THE PANAMA PAPERS

Politicians, Criminals, and the Shady System That Hides Their Cash

One Year Later
Today’s Agenda

- What is the “Panama Papers”
- FinCEN Takes Aim at the Real Estate Market
- Beneficial Ownership Legislation
  - Summary of the Beneficial Ownership Rule
  - What is the risk of complex structures?
  - Red Flags
- Management of Offshore Accounts
  - High Risk Jurisdictions
  - Red Flags for Offshore Accounts
- AML and FCPA: Connecting the Dots
Offshore corporations: The secret shell game 2:24
Panama Papers – A Quick Recap

• The Panamanian government has strongly objected to the name “Panama Papers”

• In fact, few Panamanians used Mossack Fonseca, and most Mossack Fonseca companies were formed outside Panama

• Panama emerged from the FATF Gray List in February 2016

• In April 2016 the International Consortium of Investigative Journalists (ICIJ) began publishing a series of articles based upon their exploitation of a leak of approximately 11 million documents from Panamanian law firm Mossack Fonseca (MF).
Panama Papers – A Quick Recap

• Mossack Fonseca ("MF") specialized in offshore corporate formation, and had offices in Hong Kong, Switzerland, Isle of Man, Gibraltar, the United States and other locations. MF was one of the early entrants into the offshore industry in the British Virgin Islands.

• Initial articles were followed by the May release of names and link analysis of 214,000 MF created or managed entities, as well as approximately 100,000 entities identified in the 2012 ICIJ Offshore Leaks investigation.

• Release contains limited financial transaction data (only data that was found in the MF documents).
Transaction Details are the Pieces of the Puzzle that are Falling Into Place Now

• The money movement between offshore entities is the piece known only to the banks, funds, law firms, corporations and now…the government.

• Recent revelations about MF corporations that were used to evade Cuba sanctions are an example.

• But sometimes all the details of a politicians transactions don’t need to be known, enough information exists in the public domain to convince the public of the existence of illicit activity.

• Many of the details about suspicious transactions will be provided in SARs in forthcoming months as financial institutions analyze offshore entity transactions.

• Law enforcement will take SARs from multiple institutions and weave them together to ‘complete the picture’.
U.S. Administration Response to MF Papers Media Barrage

• Finalization of long awaited CDD rule in May 2016

• Proposal to Hill for Beneficial Owner legislation

• Change to IRS regulation requiring foreign single owner LPs (‘disregarded entities’) operating in the U.S. to obtain an EIN

• Status of Proposed Registered Investment Advisor Rule

Beneficial Ownership Legislation

Also today, Treasury announced it is sending beneficial ownership legislation to Congress. The Administration is committed to working with Congress to pass meaningful legislation that would require companies to know and report adequate and accurate beneficial ownership information at the time of a company’s creation, so that the information can be made available to law enforcement. As part of the legislation outlined today, companies formed within the United States would be required to file beneficial ownership information with the Treasury Department, and face penalties for failure to comply. The misuse of companies to hide beneficial ownership is a significant weakness in the U.S. anti-money laundering/counter financing of terrorism regime that can only be resolved by Congressional action. The new draft legislation is an amended version of an Administration Budget proposal, reflecting discussions with Congress, law enforcement entities, and others.

The proposed legislation also contains technical amendments to the current Geographic Targeting Order (GTO) authority which would clarify FinCEN’s ability to collect information under GTOs, such as bank wire transfer information. The most recent GTOs temporarily require certain U.S. title insurance companies to record and report the beneficial ownership information of legal entities making “all-cash” purchases of high-value residential real estate. All-cash purchases may be conducted by individuals attempting to hide their assets and identity by purchasing residential properties so these GTOs assist the U.S. government in better understanding potential illicit finance vulnerabilities in our real estate sector. This January, FinCEN issued GTOs focused on the Borough of Manhattan in New York City, New York, and Miami-Dade County, Florida. FinCEN intends to evaluate the information it gains from these GTOs and determine what next steps would best protect the U.S. financial system from criminal abuse. Options could include broadening the GTOs to other areas, or using the information to inform a more comprehensive rulemaking.

Foreign-Owned Single-Member LLC Proposed Regulations

Treasury also announced proposed regulations to require foreign-owned “disregarded entities,” including foreign-owned single-member limited liability companies (LLCs), to obtain an employer identification number (EIN) with the IRS. Overall, our federal tax system has very strong information reporting requirements for most types of entities formed in the United States. These requirements allow the IRS to determine whether there is any federal tax liability and if so, how much, and to share information with other tax authorities as appropriate. However, there is a narrow class of foreign-owned U.S. entities – typically single member LLCs – that have no obligation to report information to the IRS or to get a tax identification number. These “disregarded entities” can be used to shield the foreign owners of non-U.S. assets or non-U.S. bank accounts. Once these regulations are finalized, they will allow the IRS to determine whether there is any tax liability, and if so, how much, and to share information with other tax authorities. This will strengthen the IRS’s ability to prevent the use of these entities for tax avoidance purposes, and will build on the success of other efforts to curb the use of foreign entities and accounts to evade U.S. tax.
60 Minutes – Anonymous, Inc.

Watch Video Now
Focus on Transparency in Real Estate

1. FinCEN Speech on November 14, 2016 at ABA Conference
2. FATF Report
   - Financial Action Task Force (FATF) will soon issue a report on the state of anti-money laundering regulation in the U.S.
   - FATF has consistently called for formal regulations governing real estate agents and brokers, and it is expected that FATF will renew this call in the new report.
3. National Association of Realtors
   - NAR collaborated with the U.S. Department of Treasury to develop voluntary guidelines to increase real estate professionals’ awareness of the potential money laundering risks surrounding real estate transactions.
   - The guidelines educate real estate professionals about red flags to be aware of during a real estate transaction and CDD practices.
   - Red flags may include large, unexplained distances between the location of the property and the buyer, unusual involvement by third parties, unusual sources of funding, or large amounts of cash being used for purchase.
REAL ESTATE NEWS  APRIL 3, 2016  2:00 PM

How secret offshore money helps fuel Miami’s luxury real-estate boom

Panama Papers: Secret offshores trace back to Brickell condo featured on ‘Miami Vice’

Paulo Octávio resigned as governor of Brasília after being accused of corruption in 2010. He secretly paid $2.95 million for a condo at the St. Regis in Bal Harbour later that year.

Hundreds of secret offshore companies trace back to a condo at the Palace in Brickell, which was once featured in Miami Vice. Olga Santini, who works for Panama-based law firm Mossack Fonseca, keeps her office in the two-bedroom unit. Daniel Christensen / Creative Commons
FinCEN GEOGRAPHIC TARGETING ORDER - JANUARY 13, 2016:

- FinCEN issued a Geographic Targeting Order temporarily requiring certain U.S. title insurance companies to identify and report the true “beneficial owner” behind a legal entity involved in certain high-end residential real estate transactions in Manhattan, NY and Miami, FL.

- FinCEN was concerned that all-cash purchases – those without bank financing – may be conducted by individuals attempting to hide their assets and identity by purchasing residential properties through limited liability companies or other opaque structures.

“Geographic Targeting Orders” Require Identification for High-End Cash Buyers

WASHINGTON – The Financial Crimes Enforcement Network (FinCEN) today issued Geographic Targeting Orders (GTO) that will temporarily require certain U.S. title insurance companies to identify the natural persons behind companies used to pay “all cash” for high-end residential real estate in the Borough of Manhattan in New York City, New York, and Miami-Dade County, Florida. FinCEN is concerned that all-cash purchases – i.e., those without bank financing – may be conducted by individuals attempting to hide their assets and identity by purchasing residential properties through limited liability companies or other opaque structures.

To enhance availability of information pertinent to mitigating this potential money laundering vulnerability, FinCEN will require certain title insurance companies to identify and report the true “beneficial owner” behind a legal entity involved in certain high-end residential real estate transactions in Manhattan and Miami-Dade County.

With these GTOs, FinCEN is proceeding with its risk-based approach to combating money laundering in the real estate sector. Having prioritized anti-money laundering protections on real estate transactions involving lending, FinCEN’s remaining concern is with the money laundering vulnerabilities associated with all-cash real estate transactions. This includes transactions in which individuals use shell companies to purchase high-value residential real estate, primarily in certain large U.S. cities.

“We are seeking to understand the risk that corrupt foreign officials, or transnational criminals, may be using premium U.S. real estate to securely invest millions in dirty money,” said FinCEN Director Jennifer Shasyi Calvery. “Over the years, our rules have evolved to make the standard mortgage market more transparent and less hospitable to fraud and money laundering. But cash purchases remain a more complex gap that we seek to address. These GTOs will produce valuable data that will assist law enforcement and inform our broader efforts to combat money laundering in the real estate sector.”
FinCEN GTO EXTENDED:

GTO extended to the following areas: include the following major U.S. geographic areas:

1. All boroughs of New York City; 2. Miami-Dade County and the two counties immediately north (Broward and Palm Beach); 3. Los Angeles County, California; 4. Three counties comprising part of the San Francisco area (San Francisco, San Mateo, and Santa Clara counties); 5. San Diego County, California; and 6. The county that includes San Antonio, Texas (Bexar County).

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<th>Jurisdiction</th>
<th>Price Threshold</th>
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<tr>
<td>New York</td>
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<td>The Borough of Manhattan</td>
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<td>The Borough of Brooklyn</td>
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<td>Florida</td>
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<td>Bexar County</td>
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FinCEN GTO Renewed:
• GTO was extended on February 23, 2017 for 180 days for the six major metropolitan areas.
• “The subject of money laundering and illicit financial flows involving the real estate sector is something that we have been taking on in steps to ensure that we continue to build an efficient and effective regulatory approach.” said FinCEN Acting Director Jamal El-Hindi.”
FinCEN Takes Aim at Real Estate Secrecy in New York, Florida, Texas AND California

- Geographic Targeting Orders (GTO)

- Temporarily require certain U.S. title insurance companies to identify the natural persons behind companies used to pay “all cash” for residential real estate

- Triggered when purchase is made, at least in part, using currency or a cashier’s check, a certified check, a traveler’s check, a personal check, a business check, or a money order in any form
FinCEN Takes Aim at Real Estate Secrecy in New York, Florida, Texas AND California

- Submit information to U.S. Treasury
- Manhattan (more than $3 million) and Miami, Broward and Palm Beach (more than $1 million)
- AML regulations don’t cover all-cash residential real estate purchases while residences purchased with a mortgage are covered
A Year After Panama Papers, is Enough Being Done to Stop Illicit Finance?

• Transparency International has also published a new report, *Tainted treasures*: Money laundering risks in luxury markets, that shows in detail how luxury goods sellers – from jewelers and real estate agents to yacht builders and diamond brokers – *do little if anything* to check if their customers are using corrupt money to fund their high-end purchases.

• Transparency International found that *little due diligence is done on luxury goods buyers* and where there are laws, there is little enforcement.
Identifying AML Risk in Complex Structures
Background on new CDD Rule

- The rule was designed to enhance financial transparency and safeguard the financial system against illicit use.
- Key Precipitating Factors
  - 2006 - FATF Rating – Partially Compliant with CDD standards related to beneficial ownership
  - 2010 - Guidance Issued by FinCEN, the SEC and CFTC
  - 2013 - US presented G-8 its Action Plan for Transparency of Company Ownership and Control
  - Feb. 2015 – The Lagarde list was published which exposed suspected tax evaders
  - April 2016 - Panama Papers list was published which exposed suspected tax evaders
Description of the Beneficial Ownership Rule
Beneficial Ownership Legislation

On May 5, 2016, U.S. Department of the Treasury announced a Customer Due Diligence (CDD) Final Rule, proposed Beneficial Ownership legislation, and proposed regulations related to foreign-owned, single-member limited liability companies (LLCs).

– Rule becomes mandatory on **May 11, 2018**

• Key Premises:

  – The CDD Final Rule adds a new requirement that financial institutions – including banks, brokers or dealers in securities, mutual funds, futures commission merchants, and introducing brokers in commodities – **collect and verify the personal information of the real people** (also known as beneficial owners) **who own, control, and profit** from companies when those companies open accounts.

  – Companies formed within the U.S. would be required to file beneficial ownership information with the US Treasury Department.
Covered Financial Institutions:

- Banks
- Brokers or dealers in securities
- Mutual funds
- Futures commission merchants
- Introducing brokers in commodities
The Final Rule defines a legal entity customer as:

- A Corporation
- An LLC
- A general partnership
- Any other entity created by the filing of public document with a Secretary of State or similar office

The Final Rule does not exempt:

- Foreign Publically Traded Companies
- Foreign Non-Profits

*Note that general trusts are not included in the definition of a legal entity unless public filings are made.*
The rule contains 4 core requirements:

1. Customer identification and verification

2. Beneficial ownership identification and verification
   - Ownership Prong
   - Control Prong

3. Understanding the nature and purpose of customer relationships to develop a customer risk profile, and

4. Ongoing monitoring for reporting suspicious transactions and, on a risk-basis, maintaining and updating customer information.
• **What is collected:**
  – Name, Address, Date of Birth and Social Security Number (or passport number/similar numerical identifier in the case of foreign persons)

• **Who is it collected from:**
  – Each individual, if any, who owns, directly or indirectly, **25 percent** or more of the equity interests of the legal entity customer (e.g., each natural person that owns 25 percent or more of the shares of a corporation); and
  – At least **one (1) or more individuals** with significant responsibility for managing the legal entity customer (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer)
• **Important Provisions and Comments:**
  
  – **Identify and verify the identity** of the beneficial owners or controllers of all legal entity customers (other than those that are excluded) **at the time of a new account is opened**. It is **not required that verification** of the individual’s **status** as a beneficial owner be obtained.
  
  – The Financial Institution **may rely on the information provided** and are not required to investigate the items assuming there are no obvious signs of fraud and that the Institution has no knowledge of facts that would reasonably call into question the reliability of information.
  
  – Financial Institutions are **not required to obtain information directly from the beneficial owners** of a legal entity.
  
  – In the case of documentary verification, the financial institution **may use photocopies** or other reproductions of the documents listed in paragraph in the applicable CIP rule.
• **Important Provisions and Comments:** (continued)
  
  – Financial institutions should **use beneficial ownership information as they use other information** they gather regarding customers (e.g., through compliance with CIP requirements), including for compliance with the Office of Foreign Assets Control (OFAC) regulations, and the currency transaction reporting (CTR) aggregation requirements.

  – It would **not be unreasonable to expect** that a legal entity that has a complex structure would have **personnel** who necessarily **have a general understanding of the ownership interests** of the natural persons behind it for operational, management, accounting, and other purposes.

  – Information can be obtained via the **Certification Form** found in the published guidance or via a document created by the Financial Institution which obtains substantially the same information.
CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name and Title of Natural Person Opening Account: 

b. Name and Address of Legal Entity for Which the Account is Being Opened: 

c. The following information for each individual, if any, who, directly or indirectly, through any arrangement, understanding, relationship or otherwise, owns 25% or more of the equity interests of the legal entity listed above:

<table>
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<tr>
<th>Name</th>
<th>Date of Birth</th>
<th>Address (Residential or Business Street)</th>
<th>For U.S. Person: Social Security Number</th>
<th>For Foreign Person: Passport No. and Country of Issuance or Other Similar ID No.</th>
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If appropriate, an individual listed under section (c) above may also be listed in this section (d):

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<th>Name/Title</th>
<th>Date of Birth</th>
<th>Address (Residential or Business Street)</th>
<th>For U.S. Person: Social Security Number</th>
<th>For Foreign Person: Passport No. and Country of Issuance or Other Similar ID No.</th>
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d. The following information for any individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer, etc.); or
- Any other individual who regularly performs similar functions.

L. (Name of natural person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: __________________________ Date: __________________________

2 In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government issued document evidencing nationality or residence and bearing a photograph of similar safeguard.
A covered financial institution may comply by either:

- obtaining certification in the form of Appendix A from the individual opening the account on behalf of the legal entity customer; or
- by obtaining from the individual the information required by the form by another means, provided the individual certifies, to the best of the individual’s knowledge, the accuracy of the information

FinCEN believes that beneficial ownership information must be, at the time of account opening, both

- current, and
- certified by an individual authorized by the customer to open accounts at financial institutions to be accurate to the best of his or her knowledge

Financial institutions can rely upon the beneficial ownership information provided by the person opening the account.

No blanket safe harbor triggered by the use and collection of the standard Certification Form
Assessing The Risk Score and Conducting Ongoing CDD
The CDD Rule amends the AML program requirements for each covered financial institution to explicitly require covered institutions to implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence, to include:

- **Understanding the nature and purpose** of the customer relationships; and

- **Conducting ongoing monitoring** to identify and report suspicious transactions and, **on a risk basis**, to maintain and **update customer information**.

The **procedures must establish risk-based practices** for verifying the identity of each beneficial owner identified to the covered financial institution, **to the extent reasonable and practicable**.
• The Nature and Purpose:
  – A customer **risk profile** refers to the information gathered about a customer at account opening used to **develop a baseline** against which customer activity is assessed for suspicious activity reporting.

  – **Information** may be **integrated into the financial institution’s automated monitoring system**, and may be used after potentially suspicious transaction has been identified, as one means of determining whether or not the identified activity is suspicious.
Ongoing Monitoring:

• When a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must **update the customer information, including beneficial ownership information.**

• This provision **does not impose a categorical requirement** that financial institutions must update customer information, including beneficial ownership information, on a continuous or periodic basis. Rather, the updating requirement is event-driven and occurs as a result of normal monitoring.

• These requirements **represent a floor, not a ceiling,** and, consistent with the risk-based approach, financial institutions may do more in circumstances of heightened risk, as well as to mitigate risks generally.
AML Risk Factors

• You may want to consider the following risk factors:
  • Nature of the customer’s business
  • High Risk Customer Type
    • Cash Intensive Business
    • Non-Governmental Organization
    • Non-Banking Financial Institution
    • Money Service Business
    • Politically Exposed Person
  • Customer Tenure
  • Number of Accounts
  • Type of Products Utilized
  • Country of Residence/Country of Transactions
  • Ownership Structure
The Complexities of Beneficial Ownership
Beneficial ownership information can be obscured through the use of:

- **Shell companies** (which can be established with various forms of ownership structure), especially in cases where there is foreign ownership which is spread across jurisdictions
- **Bearer Shares**
- **Formal nominee shareholders** and directors where the identity of the nominator is undisclosed
- **Informal nominee shareholders** and directors, such as close associates and family, and
- **Trusts and other legal arrangements** which enable a separation of legal ownership and beneficial ownership of assets.
- **Use of intermediaries in forming legal persons**, including professional intermediaries (ex. Lawyers).
Potential Red Flags to look out for:

- Entities incorporated in various high risk geographies. Especially when the business is not involved in that area.
- Foreign individuals of high risk geographies that own shares in a domestic company.
- The client or representative opening the account on behalf of the client is unable to/or is reluctant in providing ownership information.
- The use of shell companies, private investment companies, or trusts.
- The use of a registered agent appears to be a nominee incorporation service provider.
- A customer provides an invalid phone number.
- The customer’s background differs from that which would be expected on the basis of their business activities.
Best Practices

- Use a Beneficial Ownership Certification form.
- Train the front end staff responsible for opening accounts on the importance of gaining a true understanding of the entity and its owners.
- Establish a standard timeline for periodic review of existing client relationships.
- Ensure that once new beneficial ownership information is collected all effected accounts are updated accordingly.
- Conduct research on the registered agent of the company.
- Conduct research on the basic information of the entity (address, EIN, website, phone number).

Ultimately, it is up to the Financial Institution’s risk appetite in the areas of Compliance, Legal, Reputational, and Credit as to how far the due diligence on the beneficial owners will go.
CDD Rule in Summary

- The new CDD rule requires the identification of ownership greater than 25% and at least 1 controlling party when new accounts are opened after on or after May 11, 2018.
- It is not required that verification of the individual’s status as a beneficial owner be obtained.
- Financial Institutions are not required to obtain information directly from the beneficial owners of a legal entity.
- In the case of documentary verification, the financial institution may use photocopies or other reproductions of the documents listed in paragraph in the applicable CIP rule.
- The Financial Institution may rely on the information provided and are not required to investigate the items assuming no concerns related to deception exist for the Bank.
- The Financial Institution is required to implement and maintain appropriate risk-based procedures for conducting ongoing customer due diligence to understand the nature and purpose of the customer relationship and for conducting ongoing monitoring to maintain and update customer information.
What to Watch For…

• Continued Regulator interest in institutional exposure to the MF Papers

• A slow, steady drip of disclosed PEP transactions involving offshore entities

• Increased questioning by banks and broker-dealers about BO and control of offshore entities transacting through them (even as non-client counterparties)

• Offshore Corporate Formation is not illegal
  • Raises level of risk and associated due-diligence
  • Document transparency, purpose, expected activity
  • Offshoreleaks.icij.org

• Rapid Response Team
  » Responding to events, subpoenas, etc.
  » Reactive measures (look-back reviews, self-disclosures, SARs)
  » Proactive measures
Questions?
Contact Information

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Management of Offshore Accounts
Identifying High Risk Jurisdictions

• What makes a country “high risk?”
  – Someone with authority to say so, said so ...
  – Office of Foreign Assets Control (OFAC)
    • Specially Designated Nationals List (SDN)
  – Financial Action Task Force (FATF)
    • Non-Cooperating Countries & Territories
  – US Treasury Department
    • Through FinCEN, USA PATRIOT Act, Section 311, “Primary Money Laundering Concern”
Identifying High Risk Jurisdictions

• What makes a country “high risk?” (Cont’d)
  – International Monetary Fund (IMF)
    • Offshore Financial Centers
  – US State Department
    • International Narcotics Control Strategy Report
      – Volume I: Drug and Chemical Control
      – Volume II: Money Laundering and Financial Crime
  – HIFCA/HIDTA Jurisdictions (Zip Codes)
Identifying High Risk Jurisdictions

• What makes a country “high risk?” (Cont’d)
  – Private Parties:
    • World-Check
    • Promontory
    • Transparency International
    • BSA/AML/OFAC Software Vendors
Identifying High Risk Jurisdictions

• What makes a country “high risk?” (Cont’d) … and last but not least
  – Financial Institutions Internally:
    • Constructing a risk rating by evaluating one or more of the factors mentioned previously
Identifying High Risk Jurisdictions

- What’s your risk appetite?
- What’s the probability of encountering these jurisdictions in your business model?
Managing High Risk Jurisdictions

• Construct Policies, Procedures and Processes that make clear the need to understand the jurisdiction(s) in question.
• Distribute and train the appropriate staff, especially the front office.
Managing High Risk Jurisdictions

• Make the country - and corresponding code - a required item
• Employ a standard country code, e.g., ISP country code 2 character (US), FinCEN 2 character, proprietary list, full names (United States), etc.
• Require that onboarding and transaction monitoring systems test country code fields.
Managing High Risk Jurisdictions

- During the annual independent review and BSA/OFAC model validation, check for proper field mapping.
- Country codes play an important role in wire transfers, particularly SWIFT MT103s and MY202COVs.
Red Flags for Offshore Accounts and Transactions

- See RED flags
- A customer deposits funds into several accounts, usually in amounts of less than $3,000, which are subsequently consolidated into a master account and transferred outside of the country, particularly to or through a location of specific concern (e.g., countries designated by national authorities and Financial Action Task Force on Money Laundering (FATF) as noncooperative countries and territories).
- Funds transfer activity occurs to or from a financial secrecy haven, or to or from a higher-risk geographic location without an apparent business reason or when the activity is inconsistent with the customer’s business or history.
Red Flags for Offshore Accounts and Transactions

- Funds transfer activity occurs to or from a financial institution located in a higher risk jurisdiction distant from the customer’s operations.
- Large, incoming funds transfers are received on behalf of a foreign client, with little or no explicit reason.
- A bank is unable to track the true accountholder of correspondent or concentration account transactions.
- Customers conducting business in higher-risk jurisdictions.
- A bank is unable to obtain sufficient information or information is unavailable to positively identify originators or beneficiaries of accounts or other banking activity.
Red Flags for Offshore Accounts and Transactions

- Frequent involvement of multiple jurisdictions or beneficiaries located in higher-risk offshore financial centers.
- Multiple high-value payments or transfers between shell companies with no apparent legitimate business purpose.
- Purpose of the shell company is unknown or unclear.
- Banks from higher-risk locations open accounts.
- Funds are sent or received via international transfers from or to higher-risk locations.
Suspicious Activity Monitoring for Offshore Accounts

- The RED flags noted above are indicative of the typologies surrounding Offshore Accounts.
- BSA/AML Transaction Monitoring System should include rules, scenarios, parameters, thresholds that mirror the typologies.
- Training is always an important element in effective Suspicious Activity Monitoring.
- As applied to the Panama Papers, the transaction monitoring system should flag any transaction that contains “Mossack Fonseca,” or the other pertinent keywords.
The 10 Most Popular Tax Havens in the Panama Papers

- British Virgin Islands
- Panama
- Bahamas
- Seychelles
- Niue
- Samoa
- British Anguilla
- Nevada
- Hong Kong
- United Kingdom

Of the companies that appear in Mossack Fonseca’s files, one out of every two — more than 113,000 — were incorporated in the British Virgin Islands. The second favorite jurisdiction was Panama, where the firm is headquartered.

Source: The Panama Papers, panamapapers.icij.org
The 10 Banks That Requested the Most Offshore Companies for Clients

- Experta Corporate & Trust Services
- Banque J. Safra Sarasin - Luxembourg S.A.
- Credit Suisse Channel Islands Limited
- HSBC Private Bank (Monaco) S.A.
- HSBC Private Bank (Suisse) S.A.
- UBS AG (Succ. Rue Du Rhone)
- Coutts & Co. Trustees (Jersey) Limited
- Societe Generale Bank & Trust Luxembourg
- Landsbanki Luxembourg S.A.
- Rothschild Trust Guernsey Limited

More than 500 banks, their subsidiaries and branches registered nearly 15,600 shell companies with Mossack Fonseca, according to ICIJ’s analysis. HSBC and its affiliates created more than 2,300 in total.

Source: The Panama Papers, panamapapers.icij.org
Summing Up…

• Determine your risk appetite. Decide which jurisdictions suit that appetite – and which don’t.
• Bring the table of “acceptable” and “unacceptable” into the policies and procedures.
• Train so that those who need to know, KNOW.
• Require that those systems involved in the BSA/AML effort have the capability to process country codes effectively.
Summing Up...

• Financial Action Task Force –
  – http://www.fatf-gafi.org/

• FinCEN Section 311 –
  – https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures

• International Monetary Fund – Offshore Financial Centers –

• US Department of State –
Questions?

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AML and FCPA
Connecting the Dots
AML and FCPA Connecting the Dots

• The “Panama Papers” event creates a unique intersection of risks between AML and the FCPA.
• This places additional burdens and obligations on the banks that have exposure to these types of accounts and for the AML programs that are required to oversee them.
• As noted earlier, AML Practitioners must be aware of, and react to possible red flags.
AML-FCPA Exposures and Risks

• Significant FCPA Enforcement under Prior Administrations
• Expect Continued focus on FCPA under Trump Administration
• International Efforts Continue
• Significant “Political” Exposure
  1. Anti Corruption
  2. Tax Evasion
  3. Government Accountability
  4. Greater focus on governance of multinational entities
AML-FCPA Connection

1. Know Your Customer – Always, and Now more than Ever
2. Effective Due diligence, EDD and CDD
3. PEP Screening – Cast a wide Net (“friends and Family”)
4. Geographic Awareness and Risk Assessment
   1. Know Foreign Jurisdiction Rules and Licensing Requirements
5. Beneficial Ownership Rules are a Powerful Tool
   1. FCPA Risk Extends to Subsidiaries and Joint Ventures
   2. Intercompany Cash Flow Poses a Risk as Well
AML-FCPA Controls

• Transaction Monitoring
  1. Source and Purpose
  2. Assessment of Legitimate Business Purpose
  3. Reasonableness
  4. Counterparty Assessment
  5. Are Your Transactions “Flight Capital” or Embezzled Funds

• Straw Parties, Agents, Intermediaries
• Offshore Conduits with Seemingly No Legitimate Purpose
AML-FCPA

• Additional Controls
  1. Strong Internal Audit
  2. Effective Risk Assessment
  3. Training and Education
     1. The Line must know what is Legal and Acceptable
  4. Internal Hotline and Whistle Blower Program
     1. Pay Attention to It and Take it Seriously
  5. News Monitoring
     1. Stay Abreast of FCPA actions and Investigations
     2. Be Aware if Your Client is Under Investigation
     3. Monitor Client Activities – New Products, New Markets
Questions?