



# Audit Report



OIG-06-034

BANK SECRECY ACT: OCC Did Not Take Formal Enforcement Action Against Wells Fargo Bank for Significant BSA Deficiencies

August 18, 2006

## Office of Inspector General Department of the Treasury

This report has been reviewed for public dissemination by the Office of Counsel to the Inspector General. Information requiring protection from public dissemination has been redacted from this report in accordance with the Freedom of Information Act, 5 U.S.C. §552.



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## Abbreviations

AML	Anti-Money Laundering
BSA	Bank Secrecy Act
BSA/AML	Bank Secrecy Act/Anti-Money Laundering

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CEO	Chief Executive Officer
CFR	Code of Federal Regulations
CTR	Currency Transaction Report
EIC	Examiner-in-Charge
FinCEN	Financial Crimes Enforcement Network
KYC	Know-Your-Customer
MOU	Memorandum of Understanding
MSB	Money Services Business
OCC	Office of the Comptroller of the Currency
Part 30 Notification	Notification of Failure to Meet Safety and Soundness Standards and Safeguarding Customer Information Standards and Request for Compliance Plan
Pub. L.	Public Law
PPM	Policies and Procedures Manual
USA PATRIOT Act	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act
SAR	Suspicious Activity Report
U.S.C.	United States Code
Wells	Wells Fargo Bank, N.A.
WFAS	Wells Fargo Audit Services
WSRC	Washington Supervision Review Committee

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*The Department of the Treasury  
Office of Inspector General*

August 18, 2006

John C. Dugan  
Comptroller of the Currency

Over the last several years, a great deal of public scrutiny has focused on the performance of federal regulators in their monitoring and enforcement of Bank Secrecy Act (BSA) requirements. BSA, as amended, requires banks and other financial institutions to maintain programs to prevent, detect, and report on transactions that may support criminal acts or the laundering of money for illicit purposes. Following the terrorist attacks in 2001, banks have been asked to pay particular attention to transactions that may support terrorism. Regulators are at the forefront of the effort to ensure that banks and other financial institutions have adequate BSA programs. Through their supervisory activities, regulators examine financial institution programs to ensure that they are adequate and, if they are not, take corrective action to obtain improvement and compliance.

In recent years, regulators have taken an increasing number of enforcement actions against financial institutions and assessed tens of millions of dollars in fines against institutions found to have inadequate BSA programs. Since January 2004, the Office of the Comptroller of the Currency (OCC), which supervises national banks, issued 25 cease and desist orders and imposed significant fines against certain institutions for BSA violations, including a \$25 million fine against Riggs Bank in May 2004.<sup>1</sup> However, before these recent actions, formal enforcement actions and large penalties were less common. Even though OCC ultimately took strong enforcement against Riggs Bank, a congressional committee reported in July 2004 that OCC was too tolerant of Riggs Bank's

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<sup>1</sup> The Financial Crimes Enforcement Network (FinCEN) concurrently imposed a \$25 million fine against Riggs Bank.

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anti-money laundering (AML) program deficiencies over several years and failed to take strong enforcement action to require improvements.<sup>2</sup>

During the period 1999 through 2004, OCC examiners also identified BSA compliance problems at another bank, Wells Fargo Bank, N.A. (Wells), the nation's fifth-largest bank. Rather than take strong enforcement action, OCC in 2005 issued an informal, nonpublic safety and soundness enforcement action, which required Wells to develop and implement a plan for improving compliance. In this context, we undertook a review to assess OCC's oversight of BSA compliance at Wells to determine if the actions OCC took were appropriate.

To address our objective, we reviewed documents OCC provided related to its oversight of Wells. These documents covered the period 1999 through 2005. We also interviewed OCC employees who participated in the examination and enforcement process, including the then Acting Comptroller,<sup>3</sup> other senior officials, legal staff, and the examiners who worked on the examinations during our review period. In addition, we interviewed (1) the Chief Executive Officer (CEO) and the General Counsel of Wells about the bank's BSA compliance program and OCC's examination and enforcement actions and (2) FinCEN officials about OCC's enforcement actions and approach. A more detailed description of our objective, scope, and methodology is provided in appendix 1.

## Results in Brief

OCC's examiners found numerous and recurring deficiencies in Wells's BSA compliance program from 1999 through 2004. Among the deficiencies identified were weak internal controls over the program, inadequate independent testing of business lines, lack of BSA oversight, and failure to file suspicious activity reports (SAR) in accordance with regulations and program requirements. Federal

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<sup>2</sup> U.S. Senate Committee on Homeland Security and Governmental Affairs, Minority Staff of the Permanent Subcommittee on Investigations, *Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Case Study Involving Riggs Bank* (July 15, 2004).

<sup>3</sup> OCC's First Senior Deputy Comptroller and Chief Counsel served as Acting Comptroller from October 2004 to August 2005.

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statute<sup>4</sup> *requires* financial institution regulators, such as OCC, that identify violations in BSA programs<sup>5</sup> to take formal enforcement action by issuing the institution a public cease and desist order. In 2005, OCC took enforcement action against Wells but instead of issuing a cease and desist order, it issued an informal, nonpublic action that addressed BSA deficiencies as safety and soundness weaknesses at the bank.<sup>6</sup> This action required the bank to submit, and get approved, a plan for improvement. OCC senior management did not disagree with the examiners' findings that the bank had BSA program deficiencies; however, senior management believed the deficiencies did not rise to the level of a program violation. Moreover, senior officials believed that examiners' communications with the bank may have left an unclear message about the seriousness of the problems found. We disagree. Examination reports provided to Wells during the period that we reviewed clearly documented significant weaknesses and deficiencies in Wells's BSA program that, until early February 2005, were considered by OCC examiners and senior officials to be violations of BSA. In reviewing the supervisory letters, quarterly management letters, and reports of examination, we also believe these deficiencies were clearly communicated to the bank.

When determining the enforcement action to take for Wells's BSA program violations, OCC did not follow its usual practice. OCC guidelines require that the planned enforcement action be presented to the Washington Supervision Review Committee (WSRC), a headquarters committee comprised of selected senior officials with a cross-section of OCC knowledge and expertise. OCC documentation that provides this procedural and policy guidance includes the WSRC Charter, the Policy and Procedures Manual (PPM), clarifying memoranda, OCC Bulletins, and a delegation matrix. Although aspects of the guidelines are not entirely consistent with one another, we determined that the documents all included the following general practice: to ensure consistency of actions nationwide, all Part 21 violations and enforcement actions against large banks based principally on BSA issues should be presented to WSRC to receive its input on whether the planned action raises policy or other concerns. Thus, a

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<sup>4</sup> 12 U.S.C. 1818.

<sup>5</sup> Requirements for bank BSA programs are stated in 12 CFR 21.21, and are described on page 12.

<sup>6</sup> 12 CFR 30.

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customary element of the enforcement process for Wells would be presentation of the matter to WSRC for discussion about whether the planned enforcement action raises policy or other concerns.

In late 2004, the OCC examiner-in-charge (EIC) at Wells believed that the situation at Wells necessitated that OCC take enforcement action against the bank for BSA violations. In February 2005, with senior management concurrence, OCC's Enforcement and Compliance Division prepared an enforcement memorandum for an upcoming WSRC meeting. The memorandum recommended that a cease and desist order be issued to the bank. However, after (1) a meeting between the then Acting Comptroller, other OCC senior officials, and the Wells CEO and (2) a written response by Wells to the recommended action, an OCC attorney rewrote the proposed enforcement memorandum to recommend a lesser, "informal" enforcement action. Furthermore, although this rewritten memorandum was intended for use by OCC's Enforcement and Compliance Division in an April 2005 WSRC meeting, the presentation concerning Wells at the meeting was limited to announcing that a final enforcement decision had been made. Thus, WSRC input was not sought and the WSRC was effectively removed from the customary enforcement process.

We also found that OCC did not adequately communicate with FinCEN about Wells's BSA violations. OCC (and the other federal banking agencies) signed a memorandum of understanding (MOU) with FinCEN in September 2004 requiring, among other things, that OCC promptly notify FinCEN when significant BSA violations are found at an institution. We determined, however, that OCC did not keep FinCEN adequately informed of Wells's BSA violations or of OCC's enforcement decision in accordance with the MOU. Specifically, OCC advised FinCEN officials by telephone in December 2004 that OCC was considering formal enforcement against Wells, but FinCEN officials said that they did not hear again about this issue until June 2005, after OCC had taken the informal enforcement action against Wells. As a result, FinCEN was not afforded the opportunity to timely review the findings or participate in the enforcement process.

We believe that OCC should have acted more quickly and forcefully to require Wells to strengthen its BSA compliance and that OCC's



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failure to take formal enforcement action against Wells sent the wrong message to the banking industry about OCC's resolve to ensure that banks comply with BSA.

Since the Wells enforcement action, OCC has renewed its emphasis on Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance by national banks. In November 2005, Comptroller Dugan announced his plans to enhance OCC's supervision of the bank compliance programs. The initiatives are designed to strengthen OCC's BSA program examinations, enhance resources and expertise devoted to BSA supervision, and provide clear expectations about OCC's BSA/AML supervision to the industry.

We are making five recommendations to the Comptroller of the Currency to address the issues identified in this report. With regard to Wells, we recommend that OCC closely monitor Wells's compliance with the action plan, take prompt enforcement action should the bank fail to comply, and keep FinCEN fully informed of the bank's progress in improving compliance. We also recommend specific actions OCC needs to take to improve its handling of bank noncompliance with BSA in the future. These actions include obtaining WSRC input before taking enforcement action, and documenting the WSRC deliberation and basis for the enforcement action taken.

### **OCC Response and OIG Comment**

In a written response, the Comptroller of the Currency stated that he agreed with our five recommendations, with one qualification, and that OCC will carry them out.

The Comptroller's response also had a number of comments, which reflected both his general areas of agreement with our report, and several specific concerns. Since his appointment as Comptroller, which was after the events discussed in this report, he has initiated a number of steps to enhance BSA/AML supervision at OCC. The Comptroller also stated that he has committed to Congress that OCC will be firm and consistent in its expectations that national banks have strong compliance programs, but also will be fair in its responses to potential problems and weaknesses. The Comptroller also recognized the importance of documenting OCC's deliberative

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process including its review in cases in which the enforcement action taken is different than the action recommended by a lower-level reviewer and/or the WSRC. The actions taken by the Comptroller to enhance BSA/AML supervision as referenced in the response are discussed later in this report.

The one qualification to the Comptroller's agreement with our recommendations pertains to our fourth recommendation. Specifically, we recommended that minutes be kept of WSRC meetings to include a record of the deliberations, recommendation, and final committee decision. The Comptroller expressed concern that detailed minutes of open and candid discussions would have a chilling effect on committee members and be counterproductive. The Comptroller believes a more appropriate type of documentation would be to detail the basis for a final determination as part of a memorandum that describes the "case" to the WSRC and/or any supplementary explanation for the decision by the responsible Senior Deputy Comptroller. We do not mean to suggest that all comments committee members make be included in the minutes as we agree that might impede frank and open discussions that are essential to the deliberative process. However, we believe that it is critical to document the issues presented to the committee in the minutes to support the rationale for the recommendation and OCC's final decision. Accordingly, the Comptroller's suggestion to document the basis for a decision and supplementary explanation in a separate memorandum meets the intent of our recommendation.

In addition to this qualification, the Comptroller had two concerns and one general comment about the report. One concern was that we did not recognize the need for thorough, multi-level review for important agency decisions. The report implied that the views of the first level of participants in the review process are presumptively correct, and that it is unusual or inappropriate for senior management to reach different conclusions. We do agree that a multi-level review process is not only necessary but essential for important agency decisions. We also recognize that senior management can reach a different conclusion than the examiners and others in the lower levels of the review process, and this can be appropriate. In the case of Wells, however, we concluded based on our review of the supervisory and enforcement documentation

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that the examiners made the correct recommendation to issue a cease and desist order to Wells. Our criticism of OCC with respect to Wells is that the documentation we reviewed and our interviews with OCC officials and staff did not provide convincing or compelling support for taking a different action.

Another concern expressed by the Comptroller was that the report could be read to imply that it is inappropriate for the Comptroller or senior OCC supervisors to meet with senior management of a national bank to discuss issues of concern to the OCC and that bank. We do not mean to imply this in our report. We agree with the Comptroller, as stated in his response, that it is essential that the head of the agency and senior OCC staff be willing to meet with management of any national bank to discuss issues of concern to either party. We also agree with the Comptroller that where those issues relate to possible enforcement action, it is fundamental to a fair process to hear the views of the bank and, where appropriate, to follow up on relevant information presented by the bank.

As a general comment in the response, the Comptroller emphasizes that the enforcement choice for Wells was not between taking a serious enforcement action and doing nothing. All agreed that the bank's BSA/AML compliance raised serious concerns that required a serious response, which in this case meant a comprehensive and enforceable corrective tool that would require the bank to make substantial expenditures to remedy past deficiencies. The Comptroller also emphasized that the choice confronting OCC was to achieve these results through a Part 30 safety and soundness action, requiring a compliance plan that is enforceable by order, or a formal cease and desist order, which is public. Both are substantial enforcement measures, and their effect in requiring serious remedial action from a bank are virtually the same. In a BSA/AML matter, the decision to choose one over the other is a judgment call that requires the agency, using its legal and supervisory experience and expertise, to carefully apply a quite technical legal standard to the particular facts at issue. In this case, the final decision was to exercise its judgment to proceed with a Part 30 action, which, as anticipated, required the bank to begin immediately to expend the substantial sums necessary to remedy the problem. The Comptroller believes our draft report should be

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modified to more clearly acknowledge the judgmental nature of the final determination between two serious types of enforcement remedies, even though we disagree with that judgment. We believe our report does adequately state that OCC's decision was a judgment call. We also acknowledge that a Part 30 safety and soundness action is a serious enforcement action. We believe that both the nature of the BSA deficiencies at Wells as well as the history of non-compliance warranted a public enforcement action. That being said, we do hope that OCC achieves its objectives with the Part 30 safety and soundness action and that Wells implements and maintains a fully compliant BSA program going forward.

OCC also provided a number of proposed corrections and exceptions to the information in our draft report. We made some limited changes to the report where appropriate. The Comptroller's written response is included in appendix 5. Our comments specific to other matters raised in the response are provided in appendix 6.

## **Background**

### **BSA Requires Financial Institutions to Maintain an AML Program**

Observing that adequate records maintained by financial institutions are useful in criminal, tax, and regulatory investigations, Congress enacted the BSA<sup>7</sup> in 1970. Under BSA, certain private individuals, banks, and other financial institutions are required to maintain records and reports that help identify the source, volume, and movement of currency and other monetary instruments both into and out of the United States or deposited in financial institutions. These records create a paper trail for law enforcement and regulators to use to pursue investigations of criminal, tax, and regulatory violations, and provide evidence useful in prosecuting money laundering and other financial crimes.

Since enacted, Congress amended BSA several times to augment and supplement its purpose of identifying crimes involving illegal monetary transactions. One of the more significant amendments

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<sup>7</sup> Pub. L. No. 91-508, 84 Stat. 1114 (1970).

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was the Money Laundering Control Act of 1986,<sup>8</sup> which closed a BSA loophole by imposing criminal liability on a person or financial institution that knowingly assists in money laundering or structures transactions to avoid reporting under BSA. Another was the Annunzio-Wylie Anti-Money Laundering Act,<sup>9</sup> which requires covered financial institutions to report suspicious transactions relevant to a possible violation of law or regulation by filing a SAR with FinCEN.

Following the September 11, 2001, terrorist attacks, Congress passed the USA PATRIOT (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism) Act of 2001.<sup>10</sup> This law expanded BSA enforcement powers and broadened the definition of financial institutions to include new classes of businesses and persons.

### **OCC Is the Financial Institution Regulator for National Banks**

OCC's mission is to ensure that national banks are safe and sound, competitive and profitable, and capable of serving in the best possible manner for citizens, communities, and the domestic economy. OCC supervises over 1,900 national banks and their operating subsidiaries as well as federally licensed branches and agencies of foreign banks.

The banks that OCC supervises vary in size. Banks in the large-bank category, which includes Wells, have assets that average \$232 billion but that range as high as more than a trillion dollars. Using teams of dedicated onsite examiners, the OCC large-bank program supervises the 22 largest and most complex national banking companies in the United States.

OCC enforces laws and regulations applicable to supervised institutions by conducting regular compliance examinations. During each examination, OCC reviews a bank's BSA compliance program, identifies its BSA and AML risks, and ensures its compliance with regulatory requirements. These regulatory requirements include the following:

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<sup>8</sup> Pub. L. No. 99-570, 100 Stat. 3297-18 (1986).

<sup>9</sup> Pub. L. No. 102-550, 106 Stat. 4044 (1992).

<sup>10</sup> Pub. L. No. 107-56, 115 Stat. 272 (2001).

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- 31 CFR 103, which establishes programs, recordkeeping, and reporting requirements for national banks and for federal branches and agencies of foreign banks.
  - 12 CFR 21.21, which establishes procedures for monitoring BSA compliance. Specifically, banks must (1) develop and provide for the continued administration of a program that is reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of BSA, and (2) establish and maintain a BSA compliance program that at a minimum includes a system of internal controls to assure ongoing compliance, independent testing for compliance conducted by bank personnel or an outside party, designation of an individual responsible for coordinating and monitoring daily compliance, and training for appropriate personnel.
  - 12 CFR 21.11, which requires banks to report suspicious activity that may involve money laundering, BSA violations, and certain other crimes above prescribed dollar thresholds.

In addition, the USA PATRIOT Act requires every bank to adopt a customer identification program as part of its BSA compliance program. These customer identification programs are a component of know-your-customer (KYC) programs.<sup>11</sup>

### **How OCC Communicates Examination Results to Banks**

OCC communicates findings and recommendations to banks in various written forms, including the following:

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<sup>11</sup> The purpose of KYC policies and procedures is to help ensure that the bank knows who it is doing business with so that it can better detect illegal or suspicious activity. KYC programs require that banks confirm the identity of every customer and to determine why the customer wants to open the account and the number of transactions and amount of funds that will move through the account during a year. Customers must answer a series of questions and provide original documents to the financial institution. Questionnaires are used for new accounts and for long-time clients to update records. According to OCC, KYC also encompasses other requirements such as understanding the sources and uses of funds, monitoring of high risk accounts, and reporting suspicious transactions.

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- Reports of examination are addressed to the bank’s board of directors and are issued annually. They summarize OCC findings from supervisory activities conducted at the bank over the year.
  - Quarterly management letters (now known as supervisory status reports) are addressed to bank senior management. They provide a quarterly summary and an update of OCC’s risk assessment of the bank.<sup>12</sup>
  - Supervisory letters are addressed to bank management and other line managers for the areas of the bank being reviewed. These letters are a means to communicate findings and conclusions from examination activities as they occur. In addition, supervisory letters may include recommendations to bank management for which the bank is to provide a written response describing actions taken or planned to be taken to address the recommendations.
  - Conclusion memoranda are internal OCC documents. OCC examiners prepare conclusion memoranda when they have completed a planned examination to document their findings and recommendations for corrective action. Examiners may provide conclusion memoranda to banks to give them early, informal notice of findings and conclusions that will subsequently appear in a formal communication.

### **Types of Enforcement Actions Available to OCC**

When OCC identifies safety and soundness or compliance problems, it may take either informal or formal enforcement action.

#### Informal Enforcement Actions

The three main informal enforcement actions available to OCC are (1) a request by OCC for a written commitment by the bank to address identified problems, (2) an MOU between the bank and OCC, and (3) a safety and soundness plan submitted by the bank pursuant to 12 CFR Part 30 (Part 30). A commitment letter and MOU reflect specific bank commitments to take corrective actions

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<sup>12</sup> Additional findings and conclusions are communicated during the quarter to applicable area bank management as deemed appropriate.

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in response to problems or concerns identified by OCC in its supervision of the bank. A Part 30 informal enforcement action requires the bank to submit a compliance plan for OCC approval that outlines the steps the bank will take and time frames to correct identified deficiencies. Informal enforcement actions by OCC are not made public.

### Formal Enforcement Actions

Formal enforcement actions are authorized by statute, generally more severe than informal actions, and public. Formal enforcement actions are also enforceable through the assessment of civil money penalties and through the federal court system. Formal enforcement action is required when examiners find that a bank failed to establish and maintain an adequate BSA compliance program under 12 CFR 21.21. Formal enforcement under 12 USC 1818 for a violation of 12 CFR 21.21 requires that OCC issue the bank a cease and desist order, which orders the bank to refrain permanently from violating BSA requirements. OCC and the bank may enter into the order by consent, without a hearing or other legal proceedings.

### **OCC Enforcement Guidelines**

OCC has issued guidance for taking enforcement actions. The guidance directs OCC to take formal action against banks that have serious deficiencies in programs or are noncompliant with BSA requirements.

OCC's "Enforcement Action Policy Safety and Soundness Guidelines"<sup>13</sup> state that enforcement actions should be tailored to the institution, designed to correct deficiencies, and return the bank as soon as possible to a safe and sound condition.

OCC enforcement guidance presumes that formal enforcement action will be taken when the bank

- is experiencing serious problems or weaknesses in its systems, controls, internal audit programs, operating

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<sup>13</sup> OCC, *Policies and Procedures Manual*, PPM 5310-3 (Rev.) (issued July 30, 2001 and made publicly available in August 2002 through OCC Bulletin 2002-38).



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policies, methods of operations, or management information systems;

- has serious compliance problems or substantial violations of law; or
- has disregarded, refused, or been unable to appropriately respond to prior supervisory efforts to correct previously identified serious problems or weaknesses.

OCC's use of formal enforcement action depends on the presence of one or more of these conditions. The decision is to be unrelated to the bank's overall rating, financial condition, or past management cooperativeness or ability.

OCC's "Enforcement Guidance for BSA/AML Program Deficiencies"<sup>14</sup> provides examples in which a cease and desist order is appropriate, including situations in which a bank

- lacks a BSA compliance program that adequately covers all of the required program elements;
- fails to implement a written BSA compliance program;
- exhibits BSA compliance program deficiencies coupled with aggravating factors (i.e., highly suspicious activity creating a significant potential for money laundering or terrorist financing);
- fails to respond to previous supervisory warnings concerning BSA compliance program deficiencies or continues a history of program deficiencies, even when deficiencies are dissimilar to those cited in the past; or
- engages in systemic or pervasive BSA reporting or recordkeeping violations.

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<sup>14</sup> OCC Bulletin 2004-50 (November 10, 2004).

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## Findings

### **Finding 1            Despite Years of BSA Program Compliance Problems at Wells, OCC Did Not Take Formal Enforcement Action**

From 1999 through 2004, OCC examined the BSA compliance program at Wells and found inadequate compliance in a number of program areas and numerous and recurring weaknesses and deficiencies. Financial institution regulators such as OCC that identify violations in BSA programs are required to take formal enforcement action (i.e., issue a cease and desist order). However, OCC did not take formal enforcement action against Wells during this period, maintaining that the program inadequacies, deficiencies, and weaknesses did not rise to the level of a violation. In April 2005, using results from the 2004 examination, OCC took an informal enforcement action against Wells, its first BSA-program-related enforcement action against the bank.

#### **Wells's BSA Program Problems From 1999 Through 2003**

In our review of OCC examinations of Wells from 1999 through 2003, we found that OCC examiners reported numerous and recurring BSA program inadequacies, deficiencies, and weaknesses. Examples of areas within Wells where examiners found that BSA program requirements were not being met are discussed below.

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

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BSA Officer

National banks are required by 12 CFR 21.21, as part of the mandated BSA compliance program, to designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance with BSA. This individual, the BSA Officer, should coordinate and monitor BSA compliance throughout the bank.

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### **OCC's Response to Wells's Explanation**

OCC examiners reviewed the points raised by Wells's General Counsel in a January 11, 2005, letter and disagreed. Wells reiterated these points in a second letter on February 17. Excerpts of the points raised by Wells and the examiners' assessment are provided in appendix 2. OCC's Acting Chief Counsel,<sup>15</sup> in a January 2005 e-mail to the EIC for Wells, stated that "the bank's response is not very convincing and evidences a denial/lack of understanding of the depth of the problem that is pretty alarming. Need to move ahead with the enforcement process." Attorneys for OCC's Enforcement and Compliance Division also reviewed the bank's response to the examiners' criticisms. In March 2005, OCC's Assistant Director of Enforcement and Compliance (who has since retired from OCC) told OCC's Deputy Comptroller for Large Bank Supervision that Wells's February response was "overly argumentative, repetitive, and not very persuasive."

Commenting on Wells's presentation at the February 2005 meeting, an OCC examiner said that Wells officials made no reference to BSA or broader compliance risk assessment issues at the bank;

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

With regard to concerns expressed by Wells's CEO to the Acting Comptroller about the manner in which OCC examiners communicated with the bank, OCC senior management directed a national bank examiner not connected with the Wells examination

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<sup>15</sup> The Deputy Chief Counsel was Acting Chief Counsel during the period that the Chief Counsel was Acting Comptroller.

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to review communications between OCC examiners and the bank. The examiner reviewed supervisory documents that OCC had provided to Wells. The review did not include an assessment of the related examination workpapers. Upon completion of the review, in March 2005, the examiner concluded that Wells could have received a “mixed message” from OCC examiners assigned to the bank about its BSA performance. The examiner stated in a memorandum to the Deputy Comptroller for Large Bank Supervision that written feedback could have provided bank management with the impression that a BSA issue was potentially significant but narrow in scope and not worthy of the attention of Wells’s Board of Directors. Based on our review of the memorandum and interview of the national bank examiner, the nature of the “mixed message” principally involved a concern that annual reports of examination sent to the bank’s board of directors did not specifically cite the BSA deficiencies reported in supervisor letters and other communications with the bank. Instead, the reports of examination discussed deficiencies in the bank’s corporate compliance risk management which would cover a number of compliance areas of which BSA was just one.

### **OIG Review of Communications Between OCC and Wells Fargo**

Based on our review of communications between OCC and Wells, we believe that the OCC examiners clearly communicated their findings of BSA program inadequacies, deficiencies, and weaknesses to the bank, and the seriousness of those findings.

We obtained and reviewed a schedule, prepared by an OCC Deputy Comptroller, of 34 written communications from examiners to Wells from January 2000 through February 2005, as well as the communications themselves. We also interviewed OCC examiners about their oral communications with Wells management regarding BSA program deficiencies.

The schedule prepared by the OCC Deputy Comptroller showed that OCC formally issued 26 of the 34 documents to Wells and had discussed 33 of the 34 documents with the bank’s management.<sup>16</sup> Of the 8 documents that were not formally issued, 7 were

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<sup>16</sup> According to the Deputy Comptroller’s schedule, it could not be determined if 1 of the 34 documents had been presented to Wells.

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conclusion memoranda and other informal documentation. The Deputy Comptroller's analysis showed that the contents of these 7 documents had been communicated to bank management.

Collectively, the documents we reviewed covered OCC's BSA-related concerns in the areas of internal controls, independent testing, and the BSA Officer. While we noted that the BSA deficiencies cited in supervisory letters and other communications were not specifically cited in annual reports of examination, those reports did broadly summarize compliance management problems at the bank. Accordingly, we did not see how the bank was given a "mixed message." The specific problems identified by the examiners and communicated to the bank, as well as the dates and means of communication, are summarized in appendix 3.

### **Why OCC Did Not Issue a Formal Enforcement Action**

Besides concluding that Wells could have received a "mixed message" from examiners,<sup>17</sup> OCC senior officials told us that they had other reasons for not issuing a cease and desist order to the bank. One reason cited by both the Acting Chief Counsel and the Senior Deputy Comptroller for Large Bank Supervision was that OCC examiners identified  
[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Furthermore, the Acting Comptroller and the Senior Deputy Comptroller for Large Bank Supervision told us that, in their opinion, Wells's BSA-related deficiencies were not systemic.<sup>18</sup> The Senior Deputy Comptroller for Large Bank Supervision also commented that Wells was the largest filer of SARs among the banks regulated by OCC. These OCC officials, however, never documented their basis for not issuing a cease and desist order against Wells, including the basis

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<sup>17</sup> [REDACTED – FOIA EXEMPTION 5, 5 U.S.C. §552(b)(5)]

<sup>18</sup> OCC officials we interviewed never defined what they meant by systemic or what it would take for Wells's BSA program to reach a systemic level and be considered serious enough to warrant a formal enforcement action. However, the examiners documented the issues as systemic in the supervisory documentation they prepared.

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for their opinion that [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] They said that the decision came down to a “judgment call.”

[REDACTED – FOIA EXEMPTION 5, 5 U.S.C. §552(b)(5)]

Based on our review, we believe OCC examiners documented a compelling case for citing Wells in violation of 12 CFR 21.21. Although we agree that no aggravating factors (i.e., highly suspicious activity creating a significant potential for money laundering or terrorist financing) had been reported by the examiners, the presence of aggravating factors is not a requirement in the regulations or OCC’s enforcement guidance for taking formal action. Furthermore, we concluded that OCC examiners adequately communicated BSA deficiencies and weaknesses to the bank. We found that OCC examiners offered strong support for BSA violations.

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

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We also believe that the examiners established that the BSA problems at Wells were systemic.

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

With respect to Wells being the largest filer of SARs, we believe that the number of SAR filings by a bank is not, by itself, a good predictor of BSA compliance.

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

In short, Wells’s BSA compliance program could not be relied upon to independently identify and correct compliance deficiencies in its operations.

### **Issuance of Safety and Soundness Notice to Wells**

On April 26, 2005, OCC took an informal, rather than formal, enforcement action against Wells. Specifically, OCC issued a “Notification of Failure to Meet Safety and Soundness Standards and Safeguarding Customer Information Standards and Request for Compliance Plan” (Part 30 Notification). This type of action is generally used to address internal control issues related to safety and soundness rather than BSA compliance, and it is not made public. According to OCC, this decision was a “judgment call” that required OCC to apply a technical legal standard to the facts at issue, required Wells to begin immediately to expend the funds necessary to remedy the problem. Failure to comply with a Part 30 safety and soundness plan is a basis for an enforceable order.

The Part 30 Notification informed Wells that its [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] and BSA deficiencies were significant.<sup>19</sup> It also required the bank to respond to OCC with a safety and soundness compliance plan detailing the steps that the bank would take to correct these deficiencies and the

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<sup>19</sup> The Part 30 Notification included matters in addition to BSA program deficiencies for which Wells was directed to provide a corrective action plan. [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

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timeframe for completing those steps. The Part 30 Notification referred to a supervisory letter dated February 3, 2005, and other supervisory letters for details on the deficiencies in the bank's [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] compliance with BSA.

Wells submitted a compliance management plan on July 26, 2005, in accordance with the Part 30 Notification. In the submission, Wells provided a strategic perspective of how the bank would address deficiencies in [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] compliance with BSA within the following categories: (1) leadership, (2) staffing, (3) BSA Officer, (4) risk assessment, (5) BSA internal controls, (6) testing and internal audit, (7) [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)], and (8) reporting. Wells provided target dates for implementing planned BSA-related corrective actions with last action to be completed in December 2006.

On October 13, 2005, OCC approved the plan. OCC plans to allow the bank time to implement the recommendations before scheduling follow-up examinations.

## **Finding 2                    In Determining the Enforcement Action for Wells, OCC Did Not Follow Its Usual Practice**

When potential BSA violations are identified by an examiner, OCC's guidelines delineate how an enforcement action is supposed to be handled. For example, after an examiner identifies a potential violation(s) and recommends an enforcement action, and the matter is reviewed by the Senior Deputy Comptroller for Large Bank Supervision and the Large Bank Review Team,<sup>20</sup> the process then proceeds to legal counsel for final drafting of the enforcement memorandum. From there, the proposed action is presented to OCC's WSRC to review the examiner's material, including supervisory history and strategy and the facts in the current case, and to evaluate any policy issues or other concerns. This was not the process followed in the Wells case, however.

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<sup>20</sup> The Large Bank Review Team consists of the Assistant Director of Enforcement and Compliance, the BSA Director, and the Deputy Comptroller for Large Bank Supervision. It was created in September 2004 to review OCC's BSA/AML conclusions for large banks to ensure policy on enforcement is followed consistently.

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In late 2004, OCC's EIC for Wells recommended that strong formal enforcement action be taken against the bank for BSA violations. In addition, until early February 2005, the Acting Comptroller, Acting Chief Counsel, and Senior Deputy Comptroller were in agreement that BSA violations existed and strong enforcement action was needed. Accordingly, in preparation for a WSRC meeting scheduled for February 10, 2005, an OCC staff attorney prepared an enforcement memorandum for WSRC's consideration, recommending that a cease and desist order be issued to Wells bank. However, following a meeting between the Acting Comptroller and other senior OCC officials with Wells's CEO on February 9, 2005, senior OCC officials who had originally supported a formal enforcement action no longer did so. Subsequently, the Senior Deputy Comptroller decided not to issue a cease and desist order and the OCC staff attorney rewrote the enforcement memorandum to recommend a lesser, informal enforcement action. This second memorandum was to be used to present the Wells matter to WSRC in April 2005. Nevertheless, we learned that at the April 2005 meeting of WSRC, OCC's Deputy Comptroller for Large Bank Supervision presented the final Wells enforcement decision (issuance of an informal enforcement action) to WSRC without seeking any WSRC input about the enforcement action or whether it raised policy or other concerns.

### **OCC Guidance Requires That WSRC Be Involved in Evaluating Enforcement Action**

In commenting on an earlier draft of this report, OCC officials said we misunderstood the role of the WSRC. OCC officials said that the Senior Deputy Comptroller for Large Bank Supervision did not need WSRC input to make a decision about an enforcement action. However, we reviewed OCC's guidance and found a requirement for WSRC to review a proposed enforcement action for policy and other concerns.<sup>21</sup>

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<sup>21</sup> We found OCC guidelines on the role of WSRC for large bank enforcement in a number of written documents, including WSRC's 1998 charter, and policy guidelines from 1999 forward. The guidelines all require that proposed enforcement actions be reviewed by WSRC. In addition to the WSRC charter, the guidelines include "Bank Secrecy Act Compliance Program" guidance issued by the Deputy Chief Counsel on July 26, 1999; OCC Enforcement Action Policy (PPM 5310-3), dated July 30, 2001; "Compliance Policy," issued Dec. 1, 2002; and Committee on Bank Supervision guidance issued March 27, 2003.

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According to OCC's enforcement guidelines, WSRC is responsible for evaluating any recommended enforcement action. The process begins when, following an examination, an EIC recommends the use of an enforcement action to address problems and concerns identified at an assigned bank. For large banks, the final decision on an enforcement action is made by OCC's Senior Deputy Comptroller for Large Bank Supervision. WSRC assists the responsible OCC decision maker by assessing the underlying facts and evaluating any policy issues or other concerns associated with an enforcement action based on its assessment. WSRC also provides advice on other matters that are unique or likely to be highly visible. OCC's Senior Deputy Comptroller for Bank Supervision Operations annually appoints the members of WSRC, which is chaired by the Deputy Comptroller for Special Supervision/Fraud and includes key officials from a number of areas,<sup>22</sup> and approves its written charter and operating procedures.

Recommendations for enforcement action are generally presented to WSRC by an OCC staff attorney, who prepares a presentation package that includes a memorandum summarizing the supervisory history, the history of previous enforcement actions, the facts in the current case, an analysis of the facts, the recommended enforcement action, legal support for the recommended action, the supervisory strategy, and any other relevant issues. Following a WSRC meeting, the presenter is supposed to prepare minutes of the deliberations and the committee's recommendations. The presenter is to record this information and the final decision in an OCC electronic supervisory database.

### **First Enforcement Memorandum for Wells Recommended a Cease and Desist Order**

A February 4, 2005, enforcement memorandum prepared by a staff attorney with OCC's Enforcement and Compliance Division outlined

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<sup>22</sup> Regular members of the committee include (but are not limited to) the following senior OCC officials: the Deputy Comptroller for Supervision Support, the Director for Special Supervision, the Director for Enforcement and Compliance, the Deputy Chief Counsel with responsibility for enforcement and compliance issues, and a Deputy Comptroller for Large Banks (membership on WSRC alternates among the three who hold these positions).



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the significant BSA noncompliance findings examiners had identified at Wells from 2000 through 2004. Based on these findings, the memorandum recommended that the bank be presented with a cease and desist order to enter into by consent.

According to the memorandum, the examiners had determined that the bank did not meet the minimum standards required by BSA and, as a result, had violated both 12 CFR 21.21 (which states the requirements of a bank's BSA compliance program) and 12 CFR 21.11 (which states that the bank must report suspicious activity that may involve money laundering and other BSA violations). The memorandum highlighted the examiners' findings discussed earlier in this report (see finding 1). It also summarized Wells's responses dated January 11, 2005, to the examiners' December 2004 supervisory letter.

The enforcement memorandum stated that Wells's response had two overall themes: (1) the bank is large and is always working to improve, and (2) the examiners overstated the problems and want unrealistic, immediate corrective action. The bank's response also included a legal analysis of the circumstances under which a cease and desist order is mandated under 12 USC 1818 (which the OCC attorney characterized as a "novel interpretation"). For example, Wells said that a bank can only be considered to have failed to maintain a BSA program if the design of the program is unreasonable or has fundamental flaws. The OCC attorney remarked in the memorandum that this interpretation would effectively eliminate the need for a bank to implement or evaluate the effectiveness of its BSA program. This, according to the staff attorney, was a gross misinterpretation of the statute.

#### **Subsequent to a Meeting Between the Acting Comptroller and Wells's CEO, Senior OCC Officials Modified Their Positions**

Following the 2004 Wells compliance examination, OCC headquarters officials appeared to be in consensus about Wells's BSA program deficiencies and the need to take strong, formal enforcement action. This opinion changed subsequent to a February 2005 meeting between the Acting Comptroller, other senior OCC officials, and Wells's CEO. A timeline of significant events involving the Wells matter is summarized in appendix 4.

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### Senior OCC Officials Were in Consensus Early On in the Enforcement Process

In a December 2004 e-mail,<sup>23</sup> the Senior Deputy Comptroller for Large Bank Supervision stated that he had met with the Acting Chief Counsel and the Acting Comptroller on December 2, 2004, and that the three were in full agreement that Wells was in violation of 12 CFR 21.21 and that a formal enforcement action against Wells was warranted.

Upon reviewing the facts with the Wells examination team, the Assistant Director of Enforcement and Compliance Division at the time also thought that OCC's examination findings supported a violation of 12 CFR 21.21. In an e-mail he stated, "Given the seriousness and repetitiveness of the criticisms and cited violations, the proposed cited violation of 21.21 is supportable along with the proposed cited violation of 21.11."

Documentation indicated that the opinion of the OCC BSA Director was similar to that of the former Assistant Director of Enforcement and Compliance and that the BSA Director supported a strong penalty. He believed that OCC had substantive program issues with Wells that should be escalated, and he recommended that the supervisory letter draft reflect a 12 CFR 21.21 violation.

### OCC Proposes Enforcement Action, Wells's CEO Requests a Meeting with OCC, and the Proposed Action Changes

On December 20, 2004, OCC issued a draft supervisory letter to Wells detailing the deficiencies found during the 2004 compliance examination and stating OCC's intent to pursue a citation for violations of 12 CFR 21.21. On January 11, 2005, Wells responded to the draft, taking issue with the findings (see details in finding 1). On February 3, 2005, OCC issued the final supervisory letter to Wells and provided notification to the bank of its intention to issue a cease and desist order. This notification, we were told, prompted Wells's CEO to request a meeting with the Acting Comptroller. The request was granted, and on February 9, 2005,

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<sup>23</sup> The e-mail was directed to the former Deputy Comptroller for Large Bank Supervision and the EIC for Wells.

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the CEO and the bank's General Counsel met in Washington, DC, with OCC's Acting Comptroller, Senior Deputy Comptroller for Large Bank Supervision, and Deputy Comptroller for Large Bank Supervision. OCC documents related to Wells that were provided for our review did not include any written record of this meeting.

In our interview with the Senior Deputy Comptroller for Large Bank Supervision regarding this meeting, he said that Wells's CEO was concerned about the issues discussed in the December 2004 draft supervisory letter and that the bank was not being afforded due process. In response, the Senior Deputy Comptroller for Large Bank Supervision told Wells's CEO that OCC would review the accuracy of BSA issues reported to the bank over the last 5 years. He assigned this task to the Deputy Comptroller for Large Bank Supervision, and she assigned a national bank examiner to review documents provided to Wells management for BSA supervisory activities. The purpose of this review was to determine what message OCC had conveyed to the bank about its BSA program. As stated earlier, the review did not include a review of the examination documentation.

Also, in April 2005, the Acting Comptroller prepared a handwritten analysis to better understand Wells's BSA issues and aid in the decision of whether or not to issue a cease and desist order to Wells. The analysis identified the bank's lines of business, categorized them as high risk or not, and summarized OCC's comments about the bank's BSA/AML program. The Acting Comptroller's analysis, however, did not cite the basis for the risk assigned to the business lines.<sup>24</sup>

### **Wells Is Removed From the February 2005 WSRC Agenda**

The February 9, 2005, meeting between Wells's CEO and OCC officials appeared to be the turning point in moving OCC from a formal to an informal enforcement action. Specifically, after the meeting, OCC's Deputy Comptroller for Large Bank Supervision told the Director of Special Supervision to take the Wells matter off of the agenda for the February 10, 2005, WSRC meeting. The Acting Comptroller, Senior Deputy Comptroller for Large Bank

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<sup>24</sup> [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

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Supervision, and Deputy Comptroller for Large Bank Supervision told us that the reason for removing Wells from the WSRC agenda was that Wells senior management had asked to present additional information and they believed it would be more appropriate for them to review this information before the matter was presented to WSRC.

### **OCC Staff Attorney Revises Enforcement Memorandum**

Following OCC senior management's decision to remove the Wells enforcement action from the WSRC meeting agenda, the staff attorney who prepared the original February 2005 enforcement memorandum discussed above revised the memorandum to recommend an informal action. While we could not obtain a consensus at OCC on who directed the staff attorney to rewrite the memorandum, the attorney said that suggestions on needed revisions came from both the former Assistant Director of Enforcement and Compliance (her direct supervisor at the time) and from the Acting Chief Counsel. In an interview, OCC's Acting Chief Counsel stated that he suggested editing the memorandum to balance the recommendation for informal enforcement action with the content of the memorandum. According to the attorney who wrote the memorandum, the Acting Chief Counsel thought the wording in the February memorandum was "too strong" and overstated the bank's program deficiencies. The staff attorney received comments handwritten by the Deputy Chief Counsel addressing the need to balance the April 12 memorandum because, as written, the facts suggested a violation of 12 CFR 21.21.

On April 12, 2005, the staff attorney finalized the memorandum, which no longer recommended a cease and desist enforcement action. The memorandum instead recommended initiation of a lesser, but unspecified, informal action. The rationale for recommending an informal action, according to the revised memorandum, was that the bank had provided OCC with additional facts to mitigate the examiner's findings; had taken steps to improve its BSA program; and was not required to implement an effective BSA program. This revised memorandum was to be used at a WSRC meeting scheduled later in April 2005.

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We compared the February and April memoranda and, among the differences, noted the following:

- The February memorandum noted deficiencies in the design of the Wells BSA program, [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] The April memorandum also cited these deficiencies but stated they were not severe enough to support a conclusion that the program was inadequate.
- Rather than identifying failure to implement a written BSA program, as the February memorandum had, the April memorandum referred to weaknesses in the bank’s implementation of a written BSA program. According to the April memorandum, these weaknesses were not significant enough to support a formal enforcement action.
- The April memorandum included a section, not included in the February memorandum, that cited two supervisory letters and two quarterly management letters issued during 2000 and 2002 that the bank contended would mitigate any weaknesses in the bank’s 2004 BSA program. The issues reported in these letters had no relationship to other supervisory findings stated in both the February and April memoranda.<sup>25</sup>

A notice of a BSA program violation and issuance of a cease and desist order is also warranted when a bank fails to correct previously reported program deficiencies. We believe that BSA program deficiencies were adequately documented in OCC’s communications to the bank. We identified seven occasions from 1999 to 2004 on which OCC communicated BSA/AML deficiencies to Wells. Moreover, we believe that even without prior-year deficiencies, the breadth and depth of deficiencies identified in the 2004 examination alone would have warranted citation of a violation and issuance of a cease and desist order.

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<sup>25</sup> The letters included positive examination results in the bank’s [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]. However, these positive findings were in different lines of business than covered in the 2004 examination.

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## WSRC Did Not Discuss Wells

The Wells matter was included on the agenda for the April 14, 2005, WSRC meeting. OCC did not seek input from WSRC on the proposed Wells enforcement action at this meeting. Instead, the final enforcement action against Wells was decided outside this process before the meeting was held.

In deciding before the WSRC meeting to take informal enforcement action against Wells, OCC did not follow its usual practice. OCC guidelines require that a planned enforcement action be presented to WSRC for input from committee members before the enforcement action is decided. OCC documentation that provides this procedural and policy guidance includes the WSRC Charter, the PPM, clarifying memoranda, OCC Bulletins, and a delegation matrix – all in effect at the time of the Wells deliberation. Although the guidelines are in certain areas inconsistent with one another, we determined that the documents supported the following general practice: to ensure consistency of actions nationwide, all Part 21 violations and/or enforcement actions against large banks based principally on BSA issues should be presented to WSRC to receive its input on whether the planned action raises policy or other concerns. Thus, a customary element of the enforcement process for Wells would have been to present the matter to WSRC for discussion about whether the planned action raised, at a minimum, any policy or other concerns.

Furthermore, contrary to its charter, we were told that minutes of WSRC's April 14, 2005, meeting were not prepared.<sup>26</sup> Many of the WSRC participants we interviewed did not take notes and could not recall the details of the April 14 meeting; however, we ascertained through our interviews that that the Deputy Comptroller for Large Bank Supervision told WSRC that senior OCC officials had looked at 5 years of supervisory history for Wells and recognized communication breakdowns on both sides. She also

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<sup>26</sup> In response to an earlier draft of this report, OCC officials provided us with a document that they said represents the meeting's minutes. However, the document contained only a listing of banks, including Wells, and potential enforcement actions to be taken. The document did not indicate who was at the meeting and what matters were discussed or raised. We do not believe this listing of banks and enforcement action represents a general definition of minutes, i.e., an official record of what was said or done during a meeting.

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said that the officials had identified areas of BSA strengths and weaknesses at the bank. The Deputy Comptroller told attendees at the meeting that the Part 30 Notification would lay out the issues that Wells needed to address.

Notes documented by the OCC examiner who was a member of the Wells examination team disclosed that the examiners had never vetted the final decision on the lesser, informal enforcement action. The examiners expressed concern that OCC headquarters did not understand their frustrations with repeated BSA issues going uncorrected by Wells. During interviews, the examiners stated similar concerns.

### **Finding 3**

#### **OCC Did Not Keep FinCEN Fully Informed of the Potential BSA Violations at Wells and the Enforcement Action Taken**

We found that OCC did not properly notify FinCEN about the BSA deficiencies at Wells or its enforcement action decision in accordance with a September 2004 MOU between OCC and FinCEN. OCC made one telephone contact with FinCEN in December 2004 to notify FinCEN that a formal enforcement action was being considered against Wells, but provided no further information. In June 2005, FinCEN learned through a news article that OCC had instead taken an informal enforcement action against Wells.

OCC officials told us that they did not believe that the results of the Wells examination were significant enough to report to FinCEN. Without such information, FinCEN was unable to concurrently analyze and evaluate the bank's BSA deficiencies to consider whether the imposition of civil enforcement remedies under BSA may have been warranted.

For FinCEN's Office of Compliance to oversee the BSA compliance examination and enforcement activities of regulatory agencies, FinCEN entered into an MOU in September 2004 with the five

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federal banking agencies, including OCC.<sup>27</sup> The purpose of the agreement is to enhance communication and coordination between FinCEN and the regulators whenever BSA violations or program issues are identified at financial institutions.

In accordance with the MOU, OCC is required to promptly notify FinCEN of significant BSA violations or systemic or pervasive BSA compliance program deficiencies in a regulated institution. Such violations or deficiencies include reporting or recordkeeping violations and situations in which the banking organization fails to respond to a supervisory warning concerning BSA compliance program deficiencies. FinCEN is also to be notified about a history of program violations or deficiencies even when they are dissimilar to those cited in prior reports of examination or supervisory correspondence. A significant BSA violation includes action that demonstrates willful or reckless disregard for BSA requirements or creates a substantial risk of money laundering or financing of terrorism within an institution.

In the case of Wells, OCC's Acting Chief Counsel did notify FinCEN, by telephone, about the potential BSA compliance program violations in December 2004. However, OCC did not provide FinCEN with portions of the written materials relating to the significant BSA violations or deficiencies as required. OCC also did not notify FinCEN when officials decided to take the informal enforcement action. According to the MOU, OCC should have given notice to FinCEN as soon as practicable but no later than 30 days after taking the action on April 26, 2005.<sup>28</sup>

FinCEN's Associate Director of Regulatory Policy and Programs Division confirmed to us that he first became aware of the Wells matter when he received a phone call from OCC in December 2004. According to the official, the OCC Acting Chief Counsel told him that the examination was ongoing, that the process was in negotiation, and that a cease and desist order against Wells was a

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<sup>27</sup> The other federal banking agencies that signed the MOU with FinCEN are the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, and the National Credit Union Administration.

<sup>28</sup> For public enforcement actions, the MOU requires notification to FinCEN before the action is made public.



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possibility. The FinCEN official stated that it was not until June 22, 2005, about 6 months later, that FinCEN heard about the matter again – this time from a news article, which reported that an informal enforcement action had been taken against the bank.<sup>29</sup>

After reading the article, the FinCEN official asked the OCC Director of Special Supervision whether the Wells matter would be sent to FinCEN in accordance with the MOU. The Director of Special Supervision said that since there was not a finding with significant BSA violations or deficiencies, and issues were going to be addressed in an informal enforcement action, the matter would be reported to FinCEN in the next quarterly report pursuant to the MOU.<sup>30</sup>

In response to a July 29, 2005, request by FinCEN's Office of Compliance, OCC has since provided FinCEN with (1) the December 2004 report of examination on Wells and the related February 2005 supervisory letter, (2) the April 2005 Part 30 Notification issued by OCC to Wells, and (3) the bank's approved compliance plan.

During our audit fieldwork, we were told that FinCEN's Office of Compliance was reviewing the bank's BSA program deficiencies to determine if civil money penalties should be assessed against Wells. In April 2006, FinCEN issued the bank a warning letter stating that FinCEN planned to monitor Wells's progress in improving its BSA program. The letter also stated that nothing precludes FinCEN from seeking further action if Wells fails to implement corrections.

As a result of a series of subsequent contacts between OCC and FinCEN senior officials to clarify the issues related to the Wells bank examination and enforcement action, OCC agreed in the future to provide FinCEN with information on all formal and informal actions based on BSA-related violations regardless of whether a program violation was cited.

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<sup>29</sup> The OCC Acting Chief Counsel told us that he telephoned the FinCEN Director on or about June 22, 2005, the day that the article was published.

<sup>30</sup> In accordance with the MOU, within 45 days after the end of each calendar quarter, OCC is to provide a report to FinCEN that includes the number of enforcement actions by category taken to address BSA compliance.

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In August 2005, OCC established an internal procedure to implement the September 2004 MOU and prevent the type of miscommunication that happened with Wells from occurring in the future. Under the procedure, titled *Sharing Information with FinCEN*, OCC designated the Director of Special Supervision as the primary contact for information sharing. The procedure states that OCC informally agreed to provide certain information to FinCEN in all cases in which OCC decides to take a formal or informal enforcement action to address identified BSA issues of concern. According to the procedure, FinCEN is to be notified about any banks presented to WSRC. Following the WSRC presentation and approval of the final enforcement action by the responsible Senior Deputy Comptroller, OCC is to provide this information to FinCEN. Also, serious BSA deficiencies found during an examination are to be promptly reported to FinCEN through the OCC Director of Special Supervision.

## Conclusions

We believe that OCC should have acted more quickly and forcefully to require Wells to strengthen its BSA compliance. OCC's examiners for Wells documented and communicated significant and repeat deficiencies over a number of years that eventually led them in 2004 to recommend formal enforcement action. Additional information provided by the bank as to why OCC should not impose a cease and desist order was, in the words of one OCC official, "overly argumentative, repetitive, and not very persuasive." We agree. While OCC senior officials in headquarters initially supported the examiners' recommendation, the officials changed their minds and proceeded with a lesser enforcement action, but could not offer a compelling reason for overruling the examiners.

Also troublesome with respect to Wells was the exclusion of WSRC from the deliberative process and the lack of a written record (minutes) of what happened during the meeting in which the Wells matter was to be presented to WSRC. We are also concerned that OCC's failure to take formal enforcement action against Wells may result in a perception by other banks that OCC will not take forceful action for BSA violations, including repeat violations, when

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warranted, or that OCC is inconsistent in how it enforces BSA compliance. To underscore this potential perception, Alert Global Media recently advertised a series of seminars on its Web site (Moneylaundering.com) that included as a topic "How Wells Fargo escaped OCC sanctions despite years of poor compliance."

In addition to weakening the BSA program and the nation's ability to fight money laundering and terrorist financing, OCC's failure to act forcefully and in accordance with the law may (1) lead other banks that are dealt with more forcefully to believe that they are being treated inequitably; (2) encourage other banks to resist enforcement action; and (3) create morale problems among examination staff, who may believe that their recommendations for forceful action may be overruled outside of OCC's normal deliberative process. In addition, the MOU between OCC and FinCEN did not work during this important test. Wells's BSA program inadequacies, deficiencies, and weaknesses were clearly significant enough to warrant notification of FinCEN.

It is important to note that since the Wells enforcement action, OCC has renewed its emphasis on national bank BSA/AML compliance. For example, Comptroller Dugan, in a speech before the November 2005 American Bankers Association and American Bar Association Money Laundering Enforcement Conference, stated that banks should (1) establish a culture of compliance starting at the top of the organization, (2) know their risks, (3) design and implement a BSA/AML compliance program commensurate with their risks, and (4) pay attention to what the examiners tell the bank and not ignore supervisory warnings. He concluded the speech by stating that everyone shares the common goal of better BSA/AML supervision and compliance.

The Comptroller also communicated how he planned to enhance the BSA/AML supervision program at OCC in a November 14, 2005, letter to the Chairman of the Committee on Banking, Housing and Urban Affairs. The Comptroller stated that one of his top priorities is the review and assessment of the BSA/AML supervision program. He explained that for the short term, OCC had taken a series of steps to better assess the BSA/AML compliance risks currently confronting individual banks. For the long term, he said, OCC has taken a set of comprehensive

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initiatives to make the necessary and enduring changes to the BSA/AML supervisory process. The initiatives are three-fold: (1) strengthen OCC BSA/AML examinations, (2) enhance OCC resources and expertise devoted to BSA/AML supervision, and (3) provide clear and consistent expectations about OCC's BSA/AML supervision to the industry. The Comptroller also told Congress that OCC must be firm and consistent in its expectations that national banks have strong BSA/AML compliance programs, but also be fair in responding to potential problems and weaknesses. He stressed the need for clear communications throughout the examination process and the need for examiners to make supervisory and enforcement recommendations based solely on the facts and circumstances of each case.

In December 2005 OCC publicly issued, as an OCC Bulletin, the internal procedures it will follow for taking enforcement actions for BSA violations.<sup>31</sup> The Bulletin reiterated that when BSA deficiencies rise to the level of a BSA compliance program violation under 12 CFR 21.21, OCC is required to issue a cease and desist order and that OCC may take formal or informal enforcement action even when facts do not support citation of a BSA compliance program violation. The Bulletin described a process for taking administrative enforcement action against banks for BSA violations that consists of six stages: (1) preliminary assessment of the facts and discussion with bank management; (2) additional reviews by OCC staff with expertise in BSA issues; (3) written findings in draft that are provided to the bank for response; (4) presentation before WSRC; (5) final decision by the responsible Senior Deputy Comptroller; and (6) initiation of the BSA enforcement action, including referral to FinCEN if civil money penalties are warranted. In the Bulletin, OCC cautioned that while this was the general process, OCC may deviate from it in certain cases, such as where a developing situation in a bank requires immediate action, other unusual or exigent circumstances are present, or intervening developments require a different course of action.

We believe that OCC's public disclosure of this process is a positive step to help ensure that enforcement actions based on BSA violations are measured, fair, and fully informed. However, we

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<sup>31</sup> OCC Bulletin 2005-45, "Process for Taking Administrative Enforcement Actions Against Banks Based on BSA Violations" (December 23, 2005).

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believe that it is important for OCC to ensure that its deliberative review is fully documented, including its review in cases in which a lesser enforcement action is taken than the action recommended by lower level reviewers and WSRC. A basic premise of government accountability is that a complete record be maintained of decisions made, the basis for those decisions, and the parties responsible for making those decisions. Such a record was not maintained in the case of Wells.

## Recommendations

We recommend the Comptroller of the Currency do the following:

1. Closely monitor Wells's implementation of its BSA compliance plan and, if implementation is not adequate or timely, swiftly take appropriate formal enforcement action (e.g., a cease and desist order).

Management Comments OCC concurs with this recommendation. The Comptroller stated that the Part 30 safety and soundness action required the bank to develop a compliance plan and begin immediately to expend the substantial sums necessary to remedy the problem. OCC emphasized that failure to comply with the BSA compliance plan is a basis for an order enforceable by civil monetary penalties and court injunction.

Subsequent to receiving the management response, OCC's Deputy Comptroller for Large Bank Supervision explained that OCC is closely monitoring Wells's implementation of its BSA compliance plan, and that OCC performs both targeted and ongoing supervisory exam activities to assess Wells's progress. She stated that to date, Wells has made significant strides towards compliance with the BSA-related portions of the April 26, 2005, Part 30 notice. She also stated that the bank's actions should be completed by December 31, 2006, and OCC's supervisory activities to assess compliance are quite extensive and run through the third quarter of the year 2007.

OIG Comment OCC's actions to date and those planned as described meet the intent of our recommendation. OCC

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agreed to provide additional details regarding a target date for assessing the adequacy and timeliness of Wells's implementation of its compliance plan. Wells's compliance plan includes target dates for implementing aspects of the BSA-related corrective actions, with the last action to be completed December 2006. OCC has supervisory activities planned through the third quarter of fiscal year 2007 to assess compliance with the corrective actions detailed in the bank's plan. Should Wells's corrective actions not be adequate, OCC will need to take the appropriate enforcement action.

2. Continue to update and provide relevant documentation to FinCEN on Wells's progress toward improving compliance with BSA program requirements.

Management Comments OCC concurs with this recommendation. Although OCC did not provide detail of how this would be implemented in its written response, at our request OCC provided a follow-up e-mail with an explanation from the Director of Special Supervision, OCC's designated point of contact with FinCEN, who stated he will provide FinCEN with ongoing information regarding any final BSA related supervisory activities and decisions as required under the MOU. As also stated in the e-mail, when FinCEN wants any update on Wells, he will contact Large Bank Supervision for a response and obtain any supporting information to forward to FinCEN.

OIG Comment OCC's plan for communicating with FinCEN as described in the follow-up e-mail, if done, will satisfy the intent of our recommendation.

3. Ensure that senior OCC management officials follow OCC guidelines when handling future bank noncompliance with BSA/AML regulations, and obtain WSRC input before deciding on enforcement action.

Management Comments OCC concurs with the recommendation. The Comptroller states in the written response that he had reviewed OCC's procedures and reached a similar conclusion about their ambiguity and lack

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of transparency. In this regard, he initiated a number of steps to enhance BSA/AML supervision at the OCC, and he has committed to Congress that the OCC will be firm and consistent in its expectations that national banks have strong compliance programs. The Comptroller has stressed the need for open communication between the bank and OCC, and the need for supervisory and enforcement recommendations and actions to be based on all the relevant facts and circumstances of each case. OCC clarified and in some respects revised internal procedures it will follow in taking enforcement actions for BSA/AML violations in an OCC Bulletin.<sup>32</sup>

OIG Comment We believe the Comptroller's commitment to clarify procedures and add transparency to the enforcement process are positive steps. The procedures OCC describes in its Bulletin, if followed, satisfy the intent of our recommendation.

4. Ensure that a record (minutes) is prepared of WSRC meetings in accordance with the provisions of the WSRC charter. This record should include the deliberations, recommendation, and the final decision made by the committee and should be included in OCC's electronic supervisory database.

Management Comments OCC concurs with the basic purpose of the recommendation, which is to ensure that the basis for final decisions and actions are appropriately documented, particularly where differing views were expressed during the review process. The Comptroller stated that the basis for OCC's ultimate actions must be properly documented and this type of documentation was wanting in this case. OCC, however, does not believe that this information should be archived through detailed minutes of the WSRC deliberations. The concern is that such a requirement would have the counterproductive effect of chilling open and candid discussion of the merits of particular proposed enforcement actions which would be detrimental to the decision-making process in enforcement cases. The

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<sup>32</sup> The details of the bulletin are described on page 42.

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Comptroller stated that the basis for a final enforcement action determination should be documented in the memorandum that describes the “case” to the WSRC, and/or any supplementary explanation for the decision provided by the responsible Senior Deputy Comptroller.

OIG Comment We agree that a record of specific comments by each individual at the meeting is unnecessary, and as discussed in the written response, such a record could have a chilling affect on deliberations of the WSRC. We do believe, however, that all individuals in attendance should be listed. OCC’s commitment to recording the issues discussed and the rationale for the enforcement action decision and the final WSRC decision meets the intent of our recommendation.

5. Refer all examinations with potential BSA violations to FinCEN in accordance with the provisions of the MOU. A process to monitor compliance with the MOU should also be established.

Management Comments OCC concurs with the recommendation. OCC has revised the internal procedures it will follow in taking enforcement actions for BSA/AML violations and made these procedures publicly available in an OCC Bulletin, which is discussed on page 42 of this report.

OIG Comment We determined, and FinCEN officials concurred, that Wells BSA deficiencies should have been reported to FinCEN when OCC was deliberating the enforcement action. We believe that OCC’s corrective action to keep FinCEN more fully informed about banks with serious BSA deficiencies during the deliberative process, if fully implemented, will satisfy the intent of our recommendation.



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We would like to extend our appreciation to OCC for its cooperation and courtesies extended to our audit staff during the audit. If you have any questions, please contact me at (617) 223-8640 or Sharon Torosian, Audit Manager, at (617) 223-8642. Major contributors are listed in appendix 6.

/s/  
Donald P. Benson  
Director

The objective of this audit was to determine if the Office of the Comptroller of the Currency (OCC) took appropriate enforcement action against Wells Fargo Bank, N.A. (Wells), considering the history and seriousness of Bank Secrecy Act (BSA) program deficiencies found during compliance examinations from 1999 through 2004.

### **Interviews**

To identify supervisory activities, responsibilities, strategies, tracking systems, and resources dedicated to ensure BSA compliance at Wells, we interviewed officials and staff at OCC headquarters in Washington, DC, and at the OCC resident office at Wells in San Francisco, CA. In addition, senior OCC headquarters officials, including the Acting Comptroller, the Senior Deputy Comptroller of Large Bank Supervision, and the Acting Chief Counsel, gave us an overview of the decision-making process that resulted in the enforcement action taken against Wells. The examiners in the San Francisco office provided information on their BSA examinations at Wells and the events involving OCC management, bank management, and the examination team. The interviews enabled us to gain information on each individual's knowledge and level of involvement with the OCC examination of Wells and the ensuing enforcement action.

We interviewed OCC officials who were present at the Washington Supervision Review Committee (WSRC) meeting on April 14, 2005, to gain insight about the presentation of the Wells case. In addition, we interviewed officials with the Financial Crimes Enforcement Network's (FinCEN) Regulatory Policy and Programs Division to determine their knowledge of and involvement with the Wells case in accordance with the MOU between FinCEN and OCC. We also interviewed the Chief Executive Officer of Wells. The bank's General Counsel was present during this interview.

### **Field Office Visits and Data Analysis**

We requested from the San Francisco examiners any and all documentation pertaining to the BSA examinations at Wells from 1999 through 2004. We asked OCC headquarters officials to provide all documentation related to the enforcement action taken

against the bank. We received and reviewed examiner workpapers, OCC correspondence with the bank, OCC management reports, policies and procedures, examination guidance, and e-mails related to BSA compliance and enforcement. OCC officials and staff, including the Acting Comptroller, provided the OIG audit team with their personal files on the Wells BSA examination that included the above documentation along with e-mail correspondence, memoranda, and handwritten notes. Relevant documentation was also provided after our exit conference. OCC officials represented to us that we were provided all OCC documentation related to Wells. While nothing came to our attention indicating that additional documentation might exist, there were no specific audit procedures that we could perform to ensure that the documentation provided was complete.

We also analyzed (1) applicable laws and regulations related to BSA and the USA PATRIOT Act, (2) BSA formal and informal enforcement actions against other banks, (3) past BSA deficiencies and principal enforcement actions against Wells, (4) OCC's analysis of WSRC recommendations for other BSA cases presented to the committee, (5) OCC's oversight of and communications to Wells, (6) the Part 30 Notification issued to Wells, and (7) Wells's corrective action plan provided to OCC in response to the Part 30 Notification.

We performed our audit fieldwork from July 2005 through April 2006. We conducted our audit in accordance with generally accepted government auditing standards.

Appendix 2  
Points Raised by Wells in Response to OCC's Findings and OCC Examiner  
Response

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In response to the Office of the Comptroller of the Currency's (OCC) 2004 examination findings, the General Counsel of Wells Fargo Bank, N.A. (Wells) defended the bank's Bank Secrecy Act (BSA) program in a letter to the OCC examiner-in-charge (EIC) dated January 11, 2005. OCC resident staff assessed the points raised by Wells. In an OCC memorandum dated January 19, 2005, the OCC EIC provided OCC headquarters officials an overview of the bank's response along with the resident staff's analysis. A synopsis of key points of the OCC examiners' analysis is presented below.

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 2  
Points Raised by Wells in Response to OCC's Findings and OCC Examiner  
Response

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 3  
BSA Program Deficiencies Communicated by OCC to Wells

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 3  
BSA Program Deficiencies Communicated by OCC to Wells

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 3  
BSA Program Deficiencies Communicated by OCC to Wells

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]



Appendix 3  
BSA Program Deficiencies Communicated by OCC to Wells

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 3  
BSA Program Deficiencies Communicated by OCC to Wells

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[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

Appendix 4  
 Timeline of Significant Events During 2004 and 2005 Involving OCC's  
 Examination of Wells and Enforcement Action

<b>Date</b>	<b>Event</b>
March-June 2004	Office of the Comptroller of the Currency (OCC) examiners perform Bank Secrecy Act (BSA) compliance examination at Wells Fargo Bank, N.A. (Wells).
July-December 2004	OCC's examiner-in-charge (EIC) for Wells works on drafting supervisory letter detailing BSA program violations.
September-December 2004	OCC creates a Large Bank Review Team and deliberates on Wells's BSA program problems leading up to issuance of the draft supervisory letter.
November 15, 2004	Wells's CEO meets with OCC's Acting Comptroller and Senior Deputy Comptroller for Large Bank Supervision to discuss issues. The CEO expressed concern about BSA and other issues being communicated by the examiners to the bank.
December 17, 2004	OCC issues a Supervisory Status Report (formerly known as a Quarterly Management Letter) for activities from April 1, 2004, to November 1, 2004, to Wells with notification of possible 12 CFR 21.21 violations.
December 20, 2004	EIC provides draft supervisory letter to Wells, which details violations and advises Wells of OCC's intent to pursue citation for 12 CFR 21.21 violations.
December 21, 2004	Acting Chief Counsel e-mails the Senior Deputy Comptroller, Deputy Comptroller, and EIC at Wells to notify them that he contacted FinCEN to give it an advanced warning of the Wells matter.
January 11, 2005	Wells responds to the December 20, 2004, draft supervisory letter, disagreeing with OCC's findings.
January 19, 2005	EIC prepares a memorandum to the file that analyzes each of the points made by Wells in its January 11, 2005, letter. In the analysis, the examiner refutes all points on which the bank disagreed with OCC's examination findings.
February 3, 2005	EIC issues the final supervisory letter notifying Wells of OCC's intent to issue a cease and desist order.

Appendix 4  
 Timeline of Significant Events During 2004 and 2005 Involving OCC's  
 Examination of Wells and Enforcement Action

Date	Event
February 4, 2005	Date of OCC staff attorney's draft memorandum to WSRC recommending that Wells be cited for violations of 12 CFR 21.21 and issued a cease and desist order.
February 9, 2005	Wells's CEO meets in Washington, DC, with OCC's Acting Comptroller, Senior Deputy Comptroller for Large Bank Supervision, and Deputy Comptroller for Large Bank Supervision to discuss issues. Deputy Comptroller instructs the Director of the Enforcement and Compliance Division to pull Wells from WSRC's February 10, 2005, agenda.
February 10, 2005	Scheduled WSRC meeting is held, but Wells matter is postponed.
February 17, 2005	Wells provides OCC with a second response to OCC's draft supervisory letter. The Acting Comptroller had requested Wells provide the information in the January 11, 2005 letter in a format that would match the OCC's findings with the bank's response. The second letter reiterated in a chart format the comments of Wells's January 11, 2005, letter. <sup>33</sup>
February-March 2005	At the request of the Deputy Comptroller, a national bank examiner with no connection to the Wells examination analyzes OCC's communications to Wells. The examiner concludes that Wells received mixed messages and that examination results were not provided to bank management in several cases. <sup>34</sup>

<sup>33</sup> We compared the January 11, 2005, and February 17, 2005, correspondences and found no significant differences in the information reported by the bank.

<sup>34</sup> For example, the national bank examiner stated that OCC did not issue supervisory letters to bank management with the results of OCC's first quarter 2001 Currency Transaction Report processing review and third quarter 2002 BSA related examinations of enhanced due diligence for Internet, International, and Private Banking services. We found, however, that in the years 2001 and 2002 these results were discussed with bank management. Also, we found that [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] were discussed in 2000 and 2002 supervisory letters and quarterly management letters.

Appendix 4  
 Timeline of Significant Events During 2004 and 2005 Involving OCC's  
 Examination of Wells and Enforcement Action

<b>Date</b>	<b>Event</b>
February 22, 2005	The Deputy Comptroller meets with the audit committee of the Wells's board of directors to inform the bank that the BSA issues are undergoing internal review and that a final decision on enforcement has not yet been reached.
March 2005	The Senior Deputy Comptroller for Large Bank Supervision decides that Wells's BSA program deficiencies do not constitute a violation of 12 CFR 21.21. OCC decides to take an informal enforcement action against Wells (Part 30 Notification). The Senior Deputy Comptroller contacts Wells's CEO to inform him of this decision.
March 31, 2005	The Wells EIC's 5-year rotation ends and the EIC is reassigned to other duties.
April 12, 2005	Date of OCC staff attorney's revised memorandum to WSRC recommending that OCC (1) not cite a violation of 12 CFR 21.21 against Wells and (2) initiate an enforcement action less than a cease and desist order to address the bank's BSA/AML deficiencies, compliance management deficiencies, and information security issues.
April 14, 2005	WSRC meeting is held, during which the committee is informed that the Wells enforcement decision has been made.
April 26, 2005	Part 30 Notification is issued to Wells.
June 22, 2005	OCC's Acting Chief Counsel indicated the FinCEN Director was telephoned on or about this day about the informal action issued to Wells.
July 26, 2005	Wells provides OCC with Part 30 plan within the required timeframe.
October 10, 2005	Wells provides OCC with an amended Part 30 plan.
October 13, 2005	OCC approves Wells's Part 30 plan.

Source: OIG Analysis of OCC Data.

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Management Response

Note: OIG Comments  
appear in Appendix 6



## MEMORANDUM

Comptroller of the Currency  
Administrator of National Banks

Washington, DC 20219

To: Donald P. Benson, Director, Office of Inspector General, Treasury Department

From: John C. Dugan, Comptroller of the Currency *JCD*

Date: July 18, 2006

Subject: Draft Audit Report Regarding Wells Fargo Bank, N.A.

Thank you for the opportunity to review and comment on the draft audit report, transmitted to me by your memorandum of June 16, 2006, regarding the Office of the Comptroller of the Currency's (OCC) Bank Secrecy Act and Anti-Money Laundering (BSA/AML) enforcement activities with respect to Wells Fargo Bank, N.A. As you know, the activities and decisions reviewed in the draft report occurred before I was appointed Comptroller, and I have no personal knowledge of the facts at issue. Nevertheless, I have carefully reviewed both the draft report and my staff's comments on that draft. Based on that review, I have the following comments, which reflect both my general areas of agreement with the draft report, as well as several specific concerns.

Let me begin by stressing the OCC's strong commitment to rigorous and fair enforcement of our nation's BSA/AML standards. Since my appointment as Comptroller, I have initiated a number of steps to enhance BSA/AML supervision at the OCC, and I have committed to Congress that the OCC will be firm and consistent in its expectations that national banks have strong compliance programs, but also will be fair in its responses to potential problems and weaknesses. I have also stressed the need for open and clear communications between a bank and the OCC, and the need for supervisory and enforcement recommendations and actions to be based on all the relevant facts and circumstances of each case.

In this context, the OCC agrees with all the recommendations of the draft report, with one qualification described below, and we will carry out these recommendations. We also agree with a number of the concerns identified, and as the draft report recognizes, have already taken significant steps to address these concerns.

In this latter regard, the draft report criticizes the clarity and substance of some of the internal procedures governing the review of BSA matters during the period covered by the audit. Before receiving the draft report, I had reviewed these procedures and reached a similar conclusion about their ambiguity, and lack of transparency, as well as elements of the process itself. As a result, as the draft report recognizes, we took the important step of clarifying, and in some respects revising, the internal procedures the OCC will follow in taking enforcement actions for

Appendix 5  
Management Response

BSA/AML violations. Moreover, we have made these revised procedures publicly available in the form of an OCC Bulletin. As the draft report summarizes, the Bulletin describes the six key steps in our processes for taking enforcement action against a national bank for BSA/AML violations: (1) preliminary assessment of the facts and discussion with bank management; (2) additional reviews by OCC staff with expertise in BSA/AML issues; (3) written findings in draft that are provided to the bank for response; (4) presentation before the OCC's Washington Supervisory Review Committee (WSRC); (5) final decision by the responsible Senior Deputy Comptroller based on all relevant input; and (6) based upon that decision, initiation of the BSA/AML enforcement action, with appropriate referral/coordination with FinCEN. I appreciate the draft report's characterization of the OCC's public presentation of this process as a positive step to help ensure that BSA/AML enforcement actions are measured, fair, and fully informed.

The draft report also stresses that it is important for the OCC to document its deliberative process, including its review in cases in which the action ultimately taken is different from that recommended by a lower level reviewer and/or the WSRC. I agree. The basis for our ultimate actions must be properly documented, and this type of documentation was wanting in this case. The need for such documentation is especially important where, as was the case here, differing views have been expressed during the course of the review process leading up to the final decision.

In addition to these overall areas of agreement, however, I am concerned that two aspects of the draft report create implications – which may not be intentional – that appear to be inconsistent with the goals of firm, fair, and fully informed decision-making on BSA/AML matters. First, the draft's description of the OCC's process for reaching its final decision on the type of action to be taken appears implicitly inconsistent with the need for thorough, multi-level review of important agency decisions. Specifically, and quite apart from the need for adequate documentation of a final decision, several parts of the draft report seem to imply that the views of the first level of participants in the review process are presumptively correct, and that it is somehow unusual or inappropriate for senior management to reach a conclusion different from front-line staff. Such an implication is fundamentally inconsistent with the way in which organizations make decisions, following deliberation at escalating levels of management, and would be contrary to the due process that we have established, reflected in the OCC Bulletin. Similarly, there should be no implication that the expression of differing views or calling for an independent second look as part of this process is inappropriate, or that a final decision is questionable merely because it is different from the result recommended by the first level of participants in the process.

Second, the draft report could be read to imply that it is inappropriate for the Comptroller of the Currency or senior OCC supervisors to meet with senior management of a national bank to discuss issues of concern to the OCC and that bank. If the report intends to convey that position, then again, I must disagree. In my view, it is essential that the head of the agency and senior OCC staff be willing to meet with management of any national bank – large or small – to discuss issues of concern to either party. Where those issues relate to possible enforcement action, it is fundamental to a fair process to hear the views of the bank, and, where appropriate, to follow up

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Management Response

on information presented by the bank that is relevant to the basis or nature of a supervisory or enforcement action that may be taken by the OCC.

In addition to these concerns about the draft report's implications, my staff has suggested other changes to the draft report based on their documentation and recollection of the facts at issue. In this regard, I appreciate that information has been added to the draft report to address information gaps that my staff had previously identified. However, concerns remain that portions of the draft report omit or minimize important information, resulting in incomplete and potentially inaccurate depictions of the events described, and also incorrectly characterize the legal standards and OCC policies and procedures applicable in the BSA/AML arena. In the latter respect, comments in the draft report on whether OCC staff followed applicable procedures at times seem not to distinguish between the procedures that were in effect at the time of the events in question, and revised procedures adopted thereafter.

I have one final general comment. It is important to emphasize that the enforcement choice confronting the agency in this matter was not between taking a serious enforcement action and doing nothing. Instead, all agreed that the bank's BSA/AML compliance raised serious concerns that required a serious response, which in this case meant a comprehensive and enforceable corrective tool that would require the bank to make substantial expenditures to remedy past deficiencies. The choice confronting the agency was to achieve these results through a Part 30 safety and soundness action, requiring a compliance plan that is enforceable by order, or a formal cease and desist order, which is public. Both are substantial enforcement measures. The public nature of the latter makes it a more formal enforcement sanction, but its effect in requiring serious remedial action from a bank is virtually the same as a Part 30 safety and soundness action. In a BSA/AML matter, the decision to choose one over the other is a judgment call that requires the agency, using its legal and supervisory experience and expertise, to carefully apply a quite technical legal standard to the particular facts at issue. In this case, the final decision of the agency was to exercise its judgment to proceed via a Part 30 action, which, as anticipated, required the bank to begin immediately to expend the substantial sums necessary to remedy the problem. The draft report disagrees with this judgment, concluding instead that a public cease and desist order would have been more appropriate. At the same time, however, the draft report recognizes that there were differences of views within the agency about the relevant facts and the particular action that should be taken. I believe the draft report should be modified to more clearly acknowledge the judgmental nature of the final determination between two serious types of enforcement remedies – even if it disagrees with that judgment.

Turning to the specific recommendations contained in the draft report, we agree with Recommendations 1, 2, 3, and 5. We have concerns about Recommendation 4, however. As described above, we agree with the basic purpose of Recommendation 4, which is to ensure that the basis for final decisions and actions are appropriately documented, particularly where differing views were expressed during the review process. However, we do not believe that this purpose should be achieved through detailed minutes of the deliberations of the Washington Supervisory Review Committee (WSRC). I am concerned that such a requirement would have the counterproductive effect of chilling open and candid discussion of the merits of particular proposed enforcement actions. Instead, I believe a more appropriate type of documentation to



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Management Response

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implement the purpose of Recommendation 4 would be to detail the basis for a final determination as part of the memorandum that describes the "case" to the WSRC, and/or any supplementary explanation for the decision provided by the responsible Senior Deputy Comptroller.

The attached Appendix includes references to the specific text of the draft report that raise the issues addressed in this letter. I respectfully request that the draft report be modified to address these issues.

I welcome the opportunity to further discuss the concerns described above, and our responses to the draft report's recommendations.

Attachment: Appendix

-- APPENDIX --  
COMMENTS ON  
DRAFT AUDIT REPORT CONCERNING WELLS FARGO BANK, N.A.

**The draft report's description of the OCC's process for reaching its final decision on the type of action to be taken appears inconsistent with the due process of thorough, multi-level review provided for in OCC Bulletin 2004-50.**

OIG Comment 1

OIG Comment 2

OIG Comment 3

OIG Comment 4

OIG Comment 5

- The draft report states that senior OCC management "could not offer a compelling reason for overruling the examiners" on the form of enforcement action taken. While the views of examination staff carry great weight, the draft report's characterization implies that they are presumptively correct, which is inconsistent with the multi-level review by senior OCC supervisors that is essential to the due process provided for in the OCC Bulletin. [pages 37 & 38]
- The draft report indicates that senior OCC officials, after a meeting with the Wells CEO, changed the proposed action to be taken. This description of the sequence of events omits important information about the review employed to provide due process to the bank. In fact, no decision was made for two months following the meeting while additional analysis of the matter occurred, including an independent examiner's review of the record of supervisory communications with Wells. The report should be amended to reflect this chronology. [pages 6, 26, 29 & 30]
- The draft report indicates that removing an item from the WSRC agenda is unusual, but fails to explain the reasons for this removal, described above. The draft should be revised to describe that the case was undergoing additional legal and supervisory review. [page 31]
- The draft report implies that there was something unusual about managers in the Law Department editing or reviewing the work of an OCC staff attorney and recommending changes. Such review and input on staff drafts is regular practice and a fundamental aspect of supervision of legal work by managers within the Law Department. The draft report also needs to be clear that supervisory review of the memo that was submitted to the WSRC did not change the type of enforcement action that was recommended in the memo. [page 31]

**The draft report challenges legal and supervisory determinations, without acknowledging that ultimate decisions by the agency involved the exercise of judgment on complex and technical legal and supervisory issues.**

- The draft report expresses disagreement with the judgment of senior OCC officials, and with the perspectives of the independent examiner regarding the adequacy of the record of OCC communications with the bank. This is an area on which legitimate differences in judgment existed between OCC staff and senior supervisory and legal officials, and the draft report should be revised to recognize more clearly these differences of view. [pages 5, 21 & 22]

OIG Comment 6

- The draft report concludes that OCC examiners established that the BSA problems at Wells were “systemic,” and that OCC examiners documented a “compelling” case for citing Wells in violation of 12 C.F.R. 21.21. The draft report also expresses the belief that even without prior-year deficiencies, the breadth and depth of deficiencies identified in the 2004 examination alone would have warranted citation of a violation and issuance of a cease and desist order. As noted above, these statements may reflect the views of some members of the OCC staff involved in the matter, but the draft report does not comparably present the judgments of the other (more senior) OCC officials who reviewed the matter. As discussed in the following section, the ultimate determination of whether to cite a violation of 12 C.F.R. 21.21 involves an interplay of legal and supervisory judgments that can be quite intricate. The draft should be revised to reflect a more balanced presentation of these differences in judgment. [page 24]

**The draft report’s characterizations of the legal standards applicable to the BSA/AML area appear to confuse different bases for citing violations of 12 C.F.R. 21.21.**

OIG Comment 7

- The summary of the requirements of 12 C.F.R. 21.21 is incomplete and the presentation of the legal bases for citing a violation of that section seems to confuse or combine different bases for citing a violation. The draft report first should clearly reflect that the regulation states that banks “shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements [of the BSA].” Second, the discussion of legal standards in the draft report seems to confuse how the OCC’s BSA enforcement guidance applies this regulation to deficiencies in parts of a program (*see* OCC Bulletin 2004-50). Under the guidance, a C&D would be required where a bank’s overall program fails to adequately cover all of the required program elements. In other words, considering application of the program to all of a bank’s activities and lines of business, one or more required program elements are deemed to be inadequate. This is to be distinguished from deficiencies in the application of the program to parts of a bank’s operations, such as a particular line of business, where the deficiencies are not so severe as to render the entire program (or required program element), inadequate overall. In such circumstances, the deficiencies would not constitute violations of 12 C.F.R. 21.21 unless aggravating factors (such as highly suspicious activity) are present – which the draft report acknowledges was not the case here. As noted below, at various points, the draft report seems to suggest that deficiencies in the application of aspects of the bank’s program to a particular line of business, without aggravating factors, and without evaluation of their scope and severity, require finding a violation. This is not correct. [page 9]
- The statement that federal law requires financial institution regulators that identify violations “in” BSA programs to take formal enforcement action by issuing the institution a public C&D is unclear and, and depending on its intent, for the reason discussed above, may be incorrect. As noted above, the draft report needs to be clear that OCC BSA enforcement guidance provides that deficiencies in the

OIG Comment 7

application of a program to parts of a bank's business do not necessarily constitute violations of 12 C.F.R. 21.21. [pages 4, 5 & 13]

- [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]
- The statement that “[t]he guidance without exception directs OCC to take formal action against banks that have serious deficiencies in programs or are noncompliant with BSA requirements” is not accurate, for the reasons discussed above. [page 11]
- [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

OIG Comment 8

**The draft report incorrectly characterizes the OCC policies and procedures applicable to the BSA/AML area.**

OIG Comment 9

OIG Comment 10

- The draft report asserts that the OCC did not follow its procedures with respect to the WSRC presentation, but it does not recognize the delegations in effect at the time of the events in question provided that only a briefing to inform the WSRC of the decision of the Senior Deputy Comptroller was required. This was subsequently changed by a revision to the delegation matrices. [pages 26, 27 & 33]
- The report recommends that the OCC should keep detailed minutes of the WSRC meetings. Minutes of the WSRC are maintained, but they are not a detailed record of the deliberations of each meeting because such detail would likely have a chilling effect on the candor of the participants, which would be detrimental to the decision-making process in enforcement cases. [page 40]
- The report provides that the OCC did not keep FinCEN adequately informed of Wells' BSA violations or of OCC's enforcement decision in accordance with the MOU. The draft report does not distinguish between procedures that were in place at the time of the events in question, and procedures that were subsequently changed. At the time in question, the definition of "significant BSA violation or deficiency" for purposes of the MOU's notification requirements was nearly identical to the criteria in the OCC's BSA Enforcement Guidance (OCC Bulletin 2004-50) for citing a BSA compliance program violation (12 CFR 21.21). Therefore, if there were no program violation, then there would be no "significant violation" to be reported under the MOU. As a result of the Wells matter and OCC's ongoing interactions with FinCEN, both the OCC and FinCEN recognized the shortcomings of this result, and the standard for reporting to FinCEN was changed to include all BSA/AML matters that are brought before the WSRC. [page 6]

OIG Comment 11

The draft report omits or minimizes information in portions of the report, resulting in incomplete and potentially inaccurate depictions of the events described.

- [REDACTED – FOIA EXEMPTION 5, 5 U.S.C. §552(b)(5)]

OIG Comment 12

- The discussion of the OCC's communications with the bank should point out that, during the relevant period, the bank received positive feedback on BSA compliance regarding high-risk lines of business, e.g. [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] This is one important reason why the OCC ultimately concluded that it would be difficult to credibly assert that the bank's overall program was defective. [pages 5, 13-19, 22]

OIG Comment 13

- The discussion surrounding the use of the Part 30 safety and soundness plan process against the bank should point out that the failure to comply with the plan is itself a basis for an order enforceable like a C&D by CMPs, and court injunction. As such, the safety and soundness plan is a strong, enforceable remedial tool. [page 11]

OIG Comment 14

- The discussion surrounding OCC communications with the bank needs to distinguish between mid-level, senior management and board of director communications. Most of the examiner communications were provided to mid-level managers, and the draft report does not describe whether the bank's Board of Directors was informed of the deficiencies noted, in a Report of Examination, or otherwise. This is a distinction of significant legal consequence that the draft report should acknowledge. [pages 13-22 & 33]

OIG Comment 15

- [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

OIG Comment 16

- [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]  
The draft report suggests that immediately after the meeting with the Wells CEO, the OCC changed its position to recommend a lesser, "informal" enforcement action. As previously noted in the first section of this Appendix, this is incorrect. [pages 6, 26 & 29-30]

OIG Comment 17

**Miscellaneous/Technical Corrections**

- The statement that the OCC issued an informal, nonpublic action that addresses BSA deficiencies as safety and soundness weaknesses at the bank is an incomplete depiction of the Part 30 process. The Part 30 "safety and soundness order" process includes a broad range of risks. The OCC has frequently used the Part 30 process to address compliance issues, including BSA issues. [pages 5 & 24]

Appendix 5  
Management Response

OIG Comment 18

OIG Comment 19

OIG Comment 20

OIG Comment 21

OIG Comment 22

OIG Comment 23

OIG Comment 24

OIG Comment 25

OIG Comment 26

- The legal discussion of “Know Your Customer” (KYC) and “Customer Identification Programs” (CIP) is inaccurate. While the two concepts are related, they are not synonymous and, in fact, KYC is the broader term, *i.e.*, CIP is a component of KYC, but KYC also encompasses other requirements such as understanding sources and uses of funds, monitoring of high risk accounts, and reporting suspicious transactions. [page 9]
- The report characterizes the action taken as something less than “strong.” The basis for this characterization is not supported, given that the enforcement approach used by the OCC imposed enforceable standards, and required the bank to make substantial and comprehensive changes not only with respect to BSA compliance, but with respect to its overall compliance program. [pages 4, 7, 26 & 37]
- The Assistant Director of the E&C Division retired from the OCC. He did not resign. [page 20]
- The draft report does not accurately describe the communications between the staff attorney who prepared the memo and the Acting Chief Counsel, stating that the Acting Chief Counsel thought the wording in the February memo was “too strong,” but not clarifying that the staff attorney never discussed the memo with the Acting Chief Counsel. [page 31]
- The second sentence at the top of page 34 incorrectly uses the masculine pronoun to refer to the Deputy Comptroller for Large Bank Supervision.
- The draft report states that “Wells’ CEO expressed concerns with communication between the bank and the examiners *because of several BSA and other issues being presented to the bank*, and requested a meeting with OCC officials to discuss these concerns.” The highlighted phrase is not accurate. When the Wells CEO sought a meeting with the OCC, he did so based on broad concerns about the quality and effectiveness of communications between the EIC/staff and his management team. [page 19]
- The last two sentences of footnote 23 of the draft report are not relevant and unnecessarily present confidential supervisory information. [page 25]
- There are 23 companies in the Large Bank program, not 25. [page 9]
- The OCC participants in the November 15, 2004 meeting are incorrect. Only the Acting Comptroller and Senior Deputy Comptroller for Large Bank Supervision were present. [pages 19 & 51]

OIG Comment 1 As stated in the report, OCC examiners found and documented numerous and recurring deficiencies in Wells's BSA compliance program from 1999 through 2004. In late 2004, the OCC examiner-in-charge recommended OCC take enforcement action against Wells. In February 2005, with senior management concurrence, OCC's Enforcement and Compliance Division prepared an enforcement memorandum that documented problems and recommended a cease and desist order for a violation of 12 CFR 21.21. Members of the Large Bank Review team, comprised of more senior OCC officials, also thought that OCC's examination findings supported a violation of 12 CFR 21.21. Later, when OCC management decided instead to issue an informal Part 30 enforcement action, the reasons were not documented. We stated in the report the reasons OCC senior officials provided during our interviews for not issuing a cease and desist order to the bank. However, as stated, these same OCC officials never documented their basis for not issuing a cease and desist order against Wells, saying, in the end, that it came down to a "judgment call" and that they believed the deficiencies did not rise to the level of a program violation. We did not see evidence that the accuracy of the examiners findings were in question.

OIG Comment 2 The report provides the sequence of events occurring after the meeting between senior OCC officials and the Wells CEO. The report also includes as appendix 4 a timeline of significant events involving Wells's examination and enforcement action.

OIG Comment 3 Our report does state that the reason for removing Wells from the WSRC agenda was that Wells's senior management had asked to present additional information and senior OCC officials believed it would be more appropriate for them to review this information before the matter was presented to WSRC. We believe this statement is sufficient for the reader to ascertain that the information was being reviewed.

OIG Comment 4 The report does not intend to imply that there was anything unusual about managers in OCC's legal department editing or reviewing the work of an OCC staff attorney and

recommending changes. As discussed in our report, the staff attorney who prepared the original February 4, 2005, enforcement memorandum revised the memorandum issued on April 12, 2005, to recommend an informal action. While we could not obtain clarity from our interviews of OCC senior officials as to who directed the staff attorney to revise the memorandum from a formal enforcement action to an informal action, what is clear is that the staff attorney did not make the decision independently.

OIG Comment 5 The report presents the opinions of OCC senior management, who cited these results, and OCC examiners, who believed communications to the bank were adequate. We acknowledge that differences in judgment can exist. However, based on our review of the OCC communications to the bank, we believe they clearly describe the deficiencies found, were addressed to appropriate levels in bank management, and the concerns about a “mixed message” was overstated.

OIG Comment 6 The report states that OCC senior officials wanted to review additional information before OCC issued a cease and desist order to the bank. The report also includes the issues that OCC officials cited that precluded them from issuing a cease and desist order to the bank. We believe this allows the reader to understand the different opinions that existed when determining the appropriate enforcement action to take and that it was, according to senior OCC officials, ultimately a judgment call. We were at a disadvantage in providing additional details about this case because OCC did not document its deliberative process or the rationale for certain statements – such as the Acting Comptroller’s statement that [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] was low risk.

OIG Comment 7 The report states that banks must establish and maintain a BSA compliance program that at a minimum includes a system of internal controls to assure ongoing compliance, independent testing for compliance conducted by bank personnel or an outside party, designation of an individual responsible for coordinating and monitoring daily compliance, and training for appropriate personnel. These minimum requirements need to be established and maintained for a bank to have a program that is reasonably designed to assure and monitor compliance with



recordkeeping and reporting requirements of BSA. OCC examiners found deficiencies in Wells's compliance with these minimum requirements.

The deficiencies identified by the examiners were summarized in the enforcement memorandum which was to be presented to the WSRC on February 10, 2005, before the Wells case was withdrawn from the agenda. This memorandum states that pursuant to 12 CFR 21.21, the bank failed to implement an adequate BSA compliance program, [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)] In addition, the memorandum states that the bank had notable deficiencies in the design of its BSA program, including, but not limited to, [REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

OCC Bulletin 2004-50 states that a statutory mandate exists that instructs OCC to issue a cease and desist order when a bank fails to correct any problem with its BSA compliance program, which was previously cited in a report of examination or other supervisory correspondence. The Bulletin includes examples of problems in which a violation citation and accompanying cease and desist are appropriate.  
[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

We revised the report to include the requirement that a bank needs to provide for the continued administration of a program that is reasonably designed and maintained to assure and monitor compliance with the recordkeeping and reporting requirements of BSA. We also revised the report to omit "without exception" when we discuss OCC guidance for taking enforcement action against banks that have serious deficiencies in programs or are noncompliant with BSA regulations. We believe our final report

now properly depicts the deliberation that exists in OCC's enforcement action process.

OIG Comment 8 As stated in the report, the final decision on an enforcement action is made by OCC's Senior Deputy Comptroller for Large Banks Supervision. For Large Bank Supervision, WSRC assists the responsible OCC decision maker by assessing the underlying facts and evaluating policy issues or other concerns associated with an enforcement action based on its assessment. The report also states that WSRC, to ensure consistency of actions nationwide, is responsible for evaluating any recommended enforcement action, and provides advice on other matters that are unique or likely to be highly visible. OCC's procedural and policy guidance at the time of the Wells enforcement action required Part 21 violations and enforcement actions against large banks based principally on BSA issues to be presented to WSRC for input on possible policy or other concerns.

OIG Comment 9 We recommended that minutes be kept of WSRC meetings to include a record of the deliberations, recommendation, and final committee decision. The Comptroller expressed concern that detailed minutes of open and candid discussions would have a chilling effect on committee members and be counterproductive. The Comptroller believes a more appropriate type of documentation would be to detail the basis for a final determination as part of a memorandum that describes the "case" to the WSRC and/or any supplementary explanation for the decision by the responsible Senior Deputy Comptroller. We do not mean to suggest that all comments committee members make be included in the minutes as we agree that might impede frank and open discussions that are essential to the deliberative process. However, we believe that it is critical to document all individuals in attendance and the issues presented to the committee in the minutes to support the rationale for the recommendation and OCC's final decision. Accordingly, the Comptroller's suggestion to document the basis for a decision and supplementary explanation in a separate memorandum meets the intent of our recommendation.

OIG Comment 10 In accordance with the MOU, OCC is required to promptly notify FinCEN of significant BSA violations, or systemic or pervasive BSA compliance program deficiencies. OCC did notify

FinCEN in December 2004 that an enforcement action against Wells was being considered but failed to notify FinCEN again regarding the Part 30 safety and soundness enforcement action until after the enforcement action was issued to the bank. Regardless of OCC's interpretation of the MOU, we believe given that the matter involved one of the largest banks in the country, OCC should have kept FinCEN informed as its deliberation progressed. OCC has since agreed to provide FinCEN with all formal and informal actions based on BSA violations regardless of whether a program violation was cited. OCC has established an internal procedure to implement the September 2004 MOU and prevent future miscommunication from occurring again. As stated in its response, OCC will report to FinCEN all BSA/AML matters that are brought before the WSRC.

OIG Comment 11 The results of the independent examiner's review are included in the report. We reviewed the Wells examiners' reports and believe the examiners' findings were clearly stated. However, we have added additional language to the report (in a footnote) to state OCC's concern about litigation with the independent examiner's conclusions about supervisory communications.

OIG Comment 12

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

OIG Comment 13 The report has been revised to state that failure to comply with a Part 30 safety and soundness plan is a basis for an enforceable order.

OIG Comment 14 The report discusses how OCC communicates examination results to the banks and to whom the results are communicated. As we state in the report, reports of examination are addressed to the bank’s board of directors, quarterly management letters are addressed to bank senior management, and supervisory letters are addressed to both senior bank management and line managers. When addressed to bank senior management, this could include the CEO and chairman of the board of directors.

OIG Comment 15

[REDACTED – FOIA EXEMPTION 8, 5 U.S.C. §552(b)(8)]

OIG Comment 16 We did not state in our draft report that OCC immediately changed its position. We include in appendix 4 of the report a timeline of significant events involving Wells’s examination and enforcement action to provide the sequence of events.

OIG Comment 17 In its comments, OCC raises two issues related to issuance of a Part 30 enforcement action. One is that we did not completely depict the Part 30 process, and the second is that OCC has used this process frequently to address compliance issues, including BSA issues. Regarding the first issue, we believe the report includes enough information to understand the Part 30 enforcement process, and that the Part 30 required Wells to develop and implement a compliance plan with corrective actions needed to improve its BSA program. Regarding the second issue,

whether or not OCC has used the Part 30 process for other compliance issues is not relevant to the Wells matter. As OCC points out, it has used Part 30 action in the past to address compliance issues. Data we obtained from OCC showed that there were eight safety and soundness actions addressing BSA issued since the year 2000, including Wells. Two of the eight banks were found to have violations of 12 CFR 21.21, and one had not yet implemented a bank-wide customer due diligence program. We did not review the circumstances leading to OCC's use of the Part 30 safety and soundness action in these cases.

OIG Comment 18 The report has been revised to properly depict KYC and the customer identification program, as suggested by OCC.

OIG Comment 19 We recognize that an informal Part 30 enforcement action is a serious action. However, we do not believe informal enforcement action against a bank represents "strong" enforcement in the same way as a formal action, by virtue of several differences, including that a formal action is public.

OIG Comment 20 The report has been revised to state that the former Assistant Director of the Enforcement and Compliance Division retired from OCC.

OIG Comment 21 We do not say in the report there was any discussion between the staff attorney and Acting Chief Counsel. As discussed in our report, the staff attorney who prepared the original February 2005 enforcement memorandum revised the memorandum to recommend an informal action. The staff attorney said the revisions were made when OCC senior management decided to take informal enforcement action rather than formal action. The staff attorney also said OCC's Acting Chief Counsel suggested further editing of the revised memorandum to balance the recommendation for informal enforcement action with the content of the memorandum. The Acting Chief Council provided us a copy of a draft version of the April 2005 version of the memorandum with his handwritten notes and edits.  
[REDACTED – FOIA EXEMPTIONS 5 and 8, 5 U.S.C. §552(b)(5) and §552(b)(8)]

REDACTED – FOIA EXEMPTIONS 5 and 8, 5 U.S.C. §552(b)(5) and §552(b)(8)]

OIG Comment 22 The report has been revised to properly depict the Deputy Comptroller for Large Bank Supervision.

OIG Comment 23 We disagree that this statement is inaccurate. Wells's CEO told us he requested a meeting with OCC senior officials to discuss concerns about communications with the EIC regarding BSA and other issues. The timing of the request – following completion of the 2004 examiner review which identified significant BSA problems – also suggests that BSA was a major topic of the discussion. Nonetheless, we have revised the wording in the report to avoid any misunderstanding and to more clearly state that the communication issues related to broad concerns as well as BSA.

OIG Comment 24 We deleted the two sentences from the footnote.

OIG Comment 25 The number of companies in the Large Bank Supervision program is constantly changing. We initially reported 25 because that was the number in fiscal year 2004, when OCC had begun the latest BSA compliance examination. The 25 companies were also reported in OCC's fiscal year 2004 annual plan. More currently, OCC's fiscal year 2005 annual plan identifies 23 companies. The Deputy Comptroller for Large Bank Supervision stated that there were previously 23 companies, but due to a recent acquisition, there were now 22. We revised the report to reflect 22 companies.

OIG Comment 26 We obtained conflicting evidence regarding the OCC participants for the November 15, 2004, meeting with Wells's CEO. In the draft report, we stated that the Acting Comptroller, Senior Deputy Comptroller for Large Bank Supervision, and Deputy

Comptroller for Large Bank Supervision were participants in this meeting. We did so because the Senior Deputy Comptroller for Large Bank Supervision's recollection and calendar record indicated those were the participants. We knew this conflicted with the recollection of the Acting Comptroller, who we also interviewed about this matter, but the written documentation (the calendar record) seemed to be the better evidence. Based on OCC's response to our draft report, we have decided to omit in the final report the reference to the Deputy Comptroller for Large Bank Supervision<sup>35</sup> being in the meeting. The discrepancies in the recollection of the participants underscore the need that a record be prepared documenting the participants and key discussion points in such meetings with senior bank management.

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<sup>35</sup> The Deputy Comptroller for Large Bank Supervision referred to in this section retired, and OCC's current Deputy Comptroller was given responsibility for Wells in late December 2004. We did not interview this former OCC employee.

Appendix 7  
Major Contributors to This Report

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Sharon Torosian, Audit Manager  
Mark Ossinger, Auditor-in-Charge  
Jeanne Degagne, Auditor  
Terri Nabiam, Auditor  
Audrey Philbrick, Auditor  
Delores Dabney, Referencer  
Esther Tepper, Communications Analyst



**The Department of the Treasury**

Under Secretary, Office of Terrorism and Financial Intelligence  
Office of Strategic Planning and Performance Management  
Office of Accounting and Internal Controls

**Office of the Comptroller of the Currency**

Comptroller of the Currency

**Financial Crimes Enforcement Network**

Director

**Office of Management and Budget**

OIG Budget Examiner