



**DEPARTMENT OF  
FINANCIAL  
INSTITUTIONS**

**G. Edward Leary**  
*Commissioner*

**Michael L. Jones**  
*Chief Examiner*

**R. Paul Allred**  
*Deputy Commissioner*

# STATE OF UTAH

**Jon M. Huntsman, Jr.**

*Governor*

**Gary R. Herbert**

*Lieutenant Governor*

## EXHIBIT BB

October 8, 2009

Herbert K. Mallard  
P O Box 1232  
Southampton, NY 11969

Dear Mr. Mallard,

I received the complaint you filed regarding your situation with UBS Bank. Unfortunately, we have discovered that UBS Bank has legal counsel involved in this matter, and it appears that you do as well.

This Department has no jurisdiction to intervene in a civil matter, where parties are represented by legal counsel. Additionally, we have no jurisdiction to influence or overturn a courts decision in a legal matter. As such, we will be unable to provide assistance.

I trust this information is helpful.

Sincerely,

Eva Rees, Supervisor  
Consumer Credit and Compliance

November 4, 2009

Commissioner Ed Leary  
Utah Department of Financial Institutions  
PO 146800  
Salt Lake City, Utah 84114-6800

Dear Commissioner Leary:

Upon receipt of your Utah Department of Financial Institutions letter of October 8, 2009 (Exhibit AA) we have seen a chronology of events whereby UBS Utah Industrial Bank lawyer Craig Darwin's office allegedly implemented the below Steve Stewart sworn affidavit. It then was successfully submitted and is rigorously defended by the 3<sup>rd</sup> District Court (case # 080926075 as "true and correct". It is not. It then was the premise for a complaint against UBS Utah Industrial Bank lodged with your Utah Department of Financial Institutions. Your Department maintained "no jurisdiction" over criminal acts of UBS Utah Industrial Bank erroneously calling them a "civil matter".

This is one reason the United States Treasury Department would like to close down Utah Industrial Banks and thus your Utah Department of Financial Institutions. Let us explain.

Your Utah Department of Financial Institutions refusal to reprimand UBS Utah Industrial Bank for submitting fabricated fraudulent unverified documents to IRS and the Utah courts makes other Utah Industrial Banks suspect. Furthermore, it is highly probable if not certain that UBS AG international criminal oligarch clients (see [internalrevenue.com](http://internalrevenue.com)) have taken advantage of this UBS Utah Industrial Bank unverified client identification, address et al on credit line and mortgage agreements as a portal into the United States. These oligarchs are allegedly referred knowing there is no scrutiny by either the 3<sup>rd</sup> District Court, Salt Lake City, Utah or your Utah Department of Financial Institutions. This puts the nearby proposed Salt Lake City National Security Administration (NSA) complex in jeopardy. How can an internationally porous Utah Industrial banking system be allowed next to a NSA top secret complex? I spoke on the telephone to a Utah Department of Financial Institutions officer who said: "What's an out of place number?" I replied: "What was an out of place 9/11 box cutter?" This is a serious breach of United States national security. Let us explain in more detail.

At the alleged direction of in house attorney Craig Darwin UBS Utah Industrial Bank Chief Credit Officer Steve Stewart submitted a sworn affidavit to the 3<sup>rd</sup> District Court, Salt Lake City, Utah saying:

**“Steve Stewart, being duly sworn and under oath, deposes and says: 2. The Bank (Plaintiff UBS) and Mallard (Defendant) are parties to a certain Credit Line Agreement, dated July 25, 2008, which was duly signed by Mallard (Defendant). A true and correct copy of the Credit Line Agreement is attached hereto as (Plaintiff UBS) Exhibit A.”**

The identification of a customer is a very critical process with a view to protect the customer interests by preventing fraudsters, crime families or terrorists who may use the name, address and forge signature to undertake illegal activities. UBS Utah Industrial Bank under United States Federal law is required to verify all credit line agreements and mortgages as “true and correct”. UBS Utah Industrial Bank is then required to submit a document to the IRS confirming the verification. UBS Utah Industrial Bank submitted a fabricated document to the IRS that was never verified. It is alleged UBS Utah Industrial Bank committed this fraudulent act to avoid the original credit line/mortgage agreement. UBS Utah Industrial Bank criminal violations cannot be considered mistake or inadvertence since there has been a number of intentional material and non-material alterations to the document (Exhibit M). Under United States of America vs UBS, United States District Court Southern District of Florida, Case No. 09-60033-CR-COHN Plaintiff UBS is obligated to tell Federal QI Agreement compliance officers overseeing Plaintiff probation of these violations. UBS Utah Industrial Bank and in house lawyer Craig Darwin continue to refuse to do so.

#### Office of Controller of Currency (OCC)

“Financial institutions are required by law to have a Customer Identification Program for the creation of new accounts.

The minimum information that a bank must obtain when opening a new account includes—

- (e)(1) name,
- (e)(2) date of birth (for an individual),
- (e)(3) address, and
- (e)(4) identification number (for U.S. citizens, a taxpayer identification number is defined as the individual's Social Security number or employer identification number).

The bank must then verify the accuracy of the information. It can verify the information by comparing the information provided with information from a credit-reporting agency or by checking prior bank references.”

## 31 USC 5318(L)

### **I) Identification and Verification of Account Holders.—**

**(1) In general.—** Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that

shall apply in connection with the opening of an account at a financial institution.

**(2) Minimum requirements.—** The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

**(A)** verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

**(B)** maintaining records of the information used to verify a person's identity, including name, address, and other identifying information.

## United States Code of Federal Regulations 31 CFR § 103.121

### **Customer Identification Programs for banks**

**(2) Identity verification procedures.** The CIP (consumer identification program) must include risk-based procedures for verifying the identity of each customer to the extent reasonable and practicable. The procedures must enable the bank to form a reasonable belief that it knows the true identity of each customer.

**(i) Customer information required —(A) In general.** The CIP must contain procedures for opening an account that specify the identifying information that will be obtained from each customer. Except as permitted by paragraphs (b)(2)(i)(B) and (C) of this section, the bank must obtain, at a minimum, the following information from the customer prior to opening an account: (1) Name; (2) Date of birth, for an individual; (3) Address, which shall be: For an individual, a residential or business street address.

### **FDIC Law, Regulations, Related Acts**

The Department of the Treasury, through the Financial Crimes Enforcement Network (FinCEN), together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA) (collectively, the Agencies), have jointly adopted a final rule to implement section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (the Act). Section 326 requires the Secretary of the Treasury (Secretary) to jointly prescribe with

each of the Agencies, the Securities and Exchange Commission (SEC), and the Commodity Futures Trading Commission (CFTC), a regulation that, at a minimum, requires financial institutions to implement reasonable procedures to verify the identity of any person seeking to open an account, to the extent reasonable and practicable; maintain records of the information used to verify the person's identity; and determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency. This final regulation applies to banks, savings associations, credit unions, private banks, and trust companies. ... 2. Section 208.63--Procedures for monitoring Bank Secrecy Act compliance.

(1) Program requirement. Each bank shall develop and provide for the continued administration of a program reasonably designed to ensure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury at 31 C.F.R. Part 103. The compliance program shall be reduced to writing, approved by the board of directors, and noted in the minutes.

(2) Customer identification program. Each bank is subject to the requirements of 31 U.S.C. [section] 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 C.F.R. 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section. Authority: 12 U.S.C. 221 et seq., 1818, 1835a, 1841 et seq., 3101 et seq., and 3901 et seq.; 15 U.S.C. 6801 and 6805; 31 U.S.C. 5318.

(2) Customer identification program. Except for a federal branch or a federal agency or a state branch that is insured by the FDIC, a branch, agency, or representative office of a foreign bank operating in the United States is subject to the requirements of 31 U.S.C. [section] 5318(l) and the implementing regulation jointly promulgated by the Board and the Department of the Treasury at 31 C.F.R. 103.121, which require a customer identification program.

## **RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS**

### **31 USC § 5318**

**Compliance and exemptions, and summons authority**

(f) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS

(1) IN GENERAL.--Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) MINIMUM REQUIREMENTS.--The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for--

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorist or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) FACTORS TO BE CONSIDERED.--In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) CERTAIN FINANCIAL INSTITUTIONS.--In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of {{4-30-08 p.8394}} the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading commission) appropriate for such financial institution.

(5) EXEMPTIONS.--The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

**(6) EFFECTIVE DATE.--Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.**

**We look forward to your timely reply.**

**Herb Mallard**

**PO 2438  
Palm Beach, FL 33480**

**[herb@herbmallard.com](mailto:herb@herbmallard.com)**