



Fiduciary and Investment Risk Management Association 28th National Risk Management Training Conference

Anti-Money Laundering Update: Regulations, Enforcement Actions and Red Flags

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Michael Shepard

Principal

Deloitte Transactions and Business Analytics LLP



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Anti-Money Laundering *Overview*

AML In the News

IN THE NEWS

U.S. financial institutions are seen as lacking anti-corruption compliance policies for handling domestic politically exposed people, or PEPs.



REUTERS

Exclusive: Senate investigating Global Bank for money laundering

Daily Beast

**JPMorgan Chase Closes
Vatican Bank Account**

The New York Times

**Mexican Cartel Hides Millions in Horse
Races, U.S. Alleges**

THE WALL STREET JOURNAL LEADING THE NEWS

The State Department added Argentina, a Corruption Currents “Fallen Angel,” to its list of “major money laundering countries” in the International Narcotics Control Strategy report, along with Curacao and St. Maarten.

washingtonpost.com

The Washington Post

**Philippine Congress OKs bill to punish terror
financiers with 40-year prison term, large fine**

How Much Money is Laundered per Year?

Table 1: FATF estimate of money-laundering (1988)

Amounts estimated to have been laundered (1988)	As a percentage of global GDP
US\$0.34 trillion	2.0%

Source: International Monetary Fund, Financial System Abuse, *Financial Crime and Money Laundering- Background Paper*, February 12, 2001.

Table 2: IMF estimates of money laundered (1998)

	Minimum	Maximum	Mid-point
IMF estimates of money laundered as a percentage of global GDP	2%	5%	3.5%
Estimate for 1996 in trillion US\$	0.6	1.5	1.1
Estimate for 2005 in trillion US\$	0.9	2.3	1.5
Estimate for 2009 in trillion US\$	1.2	2.9	2.0

Source: OECD Observer, "Ten years of combating money laundering", *OECD Observer* No 217-218, Summer 1999 and World Bank, *World Development Indicators (WDI)*, 2010.

¹Source: http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf

Brief History of U.S. AML Statutes

Bank Secrecy Act

- Imposed civil and criminal penalties for non-compliance
- Required banks to retain records, create an audit trail and report currency transactions over \$10,000

Money Laundering Control Act

- Money laundering is now a federal crime
- Mandated requirements procedures for banks

Suspicious Activity Reporting

- Required FIs to file suspicious activity reports

1970

1986

1992

1996

2001

Annunzio Wiley Act

- Required reporting of suspicious activity within 30 days
 - Established “safe harbor” provision
- Required banks to adopt the “AML Five Pillars” Framework
 - Required record retention for fund transfers

Funds Transfer Rule

- Required banks to retain wire information over \$3,000
 - Implemented the “Joint” Rule
 - Implemented the “Travel” Rule

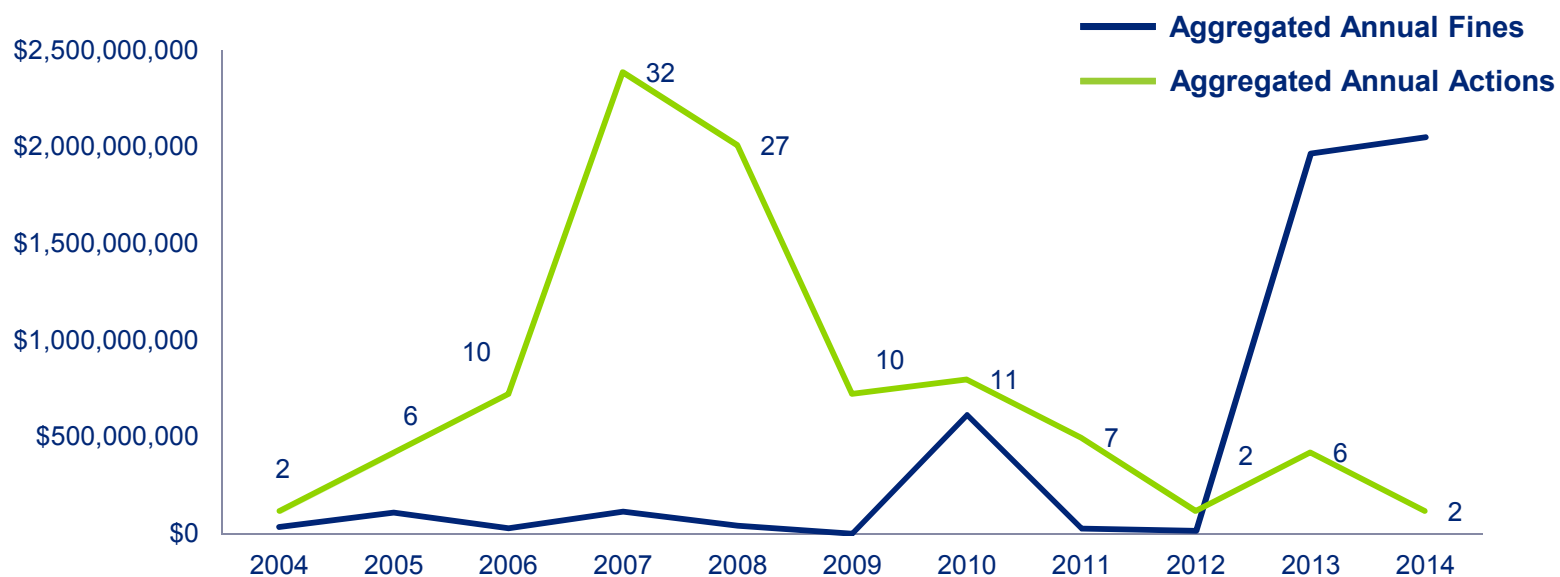
USA PATRIOT Act of 2001

- Added anti-terrorist financing provisions
- Applied rules to non-bank Financial Services Institutions

The AML Regulatory Landscape

By the Numbers

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Sum
Fines	\$35M	\$112M	\$28M	\$115M	\$42M	\$1M	\$615M	\$26M	\$15M	\$1.97B	\$2.05B	\$5B
Actions	2	6	10	32	27	10	11	7	2	6	2	115



Source: <http://www.bankersonline.com/security/bsapenaltylist.html#tcf>

Recent Enforcement Actions

Date	Institution	Findings	Penalty
Feb 5, 2014	Brown Brothers Harriman & Co.	Failure to have an adequate anti-money laundering program in place to monitor and detect suspicious penny stock transactions	\$8 Million
Jan 7, 2014	JP Morgan	Failed to report suspicious transactions, despite identification of “red flags”	\$2.05 Billion
Sept 25, 2013	Saddle River Valley Bank	Executed \$1.5 billion worth of inadequately monitored transactions on behalf of ... casas de cambio.	\$4.1 Million
Sept 24, 2013	TD Bank	Failed to detect and adequately report suspicious activities in a timely manner	\$37.5 Million
Jan 25, 2013	TCF Nat'l Bank	Existing transaction monitoring failed to discover 2,357 instances of suspicious activity found during a regulator-ordered “look-back”, resulting in the late filing of the resulting SARs	\$10 Million
Dec 11, 2013	HSBC Bank USA	Multiple failures in transaction monitoring, risk rating of customers, and suspicious activity reporting	\$500 Million

Recent Supervisory and Enforcement Actions

When entering into deferred prosecution agreements or cease-and-desist orders, authorities have identified a number of AML Compliance issues:

- Not maintaining an effective AML program and system of internal controls to adequately oversee the institution's activities.
- Failure to conduct appropriate due diligence on foreign correspondent account holders.
- Inadequate monitoring involving remote deposit capture/international cash letter activity in the institution's foreign correspondent banking business.
- Deficiencies in ensuring that suspicious activity at a foreign branch is communicated effectively to other affected branches within the institution's network.
- Failure to ensure that, on a risk basis, customer transactions at foreign branch locations can be effectively assessed, aggregated and monitored.
- Conducting inadequate customer due diligence on retail and international banking customers.
- BSA Officer deficiencies.

Recent Supervisory and Enforcement Actions

Key Takeaways From Recent Supervisory and Enforcement Actions

High-Risk Areas

Institutions should ensure adequate and effective AML Compliance programs, systems and procedures

Compliance Infrastructure

Institutions should commit more resources to ensure strong compliance programs

Independent Compliance Function

- Compliance staff should be independent from the business line and not subject to evaluation or performance determinations from the business
- Escalate Issues

Independent Reviews

Enforcement actions increasingly are requiring institutions to conduct independent reviews of transaction and account activity

Anti-Money Laundering

Trusts and Company Service Providers

Vulnerabilities

Understanding the vulnerabilities and loopholes that exist within the trust and client service provider industry is pivotal to protecting yourself from aiding criminals in laundering money

- Customer Due Diligence and reliability on customer information obtained on customers/clients/beneficial owners
- Inadequate AML training for Trust and Client Service Provider ('TCSP') staff
- Lack of Business Intelligence resources to conduct adequate customer due diligence
- Many clients have strong involvement internationally in various jurisdictions, many of which have varying standards for AML
 - Jurisdictions with limited corporate registration requirements; unrestricted bearer share usage; limited beneficial ownership information requirements; and/or lax regulation of TCSPs
- As the creation of complex structures can often generate higher fees for TCSPs, this can make such structures more attractive to TCSPs thereby potentially reducing their ability to associate an increased use of complex structures with a higher money laundering risk

Source: <http://www.fatf-gagfi.org>

Red Flags

Red Flags: Client Behavior

It is important to 'Know Your Customer' and understand your customer's intentions

- Cases of corruption where the company paying the bribe to secure a contract or the person brokering a contract will seek to secure a successful outcome by utilizing a TCSP to operate a trust with the ***funds held on deposit for the benefit of the person approving the contract***
- The use of ***foreign private foundations*** that operate in jurisdictions with secrecy laws
- The use by prospective clients of ***nominee agreements*** to hide from the TCSP the beneficial ownership of client companies
- Clients who allow ***TCSPs to have full discretionary authority*** over the client's accounts may entice unethical TCSP principals or employees to conduct unauthorized/illegal transactions from these accounts
- The operation of ***virtual offices overseas*** which provide TCSP services
- The formation by TCSPs of ***shell companies*** that can then be used by money launderers

Source: <http://www.fatf-gagfi.org>

Red Flags: Transactions

Knowing your customer to understand expected business transactions is extremely important, but do not assume a client you know is not using you to launder money

- Transactions that utilize **complex** and **opaque** legal entities and arrangements
- The carrying out of **intercompany loan transactions** and/or **multijurisdictional wire transfers**
- The payment of “**consultancy fees**” to shell companies established in foreign jurisdictions or jurisdictions known to have a market in the formation of numerous shell companies
- The transfer of funds in the form of “**loans**” to individuals from trusts and non-bank shell companies. These non-traditional “loans” then facilitate a system of regular transfers to these corporate vehicles from the “**borrowing**” individuals in the form of “**loan repayments**”

Source: <http://www.fatf-gagfi.org>

How to Help Mitigate Risk

Mitigating Risk

Examples of possible steps to mitigate the risk of you and/or your firm being used to launder money for criminals or terrorist organizations

Application of:

- The development of policies, procedures, and processes that enable the bank to identify unusual account relationships and circumstances, questionable assets and sources of assets, and other potential areas of risk
- Adequate 'Know Your Customer' practices
- Mechanisms for suspicious transaction reporting
- The designation of an AML Officer

Source: <http://www.fatf-gagfi.org>

Questions & Answers

Michael Shepard
Principal
Deloitte Transactions and Business Analytics LLP
mshepard@deloitte.com
(215) 299-5260

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