

Course: Theory and Operation of a Modern National Economy

George Washington University

“The importance of fighting money laundering in a modern economy – the international context and the American Policies and Regulation”

1. Introduction

1.1 Considerations about money laundering: definitions and stages

1.2 The importance of fighting money laundering in a modern economy

1.3 Increasingly integrated markets and tax haven territories – How difficult it is to keep track of international capital flows

2. The international environment: the Washington Conference and the role of the private sector

3. The United States’ legal experience in fighting money laundering:

3.1 The existing legislation

3.2 The National Strategy

3.3 Financial Crimes Enforcement Network’s (FinCEN) – functions and Strategic Plan

3.4 Government institutions involved and their inspection actions

3.5 The role of the Federal Reserve and of the Comptroller of the Currency

4. Conclusions

1. Introduction

The aim of this research is to provide an actual view of the international context concerning money laundering issues. Besides, to profit more from my stay in the United States in these four months we describe, in short words, the American legislation and strategy to fight against money laundering. Therefore we initiate the paper defining money laundering, its stages and the importance of this controversial issue in a modern economy.

In addition, as a public servant, it is important to underline the opportunity of this research as the Brazilian legislation concerning this issue dates from march 1998 and the Department at Central Bank has recently been established, November 1999.

1.1 Considerations about money laundering: definitions and stages

The crime of money laundering consists in a whole of commercial and financial operations in order to join to the economy of a country goods or values originated/related to illegal transactions. Money laundering is a process that tries to give legal appearance to resources illegally obtained. It consists of shedding the real identity of the owners of illicit origin funds making use of several financial transactions. In simple words, it could be defined as the act of washing dirty money to make it appear legitimate.

In the last decades this crime, formerly related to restricted regions, has gained a transnational nature. This is not only due to the economic process known as *globalization*, but also to the increasing internationalization of the domestic financial

systems. Thus, its economic effects have to be thought of and understood in an international and broad framework. That is why many countries have been trying to establish international organizations and efforts to cope with this kind of crime. The Financial Action Task Force (FATF), the Group of Egmont, International Transparency are examples of institutions created to fight against these crimes.

Many authors, for academic reasons, split the money laundering process into three stages that are called: placement, layering and integration. It must be emphasized that the procedures are divided only for academic reasons. The money laundering process need not include the three stages. The above phases are described in the following.

Placement – As the illegal activity generally generates huge amounts of cash money, placement can be defined as the act of depositing this money into the financial system. Usually, cash deposits are split in order to evade the obligation of recording and/or reporting the transaction when the amount involved exceeds a specified value established by law. In Brazil all deposits that equal or exceed to R\$ 10,000.00 (ten thousand reais) according to *Circular 2852* of 12/03/1998 (issued by Central Bank of Brazil), while in The United States the amount is USD 10,000.00 (ten thousand dollars). The American legislation for this purpose dates from 1970, which creates the Currency Transaction Report (CTR).

Trying to avoid the obligation of recording and/or reporting the transaction, cash deposits are split in several amounts under USD 10,000 or R\$ 10,000, totaling many times up to USD 500,000. This procedure is known in the market as *smurfing*.

In order not to draw attention to the illegal source of cash and avoid the risk of theft or seizure, criminals exchange small denomination bills for larger bills, deposit cash and buy financial instruments or otherwise dispose of cash promptly.

Another drawback that the government authorities usually face is the fact that managers of financial institutions are not too worried about the origin of the resources when opening a banking account. As they have goals to achieve (to attract a pre-defined amount of dollars or number of banking accounts in a certain period of time) to maintain their jobs or to get promoted, they do not care about the origin of cash deposits mainly when the amount involved is huge.

This is the initial step of money laundering. In my opinion in this step the government authorities should enhance their efforts in fighting against money laundering. At this step the resources are really close to their origin.

Layering – separating illicit proceeds from their source by creating one or more layers of financial transactions to difficult or interrupt any audit trail. If placement was undetected, layering makes tracing proceeds extremely difficult.

The most common way of concealing the resources from their origin is by making transfers among several banking accounts. Generally, the illegal accounts (“phantom accounts”) were opened only for this purpose.

The crescent technological development of the financial system and its electronic facilities, like home banking, the Net, wire transfers, are useful tools at disposing of money laundering schemes. This is a track that usually takes time and is not easy to

follow. At this step the government agencies responsible for the inspection of money laundering schemes face several difficulties:

- Bank secrecy law of many countries, mainly the tax haven territories;
- The traffic of documents among the financial institutions and the federal agencies always take time, meanwhile the funds have already been placed in other countries;
- The large scope of facilities and products that the international financial market provides;
- The accomplishment of many financial institutions to some schemes of money laundering. Some of them offer it in the range of their own products; and
- The political development stage of many countries, where some authorities are intrinsically tied to the process.

Integration – In this last stage the assets are formally joined into the economy of a country. International criminal organizations can invest in many economic sectors. Once the chain has been established, it is more difficult for the authorities to fight against the problem.

Integrated schemes present laundered proceeds as normal foreign or domestic investments, loans or reinvestments of profits. Once placement and layering have been successfully accomplished, detection and identification of laundered funds at the

integration phase will normally be possible only through undercover infiltration or, more commonly, assistance by a source knowledgeable about the suspect nature of the funds. Money laundering using foreign accomplice banks represents a higher order of criminal sophistication and presents a very difficult problem both at the technical and political levels. This process can conceal incriminating evidences relating to persons and transactions, provide sham loans secured by criminal proceeds, while providing immunity from law enforcement scrutiny due to protective banking laws and regulations of another sovereign government.

Most of the time, the profile of a typical money laundering firm is basically the same:

- Few employees;
- Occupies only a small room;
- Equipment and fixtures are only composed of microcomputers, faxes and telephones;
- The revenues are results of financial investments and rendered services;
- Existence of operations (mainly loans) made to and/or taken from off-shore companies.

1.2 The importance of fighting money laundering in a modern economy

We will approach this issue in two ways. First, we will broach the revenue originating from drug trafficking and other criminal organizations. Then, the wealth related to corruption in the public sector of developing countries.

It is widely known that drug trafficking and all the 'economic' activities related are extremely harmful to a country. In a globalized world, this kind of activity in a country decreases the confidence of foreign investors in a specific economy, diverting the flow of direct investment to other emerging markets. Considerably harmful also are the social and political effects in a country. The level of participation of the income originating from drug trafficking in the economy of a country determines how it will affect the social network in this nation, also affecting as a direct consequence the productive sector. An increase in the levels of criminality and marginality is commonly observed. For instance, in some Brazilian capitals, like Rio de Janeiro and São Paulo, there are some regions where the complete absence of the State can be observed. Public services, like sewage, police, electricity, are not provided in these areas. Marginals and criminal organizations mainly control these neighborhoods, characterized by poverty.

Locally and globally speaking, corruption in the public sector in developing countries nowadays represents a cost to the productive sector of the economy. For instance, the study '(An Almost) perfect crime – corruption and money laundering in Brazil' developed by Rogério Pacheco Jordão, a Brazilian journalist, shows how wide spread bribery of public officials in Brazilian society is.

This author mentions another study carried out by professors Marcos Fernandes Gonçalves da Silva and Fernando Garcia from Getúlio Vargas Foundation that reaches the following conclusion: a decrease in 10% of the level of corruption could lead to a raise (in twenty years) in the Brazilian per capita income from USD 5 thousand to USD 8.65 thousand. This forecast was realized through a rate defined by International Transparency (NGO). This rate was established considering mainly the manager's

perception of the level of corruption in each country. In the ranking of 1999, Brazil occupies the 45th position among 99 countries. Brazil is less corrupt than Rússia and Argentina, but more than Chile. The central idea in this study is that bribery is essentially linked to a loss in economic efficiency.

In São Paulo in 1998, the public was outraged about a scheme of town hall tax auditors. They received bribes from small traders in the city. This history started when a 23 years old businesswoman Soraia Patrícia da Silva, 23 years old, decided to reveal the bribery practiced by two public servants from the city hall. They asked her for R\$ 30 thousand (equals in average to USD 15 thousand) to allow a renovation in her gymnastic center. The conversations among them were recorded by TV Globo (The main television channel in Brazil) and followed by a member of the Public Ministry. This record started an outrage that was know as the 'bribery's mafia'. This is an example of how resources are diverted from productive activity in an economy. Economically speaking corruption raises transactions costs in an economy.

In addition, according to forecasts of the Public Ministry of São Paulo, the number of enquires relating to corruption achieves the amount of R\$ 1.5 billion (equals in average to USD 750 milion). This is equivalent to twice the annual budget of the city hall.

Nowadays, the fact is that bribery in the public sector of developing countries raises costs in the worldwide economy. This is of major concern to the political and economic international community. In many developed countries, multinational companies already count on these costs. Besides, in some industrialized countries, bribery deduction was possible according to law. In these sense the Washington conference, an international

forum, tried to discuss and join different experiences from several countries and encourage the role of the private sector in fighting against corruption.

1.3 Increasingly integrated markets – How difficult it is to keep track of international capital flows

The rise of organized crime is now an accepted, if regrettable fact of global business life.

The massive sums of money generated by such activity need to be legitimized by inserting and washing them in international banking and business systems. Running parallel are the internationalization and integration of markets; the sophistication of information technology and the uncertain political and economical environments in such regions as the former Soviet Union.

There has been a convergence in these last two or three years of key factors that have encouraged, facilitated and sponsored the explosion in money laundering. Other characteristics are:

- a) The globalization of markets and financial flows, most evident with the rise of the Internet. Virtual money laundering is a reality;
- b) Deregulation has brought with it no consistency or coherence in respect of global money laundering regulations; simultaneously the global marketplace has brought with it very few, if any restrictions;
- c) Simultaneously the new technological advances are placed at disposal of criminals by the financial system. The rapid pace of change and the volatile business

environment that it creates is an ideal environment for criminals and their associates to operate in;

d) Concurrent with these events has been the widespread criminalization of politics.

Organized crime is so influential because it buys influence. Politicians, in numerous cases, are the criminals themselves and the funds that they have removed out of the typically fragile economies of their native countries.

Corruption and money laundering go hand in hand.

Globalization is far more advanced than international regulation or cooperation. Money launderers usually make sure that their funds pass through as many jurisdiction as possible – particularly useful in delaying and frustrating any possible future official investigation.

The borderless world of international financial systems increases the appeal to criminal elements of non-cooperatives countries or jurisdictions with no or few safeguards against money laundering. Political commitment must be generated at the highest levels to ensure the cooperation and participation of other countries in implementing anti-money laundering laws.

The unprecedented growth observed in the financial services community may affect the scope and nature of the countries' legislations.

Concerning the questions raised at this item, mainly the scenery of deregulation, global markets and the corrupt political environment in many countries, we develop following the role of the private sector regarding the fight against money laundering as discussed at the Washington Conference.

2. The international environment: the Washington Conference and the role of the private sector

2.1 The issues discussed

Now we will describe some aspects of The OECD Washington Conference on Corruption that took place in February, 1999 ("Fighting Corruption in Developing Countries and Emerging Economies: The Role of the Private Sector"), as it represents an international forum where several issues related to the role of the private sector were discussed among representatives of different countries.

At the conference, business and government leaders from all around the world (80 countries) discussed the issue, spending two days hammering out effective anti-corruption strategies for the future. The result, in the words of one conference participant, was a "sense of shared accomplishment and purpose, a recognition that many of us face similar challenges and that we are all in this boat together."

The main idea of the conference was that the private sector is playing a vital role in the fight against corruption. With increasing frequency, businesses representing all walks of life are eschewing corruption and "blowing the whistle" on those who encourage corrupt practices. This is true not just for multinationals, but for local firms in emerging economies and developing countries as well.

Corruption is one of the world's oldest and best established vices. It inhibits development, squanders valuable resources, and undermines the confidence of investors. It is significant that today, as we enter a new millennium, real progress is being made to rid

the globe of this insidious influence. The story continues to unfold, but it is clear that the Washington Conference on Corruption represents an important chapter in the recent effort to combat corruption around the world.

Businesses are often considered to be largely responsible for corruption practices, so they have not traditionally been viewed as potential allies in the fight to change corrupt systems. But the situation is considerably more complex than this.

Corruption inflates firms' costs and reduces their profit margins, but it also takes a toll in terms of time. Daniel Kaufmann of the World Bank Institute noted that in Albania, for instance, the vast majority of firms would be willing to pay an additional 10 percentage points of revenue in taxes if corruption were eliminated. He continues: "The percentage of time that senior managers spend negotiating with bureaucrats in some countries is more than one-third. This compares poorly to developing countries that have done their homework in terms of governance and liberalization, like El Salvador and Chile, where it is about 8 percent."

We would like to reinforce that all firms prefer to operate in an environment where public services function well and where rules and regulations are enforceable and enforced.

Regarding corruption that enhances a competitive position, how strenuously a firm supports or objects to corrupt practices may depend on the degree to which the company benefits.

In this regard, firms basically divide into three categories:

Firms in the first group (Group I) suffer from corruption; they realize no benefit from it. Corruption brings no advantage to them in terms of their competitive position. This may be because their market is not dependant on purchases by the State. Small and medium-

sized enterprises (SMEs) would most likely be in this group of firms.

Firms in Group II are competitive when corruption does not bias the rules of competition, yet corruption plays a role in giving them access to or creating new markets. In order for these firms to compete in a public tender, for instance, they have to bear up the rules of corruption and provide payoffs. Yet without these practices, these firms would still be competitive.

These two categories of firms, if they refuse corrupt practices, are likely to lose business.

Corruption manifests itself as extortion. To be able to do business, to be able to make money, businesses are pushed into bribing officials.

Group III companies owe their position in the market solely to privileges created by a corrupt system. Hence, they would clearly lose their competitive position should a change in the rules occur. These firms are typically run in close cooperation with actors in the public arena. In this case, corruption practices tend to be implicit arrangements among actors in the public and private sectors to exploit an economic opportunity.

Corruption represents costs in terms of time and money, but it also creates an environment of uncertainty in the operations of firms. If companies pay once, they will receive more demands. If they do not get what they pay for, they are in no position to complain; there is no source of legal redress because they have themselves broken the law. Having broken the law, they are vulnerable to various forms of blackmail. And, if they enter into a corrupt relationship and then try to suspend outstanding payments, they may face a variety of different threats - including the threat of violence.

Clearly, firms from Groups I and II will be those most ready to mobilize against corruption practices that influence the rules of competition, since corruption is a liability

for them. Even those firms whose competitive position is partly acquired through corruption may join the anti-corruption movement because of the uncertainty involved in a situation where competitive position is influenced by corruption practices. If a company maintains a situation in which it has an advantage through corruption, tomorrow their competitor will have an advantage because he pays more or because he is closer to the new faction in charge. Only in a situation where everyone is competing equally can one be reasonably assured of having a good chance of competing and getting business. Even those businesses that occasionally benefit from corruption may come to deplore it. Private businesses resented some political systems because lucrative businesses and projects were systematically closed to them.

Some of the disadvantages of corruption to the productive sector in the sense of enhancing a competitive market were described during the Conference:

More generally, deferring to corruption alters the incentive to invest in the quality of a product, its low cost or its innovative quality, as those criteria rewarded by normal rules of competition are replaced by rules where connections and bribes prevail. The impact on internal management is an increasingly important issue as firms turn to capital markets for financing and exposure.

According to the environment in which corruption takes place, firms can face considerable risks. If laws are clearly defined and strictly enforced, as Eduardo Busó of General Electric (GE) noted, companies engaging in corrupt transactions expose themselves to civil damages, criminal sanctions, and legal fees. If public opinion condemns firms that engage in corruption practices, these companies run the risk of tarnishing their reputations. This can be especially important for firms that are listed in

financial markets, where the mere perception of corruption can be devastating.

Finally, corruption has negative systemic effects that have an impact on all firms.

According to Arifin Panigoro of Medco, "The depth of the Indonesian crisis sets it apart from most other Asian countries, which are seen to take the path of recovery. Corruption is a main factor in the collapse of the Indonesian economy. Globalization makes it all the more necessary for Indonesian business to fight corruption because, at the end of the day, if nothing is being done in Indonesia by private business, Indonesia will lose any competitive advantages against other countries." Simply put, corruption weakens the ability of businesses to compete in the international marketplace.

In this contest the Conference indicates some ways businesses can contribute to the fight against corruption.

To rid the marketplace of corruption, two modes of action are possible. The first is often referred to as the strategy of self-regulation: firms refuse unilaterally to engage in corruption practices, eschewing bribes of any kind. The second mode is to engage in a dialogue with the government to work together in changing the environment, its structures, and defining new rules of the game.

Self-regulation involves businesses enforcing the no-bribe practice on public officials.

This is possible only if there is very strong coordination among all firms.

Can multinationals impose a standard of integrity in countries where paying bribes is the normal mode of operation? Or is the only solution to accept the loss of market and operate in countries where public officials agree to function without corruption? Self-regulation tends to be more viable for multinationals than for local firms because an international company has a negotiating advantage that few local companies enjoy. But

this is not always the case.

The degree of negotiating advantage depends on the country and the firm, i.e., how strong the multinational company is in its ability to impose its own code of conduct on the business environment (the rapport de force between the firm, its competitors, and the bidding government). In an ideal world, when the multinational company cannot impose an ethical standard of conduct, it should withdraw.

The second approach - engaging in a dialogue with the government to change the business environment - is a more pragmatic approach for local firms. Entrepreneurs who have paid bribes to create and run their businesses have made it clear that it is important to adopt this pragmatic approach. Such businesses may take a stand to push for reforms that would permit them to operate in a non-corrupt environment, especially when they can do so as part of a collective effort (e.g., through local business associations and chambers of commerce).

Taking a stand against corruption can be both costly and risky. Businesses may be better off individually and collectively in a corruption-free environment, but they may be reluctant to push for necessary reforms. There is always a risk of reprisal.

As businesses begin speaking out against corruption and refusing to participate in corrupt practices, some entrepreneurs will be tempted to remain passive while profiting from reforms actively supported by others.

At the same time, it is difficult for a company to try to change the rules of competition and refrain from participating in corruption when its competitors are free to continue to engage in it. This is known as the "prisoner's dilemma."

From experiences presented during the Washington Conference on Corruption, it is clear

that the way to surmount these two coordination problems is for businesses to form organized groups to push for a transition to an environment where corruption is reduced. The report develops the idea of an emerging international standard of integrity in business practices, although until recently there existed a double standard for corruption: in developed countries, corruption of domestic officials was condemned, yet corruption of foreign officials was not only legal, it was considered a normal practice. Bribes given to officials from developing countries were treated as special export costs that were, in some countries, tax deductible.

Major anti-corruption initiatives of recent years include the conventions against corruption developed by the OECD (Convention on Combating Bribery of Foreign Public Officials in International Business, November 1997), the Organization of American States (OAS – Inter-American Convention Against Corruption, March 1996), the Council of Europe (Criminal Law Convention on Corruption, November 1998), the European Union (Convention on the Fight Against Corruption, May 1997) and The United Nations (General Assembly resolutions on corruption, May and December 1996).

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions focuses on the supply-side of corruption, sanctioning bribers from OECD countries. It aims for functional equivalence rather than substantive unification of legislation across OECD countries. By contrast, the Inter-American Convention Against Corruption, adopted in 1996 by the OAS, and the Criminal Law Convention on Corruption, adopted by the Council of Europe in 1998, apply to both sides of a corrupt transaction (supply side and demand side) and facilitate mutual legal assistance and extradition in their regions. The Council of Europe creates a pattern for

harmonizing rules that address corruption to enable more efficient mutual legal assistance within its geographic reach, which encompasses Western and Eastern Europe. The European Union (EU), meanwhile, passed in 1997 a Convention that criminalizes transnational bribery.

The report follows giving an account of the experiences and initiatives that are being developed in the emerging countries. Concurrent with the development of inter-governmental tools and agreements, many Less Developed Countries (LDCs) and transitional governments have been moving ahead with political and economic reforms addressing corruption. In the words of Ambassador Ahmedou Ould-Abdallah of the Global Coalition for Africa, these nations are "trying to strengthen their legal systems and simplify and streamline administrative systems that facilitate rent seeking, to ensure more effective implementation of anti-corruption legislation. They are instituting independent anti-corruption agencies, strengthening parliamentary oversight, tightening public procurement, tax collection and customs procedures, and requiring disclosure of assets from government officials."

Multilateral and bilateral donors have also launched wide-ranging anti-corruption initiatives. The International Monetary Fund (IMF) and The World Bank are taking into account the extent of corruption in the countries seeking loans. More specifically, it describes the five elements of The World Bank's anti-corruption strategy: (1) prevention of fraud within World Bank-financed projects; (2) transparency and zero tolerance in prosecuting corruption within the organization; (3) examination of corruption in country assistance strategies; (4) collaboration with international anti-corruption efforts; (5) anti-corruption assistance for countries that request it.

At the Conference, speaking on behalf of the U.S. Agency for International Development, Ambassador Harriet Babbitt stated, "The Clinton Administration believes that the worldwide war on corruption is an idea whose time has come. And we intend to support it with every means at our disposal." Another Administration official, Deputy Treasury Secretary Stuart Eizenstat, stated that Vice President Gore's Global Forum on Corruption, held in February 1999, marked "the starting point of America's campaign to combat corruption and promote good governance around the world." He described the government's evolving approach: "To promote and urge adoption of developing global standards that promote transparency and accountability in governance and the private sector; to encourage and support regional approaches to addressing corruption; and to promote key structural reforms in emerging markets directed at removing incentives to corruption and fostering favorable climates for investment, trade, and economic growth." Inter-governmental tools represent a major step forward in building a new international standard of business and corruption-free rules of competition. These initiatives will lead to new laws that define new rules of the game, to which the private sector will be expected to abide. But all of these government-led efforts have their limitations and their loopholes, as control-based strategies do. It is always possible to find a way to bypass regulations and avoid restrictions.

In the case of the OECD Convention, five areas in which this instrument could be strengthened have been identified by the OECD Working Group on Bribery in International Business Transactions: (1) targeting the role of offshore centers in bribery transactions; (2) considering bribery of foreign public officials as a predicate offense for money laundering legislation; (3) focusing on the role of foreign subsidiaries in bribery

transactions; (4) recognizing the need to extend the Convention to members of foreign political parties; and (5) recognizing the need to extend the Convention to persons expected to become foreign public officials.

Yet the limits of these texts show how vital it is that the business community enforce the spirit of these laws, not merely the letter. Thus, initiatives undertaken by multinational corporations and international business associations in support of these intergovernmental tools take on even greater importance.

The participation of the private sector is also key for the success of anti-corruption programs at the domestic level. There is an emerging consensus among anti-corruption professionals on how to fight corruption - namely, through a combination of prevention and enforcement measures. This consensus puts most of the responsibility for reform at the state level, thereby pointing to the need for political will to implement these reforms as the precondition for leading a successful fight against corruption.

But how is this political will established? The prevailing view focuses on the pivotal role of civil society in building political will. Because citizens are the ultimate victims of corruption, they put pressure on governments to fight corruption more effectively if they are better informed of their rights and the political and economic costs of corruption. The importance of establishing freedom of information (transparency) and other civil liberties in the fight against corruption is clear.

There are also lessons to learn from the experiences of countries where anti-corruption movements, with strong support from civil society, have tried repeatedly to effect change. Corrupt leaders were replaced, but no lasting changes in social organizations emerged, and within weeks of the change in regime, charges of corruption began to emerge against

the new leadership.

In short, it is essential to build alliances among the different groups that want to reduce corruption. The private sector's participation can be instrumental in ensuring that the fight against corruption is rooted in the building of State and market institutions that will work together to create healthy price competition in the local economy and conditions favorable to further development of the private sector. It has been proven that to reduce the control and sanction process is much more costly than to prevent corruption. To date, 1,500 publicly listed companies have now formulated codes of conduct for their staff. Another important point of view established during the Conference was the differences that exist among countries within a particular region are as important and diverse as differences that exist among the regions themselves. If patterns are to be identified, they would most likely be between different types of countries characterized not by their geographic location, but by the power of the state and its relationship to the private sector.

However, there were common elements and conclusions that could be drawn from experiences described by regional participants in terms of strategies for private sector participation in the fight against corruption. We list these strategies below:

- a) The role that business associations can play in enabling firms to organize and take collective action - this is especially important for those developing countries where the private sector is in a weak position relative to the state, depending on public contracts or licenses for its very existence. Its underdevelopment weakens its economic power, since it does not generate a significant share of tax revenues or export earnings, or have a strong presence in foreign markets where it can

divert investment if domestic conditions become less favorable. A poorly organized private sector has relatively little bargaining power against the government, but an organized private sector can negotiate from a position of strength.

b) Ensuring integrity within business associations - It is common knowledge that some business associations in developing countries are little more than "shell" entities that are closely tied to political powers. For business associations to play a central role in the fight against corruption, they must: (1) have as one of their founding principles the establishment and maintenance of conditions for healthy price competition; (2) act as transparent and capable mediators to establish rules that will favor such competition.

c) Combining the fight against corruption with more directly productive objectives – we have already mentioned the costs and risks for firms involved in the fight against corruption. These can be strong deterrents to action, even if the outcome of such initiatives would be highly beneficial. Within business associations, this situation can be resolved by combining commitments to fight corruption with activities that are more directly beneficial for member companies, such as providing business information and advice.

d) Establishing a constructive dialogue with the local government - conference participants noted that establishing a constructive dialogue with the government represented an important and necessary step. There is a better chance of making an impact through public-private partnerships when you deal on a friendly basis,

rather than attacking the government on whatever the source of corruption might be.

e) Establishing partnerships with NGOs and the press – When the private sector is not well organized or not in a position to take the lead, its involvement can still be solicited by non-governmental organizations (NGOs) that can become their “spokesman”. The strategies of NGOs of setting up action plans and organizing discussions with the public sector are also crucial. An employee of The Asia Foundation noted the role that NGOs can play in bringing together businesspeople to share information “We have learned that the SME (small and medium-sized enterprises) sector is really interested in the policy arena, but often there is not much horizontal structure where they can connect with other people who are working on the same issues.”

The press is another important working partner for the private sector. In the wake of the Asian financial crisis, it is clear that strong and independent media are critical to good government and to the wise formation of economic and political policy. The quality of the press is critical. For this reason, with support from the Center for International Private Enterprise (CIPE), the Center for Media Freedom and Responsibility in the Philippines has developed a program that brings together business, government, and the media to discuss disclosure and access to economic information.

f) Involving regional organizations - Another strategic element suggested by these experiences is for business associations to develop links with governmental or non-governmental regional organizations.

g) Taking stock of possible actions for the private sector - The Washington Conference on Corruption generated numerous recommendations for fighting corruption: engaging in a constructive dialogue with the government, making alliances with NGOs, collaborating with the media, and involving regional institutions in the discussions in order to strengthen the position of business associations, to name just a few. We list below some steps that business associations can take in contributing to the fight against corruption:

- Organize public discussion on the role of the public and private sectors in combating corruption;
- Disseminate ethics standards by sponsoring publications, programs, institutes or conferences;
- Provide financial support to non-governmental organizations;
- Assist professional schools with the development of ethics curricula;
- Advise the government in articulate anti-corruption reform strategies;
- Provide information on corruption to NGOs, the media, regional organizations and governments.

h) Conditions that facilitate involvement of the private sector - The private sector cannot be expected to consistently take the lead in anti-corruption efforts in all countries. If strong and organized, the business community will be much better positioned to enter into a constructive dialogue with the government.

Some environments, of course, are more conducive to such dialogue than others.

A stable political climate will help to ensure that "the goal posts will not be shifted while the game is in progress," as one participant put it. Access to civil

liberties and freedom of speech favor the development of NGOs and media as important potential allies for businesses. A sound legal framework, the existence of a trade arbitration center with transparent procedures, and an efficient judiciary provide institutional backup to ensure that business leaders can count on justice. Corruption is easier to stamp out in those countries where the involvement of the private sector is facilitated by the institutional setting, the presence of allies in civil society, and receptivity by the local government. This should come as no surprise. Corruption is often only one of a number of dysfunctional elements in a society; it affects economic development yet at the same time is the result of underdevelopment. In countries with very poor wages and few business opportunities, it is unreasonable to assume that corruption can be eliminated in the short run. Under those circumstances, anti-corruption strategies take time and need to be embedded in economic development strategies.

i) The role of donors - A number of ways in which donors can support the involvement of the private sector were discussed at the Washington Conference on Corruption. Donors can provide technical support to the right business associations, for instance, or they can serve jointly with civil society as an arbiter in public hearings. In this respect, two controversial issues surfaced during the conference. Some participants argued that it was a mistake to channel the bulk of aid funds through the public sector. As one participant put it: "The inducements for the private sector are managed through government agencies and, of course, provide an extension of the use of government patronage to support or punish the private sector members outside the government." It was suggested that aid

agencies should deal more directly with civil society organizations and business associations. There is the risk, however, of transforming one patronage and dependence system into another, replacing governmental tutelage by that of external donors. A good solution may be to support valuable private associations through training or technical assistance, for example, but to remain within a limited timeframe and to integrate in the support program certain mechanisms that will permit these associations to acquire autonomy and be free from external dependence.

The other controversial issue tackled during these discussions revolved around conditionality. A number of participants recognized the value of conditionality in such areas as having a committee composed of members of the opposition, members of the media, stakeholders in civil society, and representatives of the private sector to supervise government contracts or aid-funded projects.

Other participants from developing countries argued that "unless the strength of the government is checked, it will be very difficult to talk about corruption. And the people who have the leverage are the people who have the money, and the people who have the money are the multilateral banks and lending institutions." One participant characterized the issue this way: "A political problem calls for a political answer."

Needless to say, at a time when aid flows are being reduced, it is of paramount importance that aid agencies put in place mechanisms to ensure that funds spent are done so in the most transparent and efficient way possible.

2.2 - Main Conclusions of the Conference

The wide variety of experiences presented during the conference showed convincingly that the private sector can be an important actor in the fight against corruption. Firms may consider it beneficial to bribe in the short run, but neither the business community as a whole nor society benefits in the long run. Quite to the contrary.

In the reform process to reduce corruption and instill ethical business practices, the private sector must do its part by complying with the letter and spirit of anti-corruption laws. Stressing the difficulties of firms acting on their own to push for changes in their operating environments, participants urged support for establishing or strengthening business associations. Associations can help educate members about the dangers of corruption and how to fight it, promote standards of conduct, monitor compliance with laws and programs, and aggregate business concerns in a unified front vis-à-vis the government. Needless to say, some businesses and some countries are further along in this process than others.

Participants made clear the crucial importance of mobilizing the private sector in anti-corruption strategies. Political will is necessary to initiate and sustain anti-corruption reforms. This will must exist within government circles, but also more broadly in society, which depends heavily on the necessary process of building alliances among the different groups that want to reduce corruption, including important segments of the private sector. The private sector is a key piece of the internal political coalition that is necessary to carry forward the required reforms. The participation of business is key to ensuring that the fight against corruption is rooted in the building of State and market institutions that will work together to create healthy price competition in the local economy and

conditions favorable to the development of the private sector.

The fact that many experiences emerged from different countries around the world reinforces the view that this movement is an international one. This bodes well for development of an international business standard that respects ethics as well as the systems of checks and balances on authorities in countries around the globe.

3. The United States of America experience in fighting money laundering:

The aim of this topic is take knowledge of the American experience as it dates from 1970's. This brief research can represent an initial step to improve the recent Brazilian experience in fighting money laundering.

3.1 The existing legislation – a history

The United States counts on a large scope of legal instruments and regulations. A description of the existing legislation in a historical sequence follows. The regulation described is available at FinCEN's website.

1970 - In October 1970, in response to increasing reports of people bringing bags full of illegally-obtained cash into banks for deposit, Congress enacted the statute commonly referred to as the Bank Secrecy Act (BSA). The BSA contains two basic sets of authorizing provisions, which are put into effect by implementing regulations. The first set authorizes the Secretary of the Treasury (and in some places, the Secretary and the

Federal Reserve Board jointly) to require banks and other financial institutions to retain records to assure that the details of financial transactions can be traced if investigators need to do so. The aim was to make possible a financial trail for investigators to follow. The second set of provisions authorizes the Secretary of the Treasury to require financial institutions and in some cases, other businesses and private citizens to report financial transactions of certain kinds. The two most important reporting rules authorized in 1970 were the reporting by financial institutions of transactions in currency in excess of \$10,000 [(using the Currency Transaction Report (CTR)] and the reporting of the transportation of currency and bearer instruments (in amounts initially in excess of \$5,000--now in excess of \$10,000) into or out of the United States [using the Report of International Transportation of Currency or Monetary Instruments (CMIR)].

The BSA has been amended many times since 1970, most recently by the Annunzio-Wylie Money Laundering Act ("Annunzio-Wylie") in 1992, and by the Money Laundering Suppression Act of 1994 (the "MLSA"). These amendments have given Treasury a wider variety of regulatory tools to combat money laundering.

Although the BSA is accepted now, its constitutionality was originally challenged in the courts by elements of the banking community and some civil libertarians.

1974 – Constitutionality of BSA upheld - The constitutionality of the BSA was challenged on a number of grounds. In *California Bankers Assn. v. Shultz*, 416 U.S. 21 (1974), the U.S. Supreme Court rejected claims that various parts of the BSA violated constitutional due process requirements, the Fourth Amendment protection against unreasonable searches and seizures, and the Fifth Amendment privilege against self-

incrimination. The Court emphasized that the information sought from the reporting banks concerned transactions to which the banks themselves had been parties. A later Supreme Court decision, *U.S. v. Miller*, 425 U.S. 435 (1976), settled a question reserved in *California Bankers Assn.* by ruling that bank customers possess no privacy interests protected by the Fourth Amendment in records of their affairs maintained by the banks with which they deal.

1986 - Money Laundering Criminalized - Recognition of the growth and seriousness of the problem of money laundering, and of widespread non-compliance with the BSA, led to the enactment of the Money Laundering Control Act of 1986, P.L. 99-570. This statute made money laundering a crime in its own right, and strengthened the BSA in several respects, most importantly by adding a specific prohibition to the BSA against "structuring" transactions to avoid the impact of the BSA's reporting thresholds.

1990 – The Financial Crimes Enforcement Network (FinCEN) was created by the Secretary of the Treasury on April 25, 1990 (Treasury Order 105-08). The new organization was asked initially to focus on the detection of financial crimes by providing analytical support to law enforcement investigations. In 1994, the agency would be given BSA regulatory responsibilities.

1992 - The Annunzio-Wylie Money Laundering Act amended the BSA in several respects. Perhaps most important, it authorized the Secretary of the Treasury to require any financial institution, and its officers, directors, employees and agents, "to report any suspicious transaction relevant to a possible violation of law or regulation." The statutory

suspicious transaction authorization included a "safe-harbor" provision to protect financial institutions from civil liability to their clients and third parties that might otherwise be claimed to have arisen from the designation of transactions as suspicious by reporting institutions. Other Annunzio-Wylie amendments to the BSA authorized the Secretary to require financial institutions to carry out anti-money laundering programs authorized special record-keeping rules relating to funds transfer transactions, and created the BSA Advisory Committee (discussed below). Finally Annunzio-Wylie made operation of an illegal money transmitting business a crime, and enacted provisions requiring mandatory re-examination of the charters of federally-chartered or/insured depository institutions convicted of money laundering.

1994 – Creation of Advisory Group - With the understanding that financial institutions are the first line of defense against money launderers--they see criminal activity first and up close-- in 1994, the Treasury began to emphasize working in partnership with banks and others to establish policies and regulations to prevent and detect money laundering. This partnership approach is illustrated by the work of the BSA Advisory Group, a special panel of experts (authorized in Annunzio-Wylie) who offer advice to Treasury on increasing the utility of anti-money laundering programs to law enforcement and eliminating unnecessary or overly costly regulatory measures. The Advisory Group consists of 30 individuals drawn from the financial community--including bankers, securities broker-dealers and other non-bank financial institutions--as well as from federal and state regulatory and law enforcement agencies. Chaired by the Treasury Department's Under Secretary for Enforcement, the group has contributed, among other

things, to the elimination of unnecessary reporting requirements, simplified reporting forms, and refinement of the funds transfer recordkeeping rules. (See News Releases, [March 10, 1994](#), and [March 13, 1995](#)).

Money laundering suppression Act of 1994 - The amendments to the BSA in the Money Laundering Suppression Act of 1994, (MLSA); (i) required liberalization of the rules for exemption of transactions from the currency transaction reporting requirement, in an effort to reduce the number of Currency Transaction Report (CTR) forms filed by at least 30 per cent, (ii) authorized Treasury to designate a single agency to receive reports of suspicious transactions from financial institutions, and (iii) required "all money transmitting businesses" to register with the Treasury. The MLSA further codified the BSA's application to gaming institutions (both state-chartered and tribal gaming establishments).

The Treasury Department's Office of Financial Enforcement (OFE) was merged with FinCEN in October 1994. The combination of FinCEN with the office that had previously administered the BSA created a single anti-money laundering agency, that could combine regulatory, intelligence, and enforcement missions. Since then, FinCEN's goals have emphasized the streamlining and simplification of the BSA obligations of financial institutions and, at the same time, shaping the reporting system to make the available data more useful for law enforcement investigations.

Regulations of Casinos - Casinos are cash-intensive businesses that offer their patrons a wide variety of financial services; these "non-bank" entities have been subject to BSA (or similar state) anti-money laundering rules since 1985. Regulatory changes in 1994

required casinos to establish and maintain written BSA compliance programs. The 1994 casino regulations also enhanced requirements for customer identification when deposit or credit accounts are opened at casinos. (See News Release, [Dec. 1, 1994](#))

1995 – The funds transfer were regulated. Rules that, for the first time, would require uniform recordkeeping for funds transfers were issued in early January 1995; the rules were later amended and finally became effective on May 28, 1996. Considered the arteries of the international financial system, wire and other funds transfers are used by money launderers to confuse the money trail.

The Currency Transaction Report (CTR) was revised aiming a reduction in the burden on the Financial Community. In cooperation with the BSA Advisory Group, FinCEN revised the Currency Transaction Report (CTR) to reduce the regulatory burden created by the form for financial institutions and increase the quality of information provided by the form to law enforcement. The revised CTR requires only basic transactional information and lists broad categories of reportable transactions (which make the form easier to complete and analyze).

1996 - The regulation aimed to simplify the reporting system of suspicious Activity. The Suspicious Activity Reporting (SAR) system replaced six overlapping methods of reporting financial information to law enforcement with a single uniform reporting system. The new system was based on the Treasury's BSA authority (created by [Annunzio-Wylie](#)) and broadened the range of potential money laundering transactions which needed to be reported to the government. At the same time, the changes

significantly reduced the paperwork for the banking community and increased the amount of useful information available to investigators in real time. Under the new regulation banks send only one form--the SAR-- to a single government agency -- FinCEN. In April 1998 occurs the first review of the Suspicious Activity Reporting System.

It is broadly known that cash intensive businesses are used by criminals to place the resources into the economy. Therefore since Indian Tribal Casinos operate no differently than state licensed casinos (which were brought under the BSA--or a state equivalent--in 1985, Treasury used its codified authority over gaming institutions to equalize treatment of state- and tribal government-chartered institutions. FinCEN consulted closely with the tribal governments and various associations connected to Indian gaming before putting the new system into effect.

In this year some exemptions were established. The issuance of an Interim Rule putting the Money laundering suppression Act (MLSA - 1994) into effect expanded exemption provisions was a major step by FinCEN to eliminate currency transaction reports that have little or no value for law enforcement purposes from the BSA system. These changes reduce the burden imposed by the BSA on banks and at the same time permit more effective use of the remaining reported information. With some exceptions, currency transactions over \$10,000 are no longer required to be automatically reported as such if they involve a bank and 1) another bank in the United States, 2) a federal state or local government, 3) a corporation whose stock is listed on the New York or American Stock Exchanges or designated as a Nasdaq National Market Security, or 4) any subsidiary that is consolidated with a listed corporation for federal income tax reporting

purposes. (Currency transactions involving such customers may still be required to be reported if they involve suspicious activities under the suspicious activity reporting rules).

1997 – Proposals on foreign Bank Drafts - Regulations issued under the BSA have long required that the transportation into or out of the United States of currency or certain monetary instruments exceeding \$10,000 must be reported to the Treasury Department. The proposed rule issued by FinCEN as mandated by the Money Laundering Suppression Act of 1994, would expand the class of reportable instruments to include drafts issued or made out by a foreign bank on a dollar account maintained by or in the name of the foreign bank in the United States. The drafts could be in the form of cashier's checks, bank checks or similar instruments, so long as they are drawn on a foreign bank's dollar account in the United States. FinCEN issued an Advisory to banks in September 1996 which focused specifically on Mexican bank drafts and factored third party checks. The Advisory asked banks to give enhanced scrutiny to these instruments and report suspicious activity to law enforcement when warranted. FinCEN received 12 comments in response to the proposed rule adding bank drafts to the class of reportable instruments. The comments, which raise several significant issues, are under review in connection with work on the final regulations.

New reporting requirements to Money Services Businesses (MSB) – Through various law enforcement operations, including the geographic targeting orders in the New York metropolitan area, investigators have determined that money launderers are turning to the

relatively unsupervised financial services provided by money transmitters, check cashers, retail currency exchangers, and issuers and sellers of money orders and traveler's checks. As mandated by the Money Laundering Suppression Act of 1994, Treasury proposed on May 21, 1997 to register all qualifying money services businesses in a centralized database. This registry will be available to law enforcement and appropriate federal and state regulatory agencies. The proposed registration rule includes within the definition of "money services business" issuers, sellers, and redeemers (for funds) of stored value, commonly called electronic money or e-money.

Treasury also proposed to extend the suspicious activity reporting requirement -- already in place with respect to banks -- to money transmitters and issuers and sellers of money orders and traveler's checks. Because customers of this subset of money services businesses do not maintain account relationships comparable to banks, it is often difficult for these businesses to know their customers well enough to identify suspicious activity. In recognition of this fact, the proposed rule lists as guidance to the industry a number of specific indicia of suspicion culled from historical money laundering investigations. Finally, Treasury proposed to reduce significantly -- from \$10,000 to \$750 -- the threshold for money transmitters to report remittances purchased in cash and going to any place outside the United States. This change is based largely on the experience of the New York GTO (Geographic Target Order), which has confirmed that the money transmitting industry is particularly subject to abuse by organized money launderers. In addition, FinCEN issued the first comprehensive study of money services businesses and their potential vulnerability to money laundering, providing an in-depth examination

of this industry's size, services, geographic and transaction attributes. The study was commissioned by FinCEN and conducted by the consulting firm of Coopers & Lybrand. FinCEN estimates that, overall, money services businesses handle transactions valuing approximately \$200 billion per year through approximately 160,000 locations nationwide. The study was used to help FinCEN formulate three proposed anti-money laundering regulations that were announced in May 1997.

FinCEN hosted five public meetings to give members of the financial services industry an opportunity to review the report and discuss the three proposed regulations. Two meetings were held at FinCEN and the others were held in New York, San Jose, CA, and Chicago.

FinCEN received 82 comments on the proposed rule. The comments, which raise a number of significant issues, are under review in connection with work in the final regulations.

New form simplifies reporting for casinos - In keeping with regulatory reform goals, FinCEN issued a revised form designed to help casinos report large currency transactions. The new form, known as the Currency Transaction Report by Casinos (CTRC), and its instructions became effective on July 1, 1997. The form has been revised to simplify the reporting of the required information, enhance the value of information provided to law enforcement, and clarify the instructions on how to report large currency transactions.

During 1996, casinos filed approximately 150,000 forms reporting large currency transactions exceeding \$3.2 billion. These forms have a high degree of usefulness in criminal, tax and regulatory investigations and proceedings.

The CTR “exemptions” were streamlined. The new rules allow financial institutions to focus resources on reporting suspicious activity. FinCEN has worked closely with the banking industry over the years to simplify and facilitate numerous regulatory requirements. A remaining problem has been the exemption system, which over time has become increasingly complicated and confusing.

FinCEN announced a final rule and a proposed regulation aimed at significantly reducing the number of reports required to be filed by banks for large currency transactions. These two regulations reflect a major effort to re-engineer regulatory and reporting requirements that have been in place for over a quarter of a century. The two regulations concern the process by which banks may exempt retail and other businesses from the requirement to report currency transactions exceeding \$10,000.

The final rule creates a streamlined exemption procedure that eliminates from reporting all transactions in currency between banks and certain classes of exempt persons. It will make final the interim rule that exempts banks from reporting transactions in currency involving (1) other banks operating in the United States; (2) government departments and agencies, and other entities which exercise governmental authority; (3) corporations listed on the major national stock exchanges; and (4) subsidiaries of such listed corporations.

The proposed rule aims to expand the reach of the exemption process to all types of large and small retail, service and wholesale businesses. One example is franchises that have a recurring legitimate need to deal in currency, but are not listed on the national stock exchange.

FinCEN anticipates that these regulations, when they are both made effective, could exceed the 30 percent reduction in the number of currency transaction reports required to be filed by banks as mandated by the Money Laundering Suppression Act of 1994.

FinCEN held a public meeting on November 7, 1997, to give the banking industry the opportunity to discuss the proposed regulation. The comment period was extended to January 16, 1998, in order to provide the industry additional time to submit written comments on the proposal.

1998 – The regulation of Card Clubs because of lack controls were found at casinos. Most frequently found in California, card clubs typically offer facilities for gaming by customers who bet against one another, rather than against the establishment. While California does not permit casino gambling, customers wagered over \$9 billion at these card clubs in 1996.

FinCEN issued a final rule that would extend regulations aimed at combating money laundering to card club establishments. Under the final rule, card clubs -- including those operated on tribal lands -- would be treated in the same manner as casinos. Thus, they would be subject not only to currency transaction reporting rules but to the full set of provisions to which casinos in the United States are subject. These provisions include a comprehensive recordkeeping system and a compliance program containing anti-money laundering safeguards. The new rules are effective August 1, 1998.

FinCEN, in administering the BSA, has sought to apply regulations to establishments that provide their customers not only with gaming but a broad array of other services typically found in more traditional financial services businesses, such as banks. In addition to

gaming activity, card clubs offer their customers deposit and credit accounts, facilities for transmitting and receiving funds transfers from other financial institutions, and check cashing and currency exchange services.

FinCEN's move parallels recent efforts by California - which accounts for over 90 percent of the national card room gaming market - to impose state licensing and currency transaction reporting and recordkeeping requirements on the industry. The California and BSA requirements will be coordinated (as in other situations when BSA and state reporting rules overlap) to reduce regulatory burden and costs of compliance.

The nation's casinos and card clubs will be required to report suspicious activity under a proposed rule issued by FinCEN. Suspicious activity involves financial transactions which a casino or card club suspects are linked to illegal activity or have no legitimate purpose. The proposal is issued under the authority of the BSA. The proposal would require state-licensed and tribal casinos and card clubs with more than \$1 million in gross annual gaming revenue to report suspicious activity to FinCEN involving transactions of \$3,000 or more. The amount of money legally wagered in casinos exceeded \$480 billion in 1996. In addition, nearly \$10 billion was wagered in card clubs that same year, the latest data available.

FinCEN has also been working with representatives from the gaming industry on a guidance document for casinos to assist in identifying suspicious activity. The document lists examples of how a casino's financial services might be used for illicit purposes.

At last a final rule result of close work with the banking industry. FinCEN issued a regulation that represents the second part of its effort to significantly reduce the number of times depository institutions must report large currency transactions. Like an earlier

rule aimed at larger bank customers, this rule further simplifies the way banks can exempt large currency transactions by retail and other businesses from the reporting requirements. The two rules reflect a major effort to re-engineer rules that have been in place for over a quarter of a century.

The rule is aimed at exemption of non-public companies, especially smaller businesses, which represents a majority of CTRs filed today. It permits banks to exempt a domestic business that has routine needs for large amounts of currency by simply filing a form stating that the business is exempt, so long as the business has been a bank customer for one year. The rule thus eliminates earlier cumbersome and costly procedures that required a great deal of paperwork before an exemption could be authorized. This rule does not exempt banks from reporting suspicious activity involving these exempted entities. In addition, certain categories of businesses, such as real estate brokers, automobile dealers, and money transmitters, may not be exempted.

1999 – MSB Registration Final Rule Issued. FinCEN issued a final rule that represents the second part of its effort to significantly reduce the number of times depository institutions must report large currency transactions. Like an earlier rule aimed at larger bank customers, this rule further simplifies the way banks can exempt large currency transactions by retail and other businesses from the reporting requirements. The two rules reflect a major effort to re-engineer rules that have been in place for over a quarter of a century.

FinCEN issued a final rule concerning the application of the Bank Secrecy Act (BSA) to those non-bank financial institutions called "money services businesses" (MSBs). The

rule would (i) revise the definition of certain of these businesses for BSA purposes, and (ii) require MSBs to register with the Department of the Treasury. The rule is based on a notice of proposed rulemaking issued on May 21, 1997. The Money Laundering Suppression Act of 1994 mandates the registration of MSBs and also requires MSBs to maintain a list of their agents that would be available to regulators and investigators upon request.

The rule generally applies to five classes of financial businesses. These businesses are (1) currency dealers or exchangers, (2) check cashers, (3) issuers of traveler's checks or money orders, (4) sellers or redeemers of traveler's checks or money orders, and (5) money transmitters.

To summarize, the regulation above described require all financial institutions to submit five types of reports to the government:

1 – IRS Form 4789 Currency transaction Report (CTR): A CTR must be filed for each to deposit, withdrawal, exchange of currency, or other payment or transfer, by, through or to a financial institution, which involves a transaction in currency of more than USD 10,000. Multiple currency transactions must be treated as a single transaction if the financial institution has knowledge that: (a) they are conducted by or on behalf of the same person; and, (b) they result in cash received or disbursed by the financial institution of more than USD 10,000.

2 – U.S. Customs Form 4790 Report of International Transportation of Currency or Monetary Instruments (CMIR): Each person (including a bank) who physically transports, mails or ships, or causes to be physically transported, mailed, shipped or received, currency, traveler's checks, and certain other monetary instruments in an

aggregate amount exceeding USD 10,000 into or out of the United States must file a CMIR.

3 – Department of the Treasury Form 90-22.1 Report of Foreign Bank and Financial Accounts (FBAR): Each person (including a bank) subject to the jurisdiction of the United States having an interest in, signature or other authority over, one or more banks, securities, or other financial accounts in a foreign country must file an FBAR if the aggregate value of such accounts at any point in a calendar year exceeds USD 10,000.

4 – Treasury Department Form 90-22.47 and OCC Form 8010-9, 8010-1 suspicious Activity Report (SAR): Banks must file a SAR for any suspicious transaction relevant to a possible violation of law or regulation.

Beyond these reports the financial institutions are required to maintain a variety of records to ensure, among other things, that transactions can be reconstructed. The record keeping requirements are mainly of two types:

- a) Monetary Instruments Sales Records: a bank must retain a record of each *cash* sale of bank checks, drafts, cashier's checks, money orders, and traveler's between USD 3,000 and USD 10,000 inclusive. These records must include evidence of verification of the identity of the purchaser and other information.
- b) Funds Transfer Record Keeping and Travel Rule Requirements: a bank must maintain a record of each funds transfer of USD 3,000 or more which it originates, acts as an intermediary for, or receives. The amount and type of information a bank must record and keep depends upon its role in the funds transfer process.

3.2 United States money laundering and related financial crimes strategy

As established in the U.S. Code Title 31, Section 5341, “The President, acting through the Secretary and in consultation with the Attorney General, shall develop a national strategy for combating money laundering and related financial crimes.” This strategy shall be submitted to the Congress. The following is a description of the guidelines of national strategy as established in the U.S. Code.

The national strategy shall address any area the President of the United States, acting through the Secretary of the Treasury and in consultation with the Attorney General, including the following:

- 1) Goals, objectives, and priorities – Comprehensive, research based goals, objectives, and priorities for reducing money laundering and related financial crimes, in the United States.
- 2) Prevention – Coordination of regulatory and other efforts to prevent the exploitation of financial systems in the United States for money laundering and related financial crimes, including a requirement that the Secretary of the Treasury shall:
 - Regularly review enforcement efforts under this subchapter and other provisions of law and, when appropriate, modify existing regulations or prescribe new regulations for purposes of preventing such criminal activity; and
 - Coordinate prevention efforts and other enforcement action with Board of Governors of the Federal Reserve System, the Securities and Exchange Commission, the Federal Trade Commission, other Federal

banking agencies, the National Credit Union Administration Board, and such other Federal agencies as the Secretary, in consultation with the Attorney General, determines to be appropriate.

3) Detection and prosecution initiatives – A description of operational initiatives to improve detection and prosecution of money laundering and related financial crimes and the seizure and forfeiture of proceeds and instrumentalities derived from such crimes.

4) Enhancement of the role of the private sector in prevention – partnerships between the private financial sector and law enforcement agencies with regard to the prevention and detection of financial crimes, including providing incentives to strengthen internal controls and to adopt on an industry wide basis more effective policies.

5) Enhancement of intergovernmental cooperation:

- Cooperative efforts between the Federal Government and State and local officials, including State and local prosecutors and other law enforcement officials; and
- Cooperative efforts among the several States and between State and local officials, including State and local prosecutors and other law enforcement officials, for financial crimes control which could be utilized or should be encouraged.

6) Project and budget priorities – a three-year projection for program and budget priorities and achievable projects for reductions in financial crimes;

7) Assessment of funding – A complete assessment of how the proposed budget is intended to implement the strategy and whether the funding levels contained in the proposed budget are sufficient to implement the strategy.

8) Designated areas – A description of geographical areas designated as “high-risk money laundering and related financial crime areas.”

9) Data regarding trends in money laundering and related financial crimes. The need for additional information necessary for the purpose of developing and analyzing data in order to ascertain financial crimes trends.

10) Improved communications systems.

At the time each national strategy for combating financial crimes is transmitted by the president to the Congress (other than the first transmission of any such strategy), the Secretary shall submit a report containing an evaluation of the effectiveness of policies to combat money laundering and related financial crimes.

In addition to the consultations with the Attorney General, the Secretary shall consult with:

- a) The board of Governors of the Federal Reserve System and other Federal banking agencies and the National Credit Union Administration Board;
- b) State and local officials, including State and local prosecutors;
- c) The Securities and Exchange Commission;
- d) The Commodities and Futures Trading Commission;
- e) The Director of the office of National Drug Control Policy, with respect to money laundering and related financial crimes involving the proceeds of drug trafficking;
- f) The Chief of the United States Postal Inspection Service;
- g) To the extent appropriate, State and local officials responsible for financial institution and financial market regulation;
- h) Any other State or local government authority, to the extent appropriate;

- i) Any other Federal Government authority or instrumentality, to the extent appropriate;
- and
- h) Representatives of the private financial services sector, to the extent appropriate.

In the U.S. Code the Congress also establishes findings and purposes. Between them we would like to distinguish:

- a) Finding – money laundering and related financial crimes frequently appear to be concentrated in particular geographic areas, financial systems, industry sectors, or financial institutions;
- b) Purpose – provide a mechanism for designating any area where money laundering or a related financial crime appears to be occurring at a higher than average rate such that:
 - A comprehensive approach to the problem of such crime in such area can be developed, in cooperation with State and local law enforcement agencies, which utilizes the authority of the Secretary to prevent such activity; or
 - Such area can be target for law enforcement action.

With regard to the risk areas above mentioned, any head of a department, bureau, or law enforcement agency, including any State or local prosecutor, involved in the detection, prevention, and suppression of money laundering may submit:

- A written request for the designation of any areas as a high-risk money laundering and related financial crimes area;

- A written request for a specific prevention or enforcement initiative, or to determine the extent of financial criminal activity in an area.

The Secretary of the Treasury, in consultation with the Attorney General, shall establish a program to support local law enforcement efforts in the development and implementation of a program for the detection, prevention, and suppression of money laundering and related financial crimes.

To be eligible to receive an initial grant or a renewal grant under this part, a State or local law enforcement or prosecutor shall meet each of the following criteria:

- ✓ Submit an application to the Secretary;
- ✓ Accountability: establish a system to measure and report outcomes approved by the Secretary and conduct a biennial survey.

For these programs were authorized the following amounts for each fiscal year: U\$ 5 millions (1999), U\$ 7.5 millions (2000), U\$ 10 millions (2001), U\$ 12.5 millions (2002), USD 15 millions (2003).

3.3 Financial Crimes Enforcement Network (FinCEN) – functions and its Strategic Plan for 2000-2005:

Created in 1990, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FINCEN) supports law enforcement investigations to prevent and detect money Laundering and other financial crimes (such as fraud and embezzlement). It is the main agency of the U.S. Government that supports and coordinates law enforcement to prevent

money laundering. This final paper will broach only FinCEN functions and Strategic Plan due to the brief goal of this research.

The mission of FinCEN is to support law enforcement investigative efforts and foster interagency and global cooperation against domestic and international financial crimes; and to provide U.S. policymakers with strategic analyses of domestic and worldwide money laundering development, trends and patterns. FinCEN works toward those ends through information collection, analysis and sharing, as well as technological assistance and innovative, cost-effective implementation of the Bank Secrecy Act and other Treasury authorities.

Within the Department of the Treasury, FinCEN establishes, oversees and implements policies to prevent and detect money laundering. FinCEN links law enforcement, financial and regulatory communities into a single information-sharing network. Using Bank Secrecy Act (BSA) information reported by banks and other types of financial institutions, such as casinos and money services businesses, FinCEN serves as the nation's central clearinghouse for broad-based intelligence and information sharing on money laundering. In addition, FinCEN also has a key role in safe-guarding the information helps illuminate the financial trail for investigators to follow as they track criminals and their assets.

FinCEN also participates in multi-agency efforts to develop and implement comprehensive, integrated approaches to combating money Laundering. Such efforts include the National Money Laundering Strategy reports (mandated by the Money Laundering and Financial Crimes Strategy Act of 1998) released in September 1999 and

March 2000. These reports provide detailed plans for government action – including many of FinCEN’s highest priority initiatives.

FinCEN accomplishes its strategic goal by:

- a. Providing investigative case support – FinCEN seeks to add value to the information its regulatory program collects from financial institutions and deliver it in the most effective way possible to investigators. FinCEN’s BSA data, along with law enforcement information and commercially available data, to provide analytical support to law enforcement. Since 1990, FinCEN has provided almost 50,000 analytical case reports involving over 200,000 subjects to federal, state, and local law enforcement and regulatory agencies. This effort has been accomplished by using FinCEN’s state-of-the-art technology, in-house analysts, and countless data sources to link together various elements of a case to uncover potential criminal relationships;

FinCEN also provides specially tailored forms of assistance that permit other agencies’ staff to have direct access to its resources - an approach that enables FinCEN to accommodate the increasing demand for its services. Two of FinCEN’s most successful programs include the Platform access program and the Gateway program.

The Platform access program enables federal agencies to send their representatives to FinCEN to use its databases and receive technical assistance, when requested, for their pending cases. This program has expanded from 49 participants in FY 1997 to over 70 participants in FY 1999.

The Gateway program allows law enforcement agencies in all 50 states, The District of Columbia, and the Commonwealth of Puerto Rico to have direct access to all BSA reports founder a carefully monitored system that FinCEN controls and audits. The BSA inquires from the Gateway program continue to grow at a rate of about 20 percent per year. In addition, the Gateway program has a unique feature – a “query alert” mechanism that automatically signals FinCEN when two or more agencies have an interest in the same subject. In this way, FinCEN assists participating agencies in coordinating their investigations. These alerts are matched with federal investigative data, providing another level of networking.

- b. Identifying financial crime trends and patterns – Another significant role of FinCEN is providing strategic analytical support to the law enforcement and regulatory communities. FinCEN’s strategic analytical products focus on “macro-level” issues regarding money laundering and other financial crimes. These products include in-depth analyses of particular areas or issues based on indicators extracted form BSA data and other sources. Examples of the areas or segments analyzed could include: (1) geographic area, (2) threat vulnerability, (3) industry analysis such as electronic funds transfer systems, or (4) analysis of particular money laundering methods. To identify trends, patterns, and issues associated with money laundering and other financial crimes, FinCEN utilizes advanced analytical tools. In addition, FinCEN’s strategic analyses emphasize money laundering and other illicit business transactions related to narcotics trafficking. The General Counterdrug Intelligence Plan (GCIP), released in February 2000

and mandated in the Treasury and General Government Appropriations Act of 1998 and the 1998 Intelligence Authorization Act, calls for strengthening FinCEN as one of four national coordination centers with a focus on providing strategic analysis of narcotics-related financial crimes and investigative support to law enforcement concerning financial crimes.

- c. Administering the BSA – At the heart of FinCEN’s regulatory activities is the administration of the BSA. The BSA, originally enacted in 1970, authorizes Treasury to require financial institutions to file certain reports and keep certain records of financial transactions (e.g., suspicious activity reports, currency transaction reports, reports of cross border currency transportation, and reports relating to foreign bank and securities accounts). FinCEN benefits substantially from the cooperation of many groups and organizations in implementing its regulatory authorities. To foster that cooperation, FinCEN’s regulatory program must reflect the concerns of these groups and organizations, which include the financial institutions subject to BSA information collection and reporting requirements; the financial regulatory agencies that supervise such institutions and also support FinCEN in administering the BSA; the
- d. Fostering international cooperation – Because money laundering does not stop at the U.S. borders, FinCEN has been active in encouraging other governments around the world to develop and implement effective anti-money laundering controls. The promotion of international cooperation remains an essential part of FinCEN’s networking efforts.

Foremost among these efforts is the continued development of an international partnership among Financial Intelligence Units (FIUs) – centralized analytical agencies similar to FinCEN. FinCEN relies on its counterparts in the global network of FIUs to provide information in support of U.S. law enforcement investigations. Often, this can only be obtained with difficulty, or not at all, through other channels. FinCEN reciprocally provides its counterparts with anti-money laundering information they need to conduct their own national investigations.

A core group of FIUs – known as the Egmont Group – has come together to find ways to cooperate, especially in the areas of information exchange, the sharing of expertise, and assisting newer FIUs. One of the most significant contributions of the Egmont Group has been the creation of a secure communication network – developed by FinCEN. This network, based on secure Internet access, permits members of the Egmont Group to communicate with one another via secure e-mail and to post and access information on FIUs, money laundering trends, financial analysis tools, and technological developments.

FinCEN also supports implementation of Treasury’s money laundering initiatives and policies. This includes working to support Treasury’s efforts with intergovernmental bodies, such as the Financial Action Task Force (FATF) and its regional spin-offs in the need for international cooperation, and to provide training and technical assistance to other countries.

The Strategic Plan of FinCEN mainly aim is to enhance the development of its functions and improve the measures of its activities. The entire plan is detailed described at FinCEN web page (<http://www.ustreas.gov/fincen/>).

In short words follows a summary of FinCEN Strategic Plan. In this summary we emphasize the description of the actions/programs that are already being developed or running:

a) The increased complexity of investigations reflects a number of trends, including the globalization of crime; the increased targeting of large criminal networks, and the growing volume of BSA data forms which to develop investigative leads. The plan tends to develop programs to the management of databases. The Gateway and the Platform programs have already been presented in the previous item. Another one is the Analytical System for Investigative Support (ASIS). This portable case management database allows law enforcement investigators to record, store and manipulate their increasingly complex investigative information in a more organized manner. Over the past two years, FinCEN has been working to develop a secure communications network – Secure Outreach – that uses secure Internet access to provide investigative information quickly and securely. One feature of the network is that it will provide agencies with the capability of communicating among themselves through a secure e-mail system.

b) A second objective is to provide useful information to law enforcement and regulatory partners about trends, patterns and issues associated with money laundering and other financial crimes. A front line of defense is to monitor the flow of funds that support these activities and identify methods and patterns used to commit these crimes. FinCEN continues to expand the use of techniques, such as data mining, and leading edge

analytical tools. These tools will enhance the analysis and manipulation of BSA data by identifying and linking together related subjects for improved investigative lead information. They will also contribute to the identification of trends and patterns. These tools will permit a comprehensive linking of BSA data with other information to identify suspicious activity tied to organized groups and other interstate criminal activity.

The National Money Laundering Strategy (NMLS) for 2000 calls for FinCEN to undertake analytical efforts. Additionally, FinCEN is managing with the American Bankers Association a public-private working group that has been established to identify issues related to the use of Suspicious Activity Report (SAR) information. The group will focus on improving collaborative feedback to the financial, regulatory and law enforcement communities, primarily through a periodic SAR Activity Review providing current information on SAR trends and patterns, law enforcement use, tips on improving reporting, and an industry forum. FinCEN will also be providing strategic analytical support for the General Counterdrug Intelligence Plan.

FinCEN has awarded a contract that will develop a methodology for estimating the magnitude of money laundering. This measure will allow FinCEN and other law enforcement agencies to evaluate their efforts in the context of overall money laundering trends.

c) The third objective is to administer effectively the Bank Secrecy Act in order to support the prevention, detection, and prosecution of money laundering and other financial crimes. Working in partnership with the financial services industry, the financial regulatory agencies, various divisions of the Internal Revenue Service, and the law enforcement community, FinCEN establishes policies to administer the BSA effectively,

while balancing the associated burden imposed on the regulated financial institutions. For example, final regulations have been exempted from the obligation of filing Currency Transaction Reports on many of their customers, such as department store and supermarket chains.

FinCEN relies heavily on the federal financial regulatory agencies and the Internal Revenue Service's Examination Division to examine financial institutions for BSA compliance. These partners refer appropriate cases of non-compliance with the BSA to FinCEN for enforcement action, such as civil money penalties. Through enhancements to its internal processes and increased coordination with its regulatory partners, FinCEN's enforcement program is in the process of becoming significantly more effective. For example, FinCEN has enhanced its communication with regulated institutions by posting enforcement actions on its Website.

FinCEN will also assess progress towards this objective by measuring the timely completion of BSA enforcement matters and tracking its progress on other regulatory programs.

d) The fourth objective is to establish and strengthen mechanisms for the exchange of information globally, and engage, encourage, and support international partners in taking necessary steps to combat money laundering and other financial crimes. To accomplish this objective, FinCEN continues to provide support for its Financial Intelligence Unit (FIU) counterparts and help facilitate the exchange of information among these institutions in support of antimony laundering investigations. Additionally, FinCEN, in coordination with other U.S. government agencies, continues to assist foreign governments and institutions transnational crime by assessing and evaluating money

laundering controls in particular countries and providing training and technical assistance.

FinCEN supports the Treasury initiatives highlighted in the National Money Laundering Strategy for 2000, which include providing training and assistance to nations implementing counter-money laundering measures, supporting expanded FIU membership in the Egmont Group, and providing country-specific expertise for policy development.

Over the past five years, FinCEN's efforts have contributed to the dramatic growth in the number of FIUs – from 14 in 1995 to 53 in 2000. FinCEN continues to maintain in-depth, country-specific expertise concerning financial crimes and money laundering activities around the globe. This expertise provides the basis for FinCEN's contributions to interagency studies and Congressionally-mandated annual reports, such as the Department of State's annual International Narcotics Strategy Report. This report is used by financial institutions, various policy experts, and the international community to frame a variety of policy and operational decisions. One of FinCEN strategies is also to promote the networking of FIUs through the Egmont Secure Web to enhance the timely sharing of investigative information.

e) The fifth objective is to build efficient and effective management processes and administrative support to accomplish FinCEN's mission. The management Support objective has been added to this plan to recognize the role of both FinCEN's overall management team and its administrative support functions (e.g., human resources, information technology, financial management and procurement) in the achievement of FinCEN's mission. These functions are important to, and cut across all the operational

functions of the organization. The strategies described are: improve capacities to recruit, develop, and retain high-caliber employees; foster an environment of equal opportunity; improve customer service through the integrated, seamless delivery of FinCEN's products; measure of employee satisfaction and promote wise capital investment and effective management of FinCEN's assets.

As the main federal agency related to the enforcement of money laundering legislation, linked to the Department of the Treasury, FinCEN has among its functions the role of coordinating the transit of information, and simultaneously adding value, among all the institutions (at Federal, State and local levels). For this reason, its strategic plan was sent to many agencies, under mentioned. Some comments were received and they primarily reflected technical corrections and clarifications. In some instances, it was suggested that the plan should place greater emphasis on, or provide more detail about a particular role or function. However, none of the comments took issue with the basic goals, objectives or strategies laid out in the strategic plan.

Institutions – Money Laundering Working Group (described in the next item), Internal Revenue Service, Customs Service, the Secret Service, the Federal Law Enforcement Training Center, the Department of Justice, the Federal Bureau of Investigation, the Drug Enforcement Agency, The United States Postal Inspection Service, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Reserve, the Securities and Exchange Commission, and the Commodity Futures Trading Commission. Additionally copies were sent to the Bureau of Alcohol, Tobacco and Firearms, the Office of National Drug

Control Policy and the National Security Agency. Copies were also distributed to the private sector representatives on the BSA Advisory Group.

3.4 FinCEN interaction with the government institutions involved with the process of law enforcement

FinCEN coordinates with its stakeholders primarily in the BSA Advisory Group (BSAAG), the Money Laundering Working Group and various intergovernmental groups. The **BSAAG**, a Treasury-sponsored group, is composed of representatives from the institutions subject to the BSA, such as banks, broker-dealers, and MSBs, as well as state and federal law enforcement and financial regulators. The BSAAG discusses ways to enhance money laundering deterrence and detection through the financial community. The Money Laundering Working Group, a wholly-governmental group, is composed of representatives from federal crime investigative agencies, financial institution regulatory agencies and state criminal investigators with jurisdiction over money laundering related offenses. It helps to formulate policy, evaluate emerging trends and explore potential regulatory and other legal solutions.

The Internal Revenue Service's (IRS) has a vital role in the fight against money laundering through various IRS components, including the Criminal Investigation Division, the Examination Division, and the Detroit Computing Center (DCC). IRS' support of Treasury's anti-money laundering programs range from data system development and data storage at DCC; to examination of record keeping, reporting

requirements, and compliance program provisions of the BSA; and to jurisdiction to investigate criminal violations of the BSA.

The institutions that monitor the market in order to determine compliance with the requirements of the Money laundering legislation are:

- 1) The Office of the Comptroller of the Currency (OCC);
- 2) The Federal Reserve System;
- 3) The Federal Deposit Insurance Corporation (FDIC);
- 4) The Office of Thrift Supervision;
- 5) The National Credit Union Administration (NCUA);
- 6) The Security Exchange Commission (SEC);
- 7) The Customs;
- 8) The Internal Revenue Service with respect to all financial institutions, except brokers or dealers in securities, not currently examined by Federal bank supervisory agencies for soundness and safety.

Related to the role of coordination, FinCEN is also responsible for the appliance of penalties regarding BSA violations. When the surveillance institutions observe any violation to the regulation, they shall inform FinCEN formally that they will charge the penalty to the financial institutions or any other money services businesses subject to the legislation. The aim is to avoid that different governmental agencies apply different penalties to the same case of violation. The results of the penalties applied are at disposal at FinCEN's website.

Considering the aim of this paper, we will describe in the following item only the functions of two government agencies: the Federal Reserve System and the Office of the Comptroller of the Currency.

3.5 The role of the Federal Reserve and of the Office of the Comptroller of the Currency

The Office of the Comptroller of the Currency (OCC) monitors national banks while The Federal Reserve System monitors the local and state members banks and foreign financial institutions compliance with the BSA and 31 CFR 103 (Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Part 103).

At the OCC, banks are selected for examination using a filtering process that focuses on:

- a) Locations in high intensity drug trafficking areas (HIDTA) or high-intensity money laundering and related financial crimes areas (HIFCA). A listing of these areas is found at the website www.whitehousedrugpolicy.gov.
- b) Excessive currency flows.
- c) Significant private banking activities.
- d) Unusual suspicious activities reporting patterns.
- e) Unusual large currency transactions reporting patterns.

In addition, the OCC works with the FinCEN to enhance further its ability to identify banks with money laundering risk. For example the OCC's fraud, BSA/anti-money laundering specialists have on-line access to primary FinCEN databases.

According to the regulation, all national banks must develop, administer, and maintain a program that ensures and monitors compliance with the BSA and its implementing

regulations, including record keeping and reporting requirements. Such a program can help protect a bank against possible criminal and civil penalties and asset forfeitures.

At a minimum, a bank's internal compliance program must be written, approved by the board of directors, and noted as such in the board meeting minutes. The program must include:

- a) A system of internal controls to ensure ongoing compliance;
- b) Independent testing of compliance;
- c) Daily coordination and monitoring of compliance by a designated person;
- d) Training for appropriate personnel.

At a minimum, the procedures that an examiner from the OCC have to perform are the general, quality for risk management, and conclusion procedures. They are detailed described at OCC webwsite www.occ.treas.gov (Bank Secrecy Act/Anti-money Laundering – Comptroller's Handbook).

If the examination process identifies weaknesses in the bank's BSA compliance program or other problems within the OCC's supervisory or enforcement authority, the OCC directs the bank to the appropriate corrective action. In addition, if the examiners discover information that may relate to a possible criminal violation, the OCC directs the bank to file a Suspicious Activity Report and provide appropriate documents and information to the receiving law enforcement agency.

As mentioned before, the examiners of the Federal Reserve System are responsible for the review of financial recordkeeping practices and procedures of state members banks and foreign financial institutions operating within the United States. In other words, the compliance of these institutions with the BSA and 31 CFR 103 (Financial Recordkeeping and Reporting of Currency and Foreign Transactions, Part 103). Besides, the institutions

have to develop policies and procedures to detect, deter and report unusual or suspicious activities related to money laundering.

Regulation H, section 208.14 requires all banks to develop a written compliance program that must be formally approved by an institution's board of directors. The compliance program must:

- a) establish a system of internal controls to ensure compliance with the BSA;
- b) provide for independent compliance testing;
- c) identify individual(s) responsible for coordinating and monitoring day-to-day compliance;
- d) provide training for appropriate personnel.

The Federal Reserve has developed a Workprogram that serves as a guide for the examination compliance. It was designed to maximize the efficiency of the review process. The first section (103.0) of the Workprogram involves off-site planning. The remaining sections (1000.1 and 1010.1, 1010.3, 1010.4) of the Workprogram involve on-site examination procedures.

The purpose of the off-site examination is to determine if the subject institution exhibits a risk profile suggestive of:

- a) Noncompliance with the BSA;
- b) Ineffective internal compliance procedures;
- c) Engaging in possible money laundering activities.

Identifying institutions with such profiles should enable the examiner to use resources more effectively. The section 103 of the working paper program contains the paths the examiners have to follow in order to define the profile of the institution. It consists of

questions related to internal compliance programs and procedures, training for personnel, and the financial institutions money laundering programs.

4. Conclusion

Regarding the research done, the interviews made with the personnel of FinCEN, of the OCC, of the Federal Reserve System, and our experience in Brazil in monitoring the financial institutions concerning money laundering activities, we would like to offer some concluding comments.

Although Brazilian legislation dates from March, 1998, and the recent establishment at the Central Bank of Brazil of the Department of Surveillance of Illegal Activities (DECIF) in November 1999, this Department at Central Bank has already started to measure the compliance of the financial institutions to the national regulation. Even before the law 9.613/98, the Central Bank of Brazil has already been monitoring the market concerning the financial crimes (Law 7.492, 06/16/1986 – define the crimes against the national financial system) and the foreign exchange illicit (as defined in the Law 4.131 from 09/03/1962 – regulates the investment of foreign capital and the remittance of values). Several administrative procedures were established and penalties were applied to many financial institutions. It is believed that after the law 9.613/98, the process of surveillance of illegal activities will be enhanced and broadened.

The Department of Surveillance of Illegal Activities (DECIF) was settled with the personnel that previously belonged to the Foreign Exchange Department. These

personnel had as main function to monitor the foreign exchange market in order to guarantee the regular and legal flow of foreign exchange operations.

Basically, the new Department began examining foreign exchange suspicious operations, which were selected automatically for examination using state-of-the-art tools developed by Central Bank technicians. This technology makes possible the monitoring of all foreign exchange operations traded the business day before. There was also a focus in the foreign resident banking accounts, where usually high amounts of illegal resources pass through. These accounts are known in the market as “CC5 accounts” (due to the regulation that created these special accounts – *Carta-Circular 5* from 1969). All the foreign exchange operation that had its course by a CC5 account was carefully examined by Central Bank. If irregularities were detected, the Central Bank adopted the actions prescribed by law (administrative procedures and penalties, communications of any sign of crime to the Public Ministry and to the Internal Revenue Service, in case of tax evasion).

In October 2000, DECIF started monitoring the Financial Institutions regarding their compliance with the law 9.613/98 and the Central Bank regulation (*Circular 2852* from 12/03/1998 and *Carta-Circular 2826* from 12/04/1998). It is important to highlight that these regulations issued by Central Bank became effective in March 2000.

At first, the main strategy adopted by DECIF was to point out the internal controls concerning money laundering established by the financial institutions and observe if the procedures were being adopted. These procedures included: the systems of check and balances created, the necessary procedures followed to open a banking account, the policy of personnel and training concerning money laundering, the controls to detect

atypical movement of funds, data checking of statements of banking accounts in order to deter unusual movements.

Because many of these inspection actions were in course in December 2000, we are not yet able to describe their results.

There will follow some suggestions to improve the inspection actions of Central Bank regarding the research realized. First, in order to speed up the actions of Central Bank, we believe that the inspections should mainly be focused on monitoring the effective internal controls of the financial institutions (e.g., checking data account in a sample basis), and the procedures and results of their own internal audit departments. The examination should be carefully planned off-site. The on-site examination would consist of a sample process of checking the internal controls and the internal audit reports.

Ways to improve and enhance the administrative procedures at the Central Bank:

- a) By making public (e.g. at the Net) to the whole society the results (administrative processes established and penalties charged), what will certainly enhance money laundering as a criminal and risky activity in Brazilian society. This idea of risk has to be developed and fostered at the political and social environment. This is an essential policy to establish a healthy environment in a country's economy. At this point, we would like to highlight that the disclosure of information at the Net, will help to increase the concern of financial institutions with their "risk of image", and so their fear of conducting illegal money laundering procedures.
- b) Foster the administrative process with the application of timely penalties.
Commonly, Central Bank applies the penalties many years after the illicit action has been reported.

Another important point I would like to make is the importance of setting up a National Strategy to fight against money laundering. The first steps were already adopted: the establishment of a domestic legislation, the creation of COAFI (Consil for the Control of Financial Activities), and DECIF at Central Bank. In this sense, COAFI and Central Bank should start their efforts at the political environment to enhance the importance of fighting against money laundering activities for the whole Brazilian society. Currently, this strategy should be focused in three main ideas:

- a) A policy to reduce drug trafficking and corruption at the political and public levels;
- b) The development of the idea of democracy with the enhancement of the technical independence of the governmental agencies by fostering the idea of transparency of public policies and administrative procedures. We would like to suggest the NET as a cheap and simple way of communicating important information;
- c) Procedures to improve the interaction among the several governmental institutions involved in the actions to deter and prevent the crimes defined by the law 9.613/98. Regarding this issue, we should profit from the experience of other countries (mainly the United States and European countries), by requiring technical assistance from FinCEN and the other Financial Intelligence Units (FIU's). For example, Brazil should take advantage of the FinCEN Gateway System which seems to be a successful experience of intergovernmental integration (The system has already been described at pages 51/52).

Finally, besides all the issues discussed at the Washington Conference regarding the role of the private sector and NGO's in this fight against money laundering, we would like to

drive the attention to the following aspect: NGO's, the press and many private associations can function as important channels to denounce corruption practices then fostering the decrease of bribery in Brazilian society.

Bibliography:

- 1) Cervini, Raúl. Lei de lavagem de capitais: comentários à lei 9.613/98. Raul Cervini, William Terra de Oliveira, Luiz Flávio Gomes – São Paulo: Editora Revista dos Tribunais, 1998.
- 2) Lilley, Peter. Dirty dealing – the untold truth about global money laundering – London, United Kingdom and Dover, USA: Kogan Page Publisher, 2000.
- 3) Jordão, Rogério Pacheco - Crime (quase) perfeito – corrupção e lavagem de dinheiro no Brasil – São Paulo: Editora Perseu Abramo, 2000.
- 4) Bank Secrecy Act Examination Manual – Second Printing, September 1997 – Federal Reserve System (www.federalreserve.gov)
- 5) Bank Secrecy Act/Anti-money laundering – Consumer compliance examination, Comptroller’s Handbook, Washington, D.C., September 2000 – The Comptroller of the Currency (www.occ.treas.gov)
- 6) Money Laundering – Brazilian Legislation – Consil for the Control of Financial Activities – Brasília: Banco Rural, 2000.
- 7) Tanzi, Vito. Money laundering and the international financial system – IMF working paper, Washington D.C., 1996.
- 8) Financial Crimes Enforcement Network (FINCEN) - www.ustreas.gov/fincen/
- 9) White House - www.whitehousedrugpolicy.gov
- 10) Institute for International Economics - <http://207.238.152.36/homepage.htm>
- 11) Organization for Economic Co-operation and Development - www.oecd.org/
- 12) Transparency International - www.transparency.org