

Personal Liability: Understanding The Risk And Deploying A Sound Mitigation Strategy

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Challenges For Regulators:

- Regulators face pressure to “hold individuals accountable”
- In nearly all AML compliance program failures, regulators review individual conduct
- Nonetheless, individual actions remain relatively rare:
 - Most AML program failures are institutional in nature, i.e., the result of collective decisionmaking over a long period of time
 - Agencies also must meet legal requirements and evidentiary standards
 - Individuals are more likely to contest actions because it affects their livelihood

NY Department of Financial Services Rule 504:

- Section 504.4 requires regulated institutions to adopt and submit annually a Board Resolution or Senior Officer Compliance Finding that to the best of the Board's or Officer's knowledge, the institution's Transaction Monitoring and Filtering Program complies with the requirements of the Rule.
- Impact on individual liability?

MoneyGram (FinCEN, DOJ) (2017):

- \$250,000 CMP and three-year injunction against former CCO Haider based on:
 - Failing to terminate MoneyGram outlets after being presented with information indicating that they were complicit in fraud
 - Failing to implement a policy for terminating outlets that posed a high risk of fraud
 - Structuring MoneyGram's AML program such that information the fraud department had about fraudulent schemes was not provided to SAR

Gibraltar Private Bank and Trust Company (OCC) (2015):

- \$2,500 CMP and PC&D against former CCO Sanders based on failure to file SARs on Rothstein activity, even after BSA officer brought matter to his attention
- \$75,000 CMP and Prohibition against former SVP Harris based on failure to properly maintain Rothstein accounts and file SARs
- Personal C&D against former Branch Manager Ellis based on failure to properly maintain accounts and file

Banamex (FDIC) (2017):

- \$90,000 CMP and Prohibition against former CEO and Chairman Villar
- \$70,000 CMP and Prohibition against former IAP Noseworthy
- \$30,000 CMP against former EVP Figueroa
- Actions based on their role in the bank's failure to maintain an effective program and file SARs in connection with suspicious remittances to Mexico

Importance of reporting and documenting decisions:

- Key decisions should be reported through appropriate channels and documented in the books and records
- These include decisions with respect to CDD/EDD, CIP, customer risk rating, monitoring, SAR

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Measuring a Healthy AML Program:

- How do we know our AML program is healthy?
 - What metrics can we point to in the absence of regulatory/audit issues?
- Metrics
 - How do I interpret the metrics?
 - When does this 'number/volume/value' become a concern?
- If something goes wrong or some big AML event impacts our institution
 - How we will respond?
 - Do we have a Response/Resiliency Plan?
 - What's our communication plan and strategy?
 - Who needs to be involved?
 - How do we know it is contained or won't happen again?

Key Risk Indicators / Key Performance Indicators:

- Monitoring Solution Performance
 - Alert vs Investigation Percentage
 - Investigation vs SAR Percentage
 - Impacts on staffing
- Changes in system performance
 - Known impacts (acquisitions; month end/year end; other)
- Data Ingestion
 - AML monitoring solutions
 - OFAC/Sanctions screening solutions

Key Risk Indicators / Key Performance Indicators:

- Exception reporting/trending
 - CIP
 - SAR error rates
 - CTR error rates

- Production
 - Understanding Staffing Needs
 - BAU vs. Remediation vs. Special Events
 - New products/markets/customers
 - Aged items
 - Increase in aged items
 - Staff turnover

Reporting Frequency and Granularity:

- Board (Quarterly)
 - High Level Roll Up
 - Key trends
 - Compliance Update
 - Changing risks
- Executive Leadership (Monthly)
 - Metrics reports
 - Key trends
 - Key Functional Area Updates
- Sr. AML/Compliance Management (Weekly/Daily reporting)
 - Detailed reporting
 - Individual System Updates
 - Functional area updates

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Yates Memo and Cases from Other Jurisdictions

What Can They Teach Us?

Yates Memo September 2015

“Individual Accountability for Corporate Wrongdoing”

DOJ will give corporations “cooperation credit” only if the corporation supplies all relevant information related to individuals responsible for the potential misconduct.

From the start of investigations, DOJ will focus on individual liability.

DOJ will not agree to a resolution with a corporation that provides immunity to culpable individuals.

Civil attorneys in DOJ are also instructed to focus on individuals when considering punishment.

Stephen Bell – Standard Financial Group (UK 2015)

Settlement reached after Financial Conduct Authority (FCA) investigation concluding Bell was responsible for systemic weaknesses in the compliance systems he had designed at Standard Financial Group.

Bell was responsible for compliance oversight generally, had knowledge of and responsibility for the design and implementation of controls at the firms, and failed to provide adequate systems and controls relating to recruitment, training, monitoring, and control. The firms' compliance and file checking process did not adequately identify and assess risk.

Fined £33,800 and banned from acting as a compliance officer. This fine amount reflects a 30% discount that Bell received for agreeing to settle the case early in the investigation.

How to Safeguard Yourself Post Yates

D&O Insurance?

Accurately assess compliance staff and program?

Risk assessment to find true risks?

Transparently advise management of weaknesses?

Quit?

Cases from Other Jurisdictions – Lessons Learned

Anthony Wills and Michael Allin - Bank of Beirut (UK 2015)

Compliance officer Anthony Wills and internal auditor Michael Allin were fined after the FCA concluded that the Bank's anti-bribery and anti-money laundering systems and controls were lacking and that Wills and Allin had repeatedly and knowingly provided incorrect and misleading information about the Bank's progress and compliance.

In 2010, FCA formulated a Remediation Plan to address concerns regarding the Bank's internal audit and compliance monitoring. The bank repeatedly provided inaccurate and misleading information to FCA regarding its compliance with this plan. Wills provided incorrect information to FCA erroneously claiming that the Bank had completed mandates under the Remediation Plan. Allin prepared and submitted writings to the FCA suggesting that the Bank had completed its FCA mandated action points, when it in fact failed to do so.

Wills defended himself by stating that the senior management of the Bank – which is located in Lebanon – did not give him authority to fully explain issues to FCA, and that he therefore felt pressure from senior management to be careful when communicating with regulators.

Wills and Allin were fined £19,600 and £9,900 respectively. Both settled and received a 30% discount.

Michael Wheelhouse - Sindicatum Holdings Ltd. (UK 2008)

Financial Services Authority (FSA) found that Wheelhouse failed to take reasonable steps to implement adequate procedures to verify the identity of Firm clients and failed to ensure that the Firm kept adequate records to demonstrate it had verified identity of clients.

Wheelhouse was an approved Money Laundering Reporting Officer and therefore had responsibility for oversight of its compliance with the FSA's rules on AML systems and controls.

Fined £17,500. He received a 30% discount for agreeing to settle at an early stage of the FSA investigation.

Syed Hussain – Habib Bank AG Zurich (UK 2012)

Hussain, an approved Money Laundering Reporting Officer, failed to take reasonable steps to ensure that the bank established and maintained adequate procedures for assessing the level of money laundering risk posed by prospective and existing customers; failed to conduct sufficient enhanced due diligence in relation to higher risk customers; neglected to carry out adequate reviews of the bank's AML systems and controls, and failed to adequately provide training to address shortcomings in the bank's AML practice or maintain sufficient records of AML trainings.

Although Hussain opened and checked customer files, he neglected to identify high risk accounts and conduct enhanced due diligence on high risk transactions.

45% of the bank's customers (accounting for 70% of the bank's deposits), came from jurisdictions which did not have AML requirements equivalent to the UK's and/or carried a higher risk of money laundering because of high levels of corruption in the customer's country of origin.

Fined £17,500. He received a 30% discount for agreeing to settle at an early stage of the FSA investigation.

Sudipto Chattopadhyay – Alpari Ltd (UK 2010)

Chattopadhyay failed to take reasonable steps to ensure that Alpari had adequate processes and procedures in place for assessing its exposure to money laundering and financial crime risk and overseeing and monitoring the role of compliance and anti-money laundering function to ensure that it had adequate resources in line with growth of the business. Chattopadhyay also failed to ensure that Alpari adequately carried out checks to screen customers against UK and global sanctions lists and to determine whether a customer is a politically exposed person, or carried out due diligence procedures in relation to customers from higher risk jurisdiction at the account opening stage. Lastly, he failed to adequately carry out ongoing monitoring of the business relationship with customers and to adequately train himself and other employees in relation to financial crime and money laundering.

Fined £14,000. This amount reflects a 30% discount received for settling at an early stage of the FSA investigation.

Ping An of China Securities (Hong Kong 2015)

He Zhi Hua, CEO of Ping An, was banned for 12 months for failure to establish internal control procedures aimed at preventing and impeding money laundering, identify and report suspicious transactions, and provide AML training to staff.

An investigation by the Hong Kong Securities and Futures Commission (SFC) revealed that a series of suspicious transactions were carried out by Ping An's clients in fall 2010. Despite apparent red flags, these suspicious transactions received no attention or follow-up. These incidents were not reported to authorities in a timely fashion as required under the Organized and Serious Crimes Ordinance. The SFC found a lack of internal AML policies and AML training at Ping Am.

The SFC found that He's conduct contributed to Ping An's internal control deficiencies.

Huang Qiang – Guangdong Securities Ltd (Hong Kong 2017)

The Hong Kong Securities and Futures Commission (SFC) sanctioned Guangdong Securities Ltd (GSL) for breach of AML guidelines when handing third party payments and found that Huang – a former managing director and responsible officer – failed to ensure the maintenance of appropriate standards of conduct and adherence to proper procedures, and failed to diligently supervise his staff to conduct business on GSL's behalf.

Banned from re-entering the industry for nine months (from March 2017-December 2017).

Wu Biwei – iSTAR International Futures Co. Limited (Hong Kong 2017)

The SFC sanctioned iSTAR for failure to comply with AML regulatory requirements when processing third party fund transfers. Wu was the most senior person at iSTAR at the time, and the SFC found that he contributed to the regulatory violations by failing to have proper safeguards in place against the risks of money laundering and terrorist financing associated with third party fund transfers. Specifically, Wu failed to make appropriate inquiries to ensure third party fund transfers were consistent with known legitimate activities, and to maintain records of such inquiries. Wu also failed to implement policies and training programs for preventing money laundering.

In addition, Wu exploited the lax controls by making deposits into various client accounts, and by receiving deposits in his own trading account when he needed additional margin to trade.

Suspended for six months from June to December 2017.

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