Money Laundering Through Real Estate
Current Issues
James Wright

On May 17, 2016 the Chapter in partnership with KPMG, hosted a learning event featuring Elise Bean, former Staff member of Senator Carl Levin (R-Mich.), who presented cases and significant issues facing the US in the fight against money laundering through real estate. The use of the real estate sector by foreigners is common and the cases she presented involved persons from Iran, Mexico, Spain, Russia, Cyprus and India. The million-dollar properties used to launder money were located in both Manhattan and Miami. She commented on the motivation for the recent FinCEN Geographic Targeting Order requiring title insurance companies to report real estate transaction involving cash in Manhattan and Miami. Current issues include the need for states to have transparency in state corporate approvals and bringing real estate agents under the requirements to both report and implement BSA compliance programs. With respect to beneficial ownership, she advocates that Secretaries of State in each state require enhanced information from applicants for corporate charters. Unlike many other countries, the US doesn’t require realtors and real estate companies to have formal BSA compliance programs. She concluded by saying that this weakness will continue to attract money launderers to use real estate located in the United States.

Unlike many other countries, the US doesn’t require real estate agents and real estate companies to have formal BSA compliance programs.

Tentative Upcoming Events
September 2016: Meet the Author: Anatomy of a Bank Scandal
September 2016: Networking and learning event at a Washington Nationals ballgame.
December 2016: Year in Review

Specific dates and locations to be announced, please visit our website: http://www.acams.org/acams-chapters/u-s-capital/#events
Anatomy of a Banking Scandal: The Keystone Bank Failure—Harbinger of the 2008 Financial Crisis

Robert S. Pasley

In the early 1990s, the First National Bank of Keystone in West Virginia began buying and securitizing subprime mortgages from all over the country, and quickly grew from a tiny bank with just $100 million in assets to over $1.1 billion. For three years, it was listed as the most profitable large community bank in the country. It was all a fraud.

All of the securitization deals the bank entered into lost money. To hide that fact, bank insiders started cooking the books, and concealing that they were also embezzling millions of dollars from the bank. This was all hidden from the bank’s attorneys and auditors, federal bank examiners, and even the board of directors of the bank. To keep the examiners at bay, the bank insiders did everything possible to avoid giving them access to documents they were entitled to see, documents they knew would sink their scheme. The head of the bank even went so far as to bury four large truckloads of documents in a ditch on her ranch.

Robert S. Pasley explores the failure of the First National Bank of Keystone, the intrigue involved, and the lessons that could have been learned—and still can be learned—about how banks operate, how federal banking regulators supervise financial institutions, how agencies interact with one another, and how such failures can be avoided in the future.

"Anatomy of a Banking Scandal is a must read for anyone in the Anti-Money Laundering or Financial Crime Prevention fields. Robert Pasley takes you into a world of corruption, intimidation, and arrogance that was the First National Bank of Keystone. You will also be astounded at how regulators and outside auditors failed in their supervisory and oversight roles that allowed the bank to thrive. Fortunately, the scandal was eventually uncovered, but the trip there will teach you quite a bit. Pasley’s book is the perfect precursor to The Big Short and should go down as an excellent anti-fraud training tool."

--John J. Byrne, Executive Vice President, ACAMS
Yates Memo and Personal Liability
Megan Jeffries Cerveny, Mary Bashore and Barbara Keller


At the start of the event, Lopez outlined the Department of Justice’s (DOJ) longstanding approach in cases against individual wrongdoers in criminal and civil investigations, and expanded on the implications of the Yates Memo. Attendees learned that the Yates Memo, which was issued in September 2015, has not changed the level of criminal liability. In fact, there are few significant changes as to how the DOJ governs such cases. Criminal and civil DOJ attorneys should routinely communicate with each other and share information. Notably, for a corporation to be eligible for consideration for cooperation credit, it must provide all relevant facts on individuals related to the misconduct, regardless of their position or rank. Lopez emphasized that the memo pertains only to DOJ attorneys, but this does not mean that other regulators and law enforcement agencies are not also focused on personal liability.

The need to provide all relevant information prevents corporations from picking and choosing facts to provide, and reduces the chance that an individual will be chosen as a scapegoat for what may be an institutional or process failure. The DOJ will want to know what issues were raised, who raised them, where the ultimate failure occurred and why. In this way, the Yates Memo can actually help compliance officers. Lopez stressed that the Yates Memo does not change the standards governing criminal liability—there is still the need to prove someone willfully violated laws, rules and regulations.

However, there are still concerns that compliance talent will be driven out of the field for fear of personal liability. Questions remain about what full company cooperation with the government might mean, and whether companies will feel pressured to produce an individual to be held liable.
OCC Enforcement Actions

Vivenzio spelled out the different kinds of informal and formal enforcement actions that the OCC might take against individuals. Most frequently issued are informal actions, including Supervisory Letters and Letters of Reprimand—these letters inform the individuals of the act or practice of concern and reminds them of their responsibilities as officers or directors of the bank.

When formal enforcement actions are brought against individuals, they have often clearly violated law or regulations or engaged in unsafe and unsound banking practices. Individuals may be assessed a Civil Money Penalty, may be subject to removal and/or prohibition (removing the individual from their position and prohibiting them from working in any federally insured institution); a personal Cease and Desist Order, preventing an individual from continuing specific activities at a bank or compelling specified action; or a suspension in the case of a criminal conviction or indictment. Also, if an officer or director is convicted of certain crimes involving dishonesty or breach of trust, they are automatically prohibited from participating in the affairs of an insured depository institution for 10 years. In these situations, the OCC will send the convicted person an 1829 Letter informing the person of this statutory restriction in 12 U.S.C 1829.

Moreover, Vivenzio noted that Bank Secrecy Act (BSA) cases brought by the OCC against individuals are relatively rare—they require significant violations of law or regulation, they must be well supported, and the legal standards for the OCC to bring an action are high. Examples of individual BSA cases brought by the OCC include: 1) money laundering through the bank (Broadway NB), 2) failure to comply with OCC BSA enforcement actions (Pacific NB; Security NB) and 3) Ponzi scheme cases (Gibraltar NB, TD Bank NA). Cases are typically brought against senior managers and directors who failed to comply with OCC BSA enforcement actions or against officers who violated the law or engaged in unsafe and unsound banking practices.

In addition, Vivenzio pointed out that it is challenging for the OCC to bring an individual action based solely on a compliance program breakdown at a national bank because this type of BSA breakdown frequently involves a series of decisions made by numerous people over long periods of time.
The culture of compliance and tone from the top are important. In order to prevent some of these issues, it is important to have adequate training and to make sure that expectations permeate the entire organization. To reinforce these expectations—in several recent enforcement actions taken by the OCC—the OCC required the banks to include BSA/AML requirements in the job description and performance standards for relevant employees, including business and relationship managers, to ensure that these employees were aware of their BSA responsibilities.

A Special “Thank You” to all our 2016 speakers and sponsors: Jonathan Lopez, James Vivenzio, Elise Bean, George W. Prokop, Tom Locke, Orrick, Herrington & Sutcliffe, KPMG and PricewaterhouseCoopers LLP.