FLORIDA BANKERS ASSOCIATION

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CHIEF EXECUTIVE OFFICER

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Public Information Room, Office of the Comptroller of the Currency
250 E Street, SW Mailstop 1-5
Washington, DC 20219
Attention: Docket 05-01

Ladies and Gentlemen:

The Florida Bankers Association appreciates the opportunity to respond to the EGRPRA request for burden reduction comment dated February 3, 2005, (OCC Docket Number 05-01]. The Florida Bankers Association is a voluntary association representing over 90% of the bank/thrift financial institutions operating in Florida. These institutions represent over 250 billion dollars in deposits, more than 80% of the Florida market.

In a survey the Florida Bankers Association conducted this year, thirty-six members of the Association reported that their combined incremental personnel costs of compliance averaged $18,200,000 over the past three years. Twenty-seven members reported that they would be hiring new staff in the coming year to meet the regulatory burden at a projected combined cost of $21,685,000. In addition, the members reported that they had paid approximately $27,400,000 in outside consulting fees to meet the regulatory requirements imposed. At the same time, Florida Bankers Association members have purchased $36,900,000 in new hard- and software, with annual operating and maintenance expenses averaging $6,600,000, to meet the regulatory requirements. Notably, these existing and projected expenditures do not result in the improved delivery of banking services to customers or improve the profitability or safety and soundness of the financial institutions themselves. These expenditures are required for the sole purpose of meeting the regulatory burdens imposed on financial institutions as the first line of law enforcement and national security.

The primary concerns of the Florida Bankers Association center on the burdens and uncertainties now implicit in Cash Transaction Reports ("CTR's") and Suspicious Activities Reports ("SAR's") pursuant to the Bank Secrecy Act, 31 U.S.C. Part 31, subpart II. The members of the Florida Bankers Association appreciate and support the goals the statutes and implementing regulations seek to achieve. Unfortunately, the

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burden imposed has not led to increased security commensurate with the increased burden on financial institutions. The Florida Bankers Association makes the following recommendations:

Cash Transaction Reports:

The current threshold for filing Cash Transaction Reports is unrealistically low. The $10,000.00 threshold for cash transactions and the $3000 threshold for monetary instruments has not been adjusted to reflect inflation. Moreover, the enormous number of reports generated for transactions at these low levels do not provide the "high degree of usefulness" that Congress enunciated as the policy underlying the imposition of these reporting requirements. *See* 31 U.S.C. § 5311. Law enforcement reports that its primary use of these reports is to confirm prior activity conducted by individuals and organizations on whom suspicion has already fallen. This is not surprising, given the superior investigative screening tool Congress has provided in section 314(e) of the USA PATRIOT Act, which allows suspects' accounts to be more precisely identified and monitoring to be more narrowly focused.

Financial institutions, therefore, are filing hundreds of thousands of reports to provide what is, at best, cumulative evidence in investigations of criminal activities that are reflected in, at best, a tiny fraction of the transactions reported.

Given the foregoing, Florida Bankers Association urges the regulators to recognize that the **current** threshold for reporting CRT's is a redundant, unnecessary and unduly burdensome requirement. These defects could be ameliorated by the simple expedient of adjusting the thresholds upward to a level that reflects both the inflation-adjusted level that Congress in 1979 intended to trigger scrutiny and that represents a significant and unusual cash transaction in 2005 commerce.

Florida Bankers Association recommends raising the CRT threshold for cash transactions to $30,000, and the money instrument threshold to $15,000.

Suspicious Activity Reports:

The complaint Florida Bankers Association hears most often from its constituents is that they would gladly comply with the requirements of the Bank Secrecy Act ("BSA") if the regulators would give clear and definite guidance as to what is required and that guidance should be provided to examiners as well as to financial institutions. At present, financial institutions are faced with the obligation to "over comply." Because there is no consistency from agency to agency—or even from examination to examination—financial institutions seeking to avoid being written up for non-compliance are over-

reporting, creating a log-jam of useless information at the investigative agencies and overwhelming the financial institutions with records and record-keeping obligations.

The problem arises because the BSA has imposed on financial institutions a responsibility not reasonably consistent with financial-institution operations and outside the occupational skill-set desirable in most financial institution officers and employees. In short, banks are not law enforcement agencies. Bank officers and employees are not trained detectives. While every member of the Florida Bankers Association is eager to cooperate with law enforcement and national security agencies to the extent permitted by law, placing financial institutions at the front line to investigate the legality of their customers' activities imposes a mindset and obligations beyond the skills and services financial institutions are established to offer.

Obviously, financial institutions, in the course of offering banking services, become the repository of significant information which may be evidence of wrong-doing on the part of bank customers. However, the statutes and regulations which impose the obligation to detect potentially criminal behavior give little guidance as to the universe of characteristics which should trigger further action. Banks are required to intuit what some future examiner will demand as compliance with these regulations. Because a financial institution faces significant consequences for negative reports in examinations, many financial institutions are over-reporting and over-documenting to avoid regulatory difficulties.

Obviously, this approach burdens financial institutions, law enforcement, and the regulators themselves.

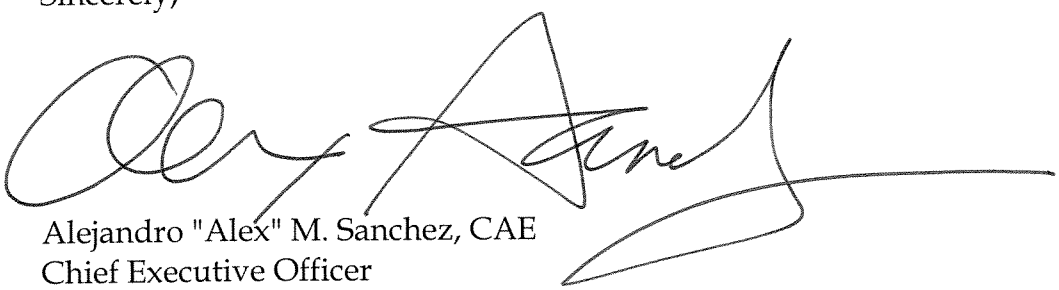
The Florida Bankers Association recognizes that it is not a simple matter to establish the parameters that would predict and prevent all forms of money-laundering or other abuses of the banking system. However, specific guidelines can and should be developed which set a floor for reporting requirements and which minimize the burden on financial institutions to pursue investigations that law enforcement itself would not. It would be more logical and efficient to have those who bear the burden of enforcing the law and apprehending wrong-doers specify the data (and the form of the data) that are most significant in detecting crime or terrorist activities. Based on that specific information, the regulators should develop a uniform, easily completed form for reporting suspicious activity which specifies the back-up detail required to give law-enforcement entities sufficient evidence to commence an investigation. Examiners should be trained in the scope and significance of the form and not require additional evidence of compliance.

Finally, the burden of continued monitoring of bank customers appears to outweigh the benefit to law-enforcement. The requirement for follow-up reporting on all SAR's is inconsistent with the frequency of law-enforcement follow-up on these reports. In

addition to establishing clear guidelines for reporting, a tiered approach to follow-up reporting should be established. If the initial report triggers no law enforcement interest, additional reporting should be required only when a substantial increase in the questioned activity is detected.

Again, we appreciate the attention being given these important issues and the regulators' interest in the experience of the regulated. The Florida Bankers Association would be happy to participate in any further discussions on these issues.

Sincerely,



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