Anti-Money-Laundering Bill Passes Congress

by Suzanne Rose

The Sept. 11 attacks have been seen by members of Congress, law enforcement, and government agencies as the opportunity for passing anti-money-laundering legislation which has otherwise been languishing. As former Japanese Deputy Finance Minister Eisuke Sakakibara told the Malaysian daily *New Strait Times* of Oct. 20, before the attacks the U.S. government *opposed* international efforts to impose sanctions on tax havens that refused to share information with U.S. authorities on money laundering. Since Sept. 11, he said, there has been a sea change.

During the week of Oct. 22, both Houses of the U.S. Congress passed H.R. 3162, the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act." In this anti-terrorism legislation, there is a section which treats money laundering in an unprecedented way.

The money-laundering sections of H.R. 3162 are an amalgam of previous bills sponsored by Sens. Carl Levin (D-Mich.) and John Kerry (D-Mass.), and Rep. John LaFalce (D-N.Y.), plus recommendations of the Bush Administration. The Act incorporates recommendations which came out of Senator Levin's extensive 1999 hearings on money laundering in the Senate Permanent Investigations Subcommittee, which dealt with, especially, the use of "private banks" for money laundering. Private banks are off-the-record accounts maintained by special personnel, for customers who deposit $1 million or more. The 1999 hearings dealt exhaustively with the case of Raúl Salinas, brother of former Mexican President Carlos Salinas de Gortari, who, some say, laundered in excess of $200 million in drug-related funds through his "private bank" at Citibank. No one from Citibank has yet been prosecuted in this case, which dates to 1993, although it has been demonstrated that the highest-level bank officers were aware of Salinas' account.

U.S. Banks Addicted To Money Laundering

The Salinas case points up one of the major conceptual problems with the new bill; it assumes that the problem centers on *foreign accounts,* from foreign locations which are "of money-laundering concern." The Salinas case, among others, lifted the curtain on the degree to which *U.S. banks* are addicted to money-laundering flows, especially from drug trafficking.

That said, the bill authorizes the Secretary of the Treasury to take special measures against foreign countries or financial institutions or accounts deemed "primary money-laundering concerns." The Treasury Secretary could include offshore havens, such as the notorious Cayman Islands; and British Crown Colonies, such as the Channel Islands and the Isle of Man, long the center of money laundering. Among its findings, the bill states that "certain jurisdictions outside of the United States that offer 'offshore' banking and related facili-

The "new" anti-money-laundering legislation was really largely drafted in 1999, after hearings on Citibank money-laundering. It was opposed by Greenspan and the banks then, and still has a huge loophole: "The enforcement can be waived if the financial community wishes."

ties designed to provide anonymity, coupled with weak financial supervisory and enforcement regimes, provide essential tools to disguise ownership and movement of criminal funds, derived from, or used to commit, offenses ranging from narcotics trafficking, terrorism, arms smuggling, and trafficking in human beings, to financial frauds that prey on law abiding citizens."

Heightened reporting requirements, beyond the current requirement under the Bank Secrecy Act to report every cash transaction of more than $10,000, will be mandated in instances where the account, or the country of a bank's location, or a bank, is considered a money-laundering concern by the Treasury Secretary. Private banks, and banks which maintain correspondent accounts for foreign banks which fall under the category of concern, will be required to maintain records of the identities and other information concerning their customers, and to share it with law enforcement. The new regulations not only require banks to carry out more stringent reporting and to have more knowledge of their customers; the Treasury Secretary can also prohibit a bank from doing business in the United States. Banks which use concentration accounts for their foreign customers (where money from different accounts is co-mingled in wire transfers, so that the owner of a particular transaction is concealed) will be subject to regulations preventing this. "Shell banks" in offshore money-laundering havens which do not conduct business in their geographical area, can no longer have correspondent accounts with U.S. banks.

An Enormous Loophole

An enormous loophole was included in the legislation, signalling the fact that it was passed in the midst of the biggest financial and monetary crisis in modern history. The bill reads, "The Secretary of the Treasury may require domestic financial institutions and agencies to take one or more of the special measures described in subsection (b), if the Secretary finds that reasonable grounds exist for concluding that (such institutions or classes of transactions, or types of accounts) is of primary money laundering concern." In selecting the special measures, the Federal Reserve or other appropriate agencies shall be consulted, and shall consider whether the imposition would create a competitive disadvantage or undue cost or burden for U.S. banks, and whether the action or timing would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions."

In other words, if enforcing anti-money-laundering provisions would threaten the solvency of a bank, or impose too big a cost burden, the enforcement can be waived if the financial community wishes. This loophole raises the issue of the insolvency of the entire financial system, which has been masked for years by large-scale illegal financial flows, especially of drug money. The need to eliminate these financial flows as the source of funding for terrorist activities, begs the question of the solvency of the banking system. That must be addressed through a bankruptcy reorganization, or New Bretton Woods plan, proposed by economist Lyndon LaRouche.

The financial community and their Congressional representatives fiercely opposed other aspects of the bill, and succeeded in further compromising it. House Majority Leader Dick Armey (R-Tex.) opposed efforts to regulate flows from offshore centers, citing the fact that people do business in these places to avoid taxes—which, he claimed, is a sound economic policy! Others objected to the inclusion of an amendment barring gambling on the Internet with credit cards, and it was subsequently excluded.

Another major omission from the legislation is the hedge funds, which are completely unregulated, and provide unique opportunities for laundering of drug money. Former Deputy Finance Minister Sakakibara pointed to hedge funds as the "pirates of modern finance," and charged that they include funds for terrorists. Sen. Jon Corzine (D-N.J.), in hearings considering the legislation, demanded that unregulated money managers (hedge fund operators) who can conceal the identity of those who own the account, be included under the legislation. But, in the final version, hedge funds were not included.