

4 Lohman

From: Samuel.Lohman@lohman-law.com

Date: 1/7/2005 8:24:46 AM

Subject: Re: FinCEN is proposing changes to the current Designation of Exempt Person (DOEP), FinCEN Form 110

Dear FinCen,

Thank you for your update. Over the years, I have been active in anti-money laundering law and regulation and have been following the subject since it was introduced in the late 1980s. You will know that Switzerland has been active in developing its law and regulation since that time.

I am proud to say that I have advised governments and private sector on the subject with a particular emphasis on developing and delivering educational programs.

However, my current focus is on AML developments and their impact on attorney client privilege as well as the development of overzealous reporting cases internationally.

I was proud to deliver speeches on these themes numerous times in 2004, most recently as a keynote address to the Oklahoma Bar Association on the occasion of the annual bar meeting in Oklahoma City.

I have read extensively and understand that you are addressing the issue of what you refer to as 'defensive filing'.

We have analyzed the US case law on the subject of whether a good faith element need be read into reporting obligations in order to benefit from safe harbour provisions. We have compared the same to the position taken elsewhere in the world (e.g. via the FATF directives, Switzerland, EU nations, etc.) and you will know that the US is unique in its majority approach not requiring the good faith element as a condition to enjoyment of safe harbour benefits.

On the basis of a recent paper delivered by your chair, I see that defensive filing (and the attending influx of otherwise unnecessary reports) is a matter that FinCen is studying.

I submit that you may resolve the 'defensive' filing issues with the advent of a standard that would be applied in cases of reporting. I would be more than happy to discuss this further and render any support that we are able to in regards to your developing policy in this critical area. You may find that my academic training, professional and practical experience allows a unique perspective on this important matter.

Wishing you a very good 2005.

Sincerely,

Samuel M. Lohman

Law Firm Lohman

President Emeritus, The Offshore Institute (Isle of Man) Co-Director, The Financial Services Institute, (British Virgin Islands) Lead Consultant, The Financial Services Sector Advisory Group 11, Rue Verdaine CP 3377 1211 Geneva 3