

## Publications

### *Client Alert: BSA/AML Enforcement; Bankers Beware*

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The banking world has been rocked in recent weeks by news of very significant settlements between banks and federal regulators for alleged violations of laws and regulations pertaining to bank secrecy and money laundering. The level of these settlements should serve to remind bankers that the regulatory agencies take compliance with those laws and regulations very seriously.

While it is tempting to treat BSA/AML compliance as nothing more than an unfortunate, unnecessary and costly hassle, especially since reports seem to go into a governmental "black hole" once filed, banks and bankers failing to treat BSA/AML compliance seriously and with appropriate attention do so at their peril. In addition to fines for noncompliance, state and federal criminal sanctions as well as foreign laws may likewise apply.

Placing banks in the position of acting as gatekeepers for monitoring and reporting certain types of financial transactions has been around for a while in different guises. While first a mechanism to assist law enforcement in monitoring potential gambling and drug activities, after 9/11 the importance of tracking BSA/AML transactions took on a new focus and a new importance. As bankers know, the OFAC list of names grows almost daily and reflects the level of concern of federal law enforcement officials at FINCEN with regard to the expansion of issues in this country and the need to continue to be vigilant to monitor and report relevant activities.

"Follow the money" has for a long time been the mantra in law enforcement with regard to a number of illicit activities, and the mechanisms required of institutions to track and report certain types of transactions and certain individuals and organizations is not a wasted effort. It provides important data for law enforcement officials to aggregate, study and analyze patterns and persons where illegal activities (including potential terrorist activities) may be involved. Whether there is a cost/benefit analysis to apply to such monitoring and reporting activities is interesting to contemplate, however the fact of the matter is that failure to comply can result in very adverse consequences for banking institutions.

## HSBC and Standard Chartered

Recent weeks have seen large well-known financial institutions announce very significant settlements in conjunction with alleged violations of BSA/AML laws and regulations. HSBC is slated to pay a settlement of \$1.9 billion for non-compliance, and Standard Chartered is slated to pay \$327 million in a federal settlement on top of a previous agreement to pay the New York Department of Financial Institutions \$340 million in fines for similar alleged violations.

No small amounts for either.

Those prosecutions and settlements point up the importance with which the regulatory agencies view compliance with BSA/AML laws and regulations, and the seriousness with which institutions must take BSA/AML compliance, whether small community banks or large multi-national institutions. BSA/AML compliance remains one of the biggest "hot buttons" on the list of regulatory compliance concerns, and as a result will remain a focus in bank examinations and a factor in other banking activities such as mergers and acquisitions as well as compliance audit focus. While institutions may never really know the impact of a particular SAR filing, the regulatory focus and size of the referenced settlements reflects the fact that those and other filings and reports required by relevant BSA/AML laws and regulations are used by law enforcement and important to their mission, whether drug trafficking, public safety or national security.

Facts and circumstances of course differ, and the more egregious the violation likely the higher the potential fine for noncompliance. In addition to the expense, institutions that find themselves in public violation of BSA/AML laws and regulations also face the impact of significant "reputation risk" issues. The importance of BSA/AML compliance and potential for significant fines arising from BSA/AML violations will now likely be seen as an added risk factor in analyzing potential M&A transactions and bank investments, with buyers and investors either avoiding, or extracting substantial price concessions from, target institutions that may have BSA/AML compliance issues or concerns.

## Conclusions

As with other compliance programs, until issues arise it can be difficult to recognize the potential impact of failure to comply both financially and from a reputational perspective. The "war on terror" however continues, and the importance of implementing and overseeing appropriate BSA/AML compliance processes cannot be overstated. Directors should be aware of the issues, and ascertaining that their institutions are treating BSA/AML compliance with appropriate concern and attention. Even with other regulatory burdens and the current financial and economic pressures on the industry, bankers can expect BSA/AML compliance to remain a hot topic for the foreseeable future and directors should understand the importance of compliance to the financial well-being of their institution.