's Audit Program must report all internal audit-identified deficiencies to the Compliance Committee, the Bank's Audit Committee, and to senior compliance management. The reports has to indicate the severity of the deficiencies, the risks, and the corrective actions. Corrective actions must be followed-up by internal audit within a reasonable period of time until closed. Monthly status reports on corrective action status are to be provided to the Compliance Committee and the Bank's Audit Committee.

The Board and senior compliance management must receive full information about the Bank's compliance management program in light of their obligation to oversee the Bank and to fulfill its fiduciary responsibilities and other responsibilities under law. Deficiencies in the program are to be identified and highlighted along with the risks.

New Products, Services, or Lines of Business

Finally, the Order requires that the Bank ensure that new products and services are subject to senior level compliance review and approval. These reviews must consider the quantity of BSA/AML and OFAC risk of the new product or service as well as the quality of risk management. At a minimum, these reviews must assess the ability of the Bank's compliance program to manage the risk, the anticipated growth in both the business and the compliance function, and the ability of alert investigators' to manage any anticipated increase in alert volume as a result of the new business.

Under the Order, the Bank may not enter into a new high-risk (quantity) line of business, or expand existing high-risk (quantity) lines of business, without conducting a risk assessment, a determination of compliance staffing impact, and without the prior approval of the OCC, which must be obtained in the form of written supervisory non-objection from the Examiner-in-Charge.