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Financial Institutions Group

**Countering the
Financing of Terrorism**
ACAMS Chicago Chapter
Double Session Event

July 17, 2018

Presented by:

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SOURCES OF AUTHORITY

Relevant Statutes (Anti-Money Laundering)

- Financial Recordkeeping and Currency and Foreign Transactions Reporting Act of 1970 (Bank Secrecy Act)
- USA PATRIOT Act of 2001
- Others

Relevant Statutes (Economic Sanctions)

- Trading with the Enemy Act of 1917
- International Emergency Economic Powers Act of 1977
- Antiterrorism and Effective Death Penalty Act of 1996
- Others

Relevant Agencies

- Treasury Department
Office of Terrorism and Financial Intelligence
 - FinCEN
 - OFAC
- Prudential banking regulators
(FDIC, OCC, FRB, states – FFIEC)
- Department of Justice
- Others

Additional Authority

- Executive Orders
- United Nations
- Financial Action Task Force (FATF)
- Egmont Group of FIUs
- The Wolfsberg Group
- Others

TERRORISM DESIGNATIONS

Terrorism Defined

Premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents

22 U.S.C. § 2656f(d)

Specially Designated Terrorists (SDTs)

IEEPA, Executive Order 12947 (13099)

- Prohibiting transactions with terrorists who threaten to disrupt the Middle East Peace Process (1995)
- 38 individuals and entities as of December 31, 2016

Foreign Terrorist Organization (FTOs)

- Antiterrorism and Effective Death Penalty Act of 1996
- Secretary of State, with Secretary of the Treasury and Attorney General
- 61 organizations or groups as of December 31, 2016

Foreign Terrorist Organizations

Abu Sayyaf Group (ASG)	Aum Shinrikyo (AUM)	Basque Fatherland and Liberty (ETA)	Gama'a al-Islamiyya (Islamic Group) (IG)	HAMAS
Harakat ul-Mujahidin (HUM)	Hizballah	Kahane Chai (Kach)	Kurdistan Workers Party (PKK) (Kongra-Gel)	Liberation Tigers of Tamil Eelam (LTTE)
National Liberation Army (ELN)	Palestine Liberation Front (PLF)	Palestinian Islamic Jihad (PIJ)	Popular Front for the Liberation of Palestine (PFLP)	PFLP-General Command (PFLP-GC)
Revolutionary Armed Forces of Colombia (FARC)	Revolutionary People's Liberation Party/Front (DHKP/C)	Shining Path (SL)	al-Qa'ida (AQ)	Islamic Movement of Uzbekistan (IMU)
Real Irish Republican Army (RIRA)	Jaish-e-Mohammed (JEM)	Lashkar-e Tayyiba (LeT)	Al-Aqsa Martyrs Brigade (AAMB)	Asbat al-Ansar (AAA)
al-Qa'ida in the Islamic Maghreb (AQIM)	Communist Party of the Philippines/New People's Army (CPP/NPA)	Jemaah Islamiya (JI)	Lashkar i Jhangvi (LJ)	Ansar al-Islam (AAI)
Continuity Irish Republican Army (CIRA)	Islamic State of Iraq and the Levant (formerly al-Qa'ida in Iraq)	Islamic Jihad Union (IJU)	Harakat ul-Jihad-i-Islami/Bangladesh (HUJI-B)	al-Shabaab
Revolutionary Struggle (RS)	Kata'ib Hizballah (KH)	al-Qa'ida in the Arabian Peninsula (AQAP)	Harakat ul-Jihad-i-Islami (HUJI)	Tehrik-e Taliban Pakistan (TTP)
Jundallah	Army of Islam (AOI)	Indian Mujahideen (IM)	Jemaah Anshorut Tauhid (JAT)	Abdallah Azzam Brigades (AAB)
Haqqani Network (HQN)	Ansar al-Dine (AAD)	Boko Haram	Ansaru	al-Mulathamun Battalion
Ansar al-Shari'a in Benghazi	Ansar al-Shari'a in Damah	Ansar al-Shari'a in Tunisia	ISIL Sinai Province (formally Ansar Bayt al-Maqdis)	al-Nusrah Front
Mujahidin Shura Council in the Environs of Jerusalem (MSC)	Jaysh Rijal al-Tariq al Naqshabandi (JRTN)	ISIL-Khorasan (ISIL-K)	Islamic State of Iraq and the Levant's Branch in Libya (ISIL-Libya)	Al-Qa'ida in the Indian Subcontinent
Hizbul Mujahideen (HM)				

Specially Designated Global Terrorists (SDGTs)

Executive Order 13224

- Blocking property and prohibiting transactions with persons who commit, threaten to commit or support terrorism (2001)
- 1,056 individuals and entities as of December 31, 2016

State Department Country Reports on Terrorism 2016

- Africa
- East Asia and the Pacific
- Europe
- Middle East and North Africa
- South and Central Asia
- Western Hemisphere

FINANCING TERRORISM

Cost to Perpetrate Significant Terrorist Attacks

ATTACK	YEAR	KILLED	INJURED	COST
World Trade Center	1993	6	> 1,000	\$400
Oklahoma City	1995	168	> 680	\$5,000
Nairobi and Dar es Salaam	1998	224	4,085	\$50,000
9/11	2001	2,996	> 6,000	\$500,000
Bali	2002	202	> 300	\$74,000
Madrid	2004	192	> 2,000	\$80,000
London	2005	52	> 700	\$15,000
Boston	2013	3	100s	\$500
Kenya	2013	>= 67	> 175	\$5,000
“Lone wolf” attacks	Ongoing	Ongoing	Ongoing	< \$100

The World's 10 Richest Terrorist Organizations*

NAME	ANNUAL INCOME
Hizballah	\$1.1 billion
Taliban	\$800 million
Hamas	\$700 million
Al-Qaeda	\$300 million
ISIS	\$200 million
Kurdistan Worker's Party	\$180 million
Kata'ib Hizballah	\$150 million
Palestinian Islamic Jihad	\$100 million
Lashkar-e-Taiba	\$75 million
Real IRA	\$50 million

*Forbes (2018)

GENERATING, MOVING AND USING FUNDS

Generating Funds

- Private donations
- Abuse and misuse of nonprofit organizations
- State sponsorship
 - Syria
 - Iran
 - Sudan
 - North Korea

Generating Funds (cont.)

Criminal Activity

- Territorial exploitation
 - Oil and gas
 - Antiquities
 - Banks
- Extortion
 - Similar to taxation
 - Under threat, extract funds from citizens with minimal services provided

Generating Funds (cont.)

Other Criminal Activity

- Kidnapping for ransom
- Drug trafficking
- Smuggling
- Passport falsification
- Fraudulent schemes
- Money laundering
- Others

Moving and Placing Funds

- Banks
- Money service businesses
- Unlicensed money transmitters
- Smuggling
- Emerging payment systems

Using Funds

- Operations
 - Travel, vehicles, surveillance, weapons
 - Documents
 - Expenses
 - Couriers
 - Others

Using Funds (cont.)

- Propaganda and recruitment
 - Recruit members, raise funds
 - Social media, magazines, newspapers, websites, media outlets
- Training
 - Weapons, explosives, communications, ideology
 - Acquiring land and buildings
 - Increased use of virtual training

Using Funds (cont.)

- Salaries and compensation
 - Financial security and incentives
 - Long-term financial support
- Social services
 - Health, social, and educational
 - Undermines credibility of legitimate government

CUSTOMER AWARENESS

Customer Identification Program

- Required information
- Customer verification
- Comparison with government lists
- Customer notice
- Record retention

OFAC Issues

- Transliterations
- Fuzzy logic
- 50% rule

Evaluate software limitations

CDD Rule Amendments

- Conduct ongoing risk-based CDD (EDD)
- Understand nature/purpose of customer relationships
- Conduct ongoing monitoring to identify/report suspicious transactions and maintain/update customer information on risk basis

Beneficial Ownership Requirements

- Establish/maintain written procedures reasonably designed to identify/verify beneficial owners of legal entity customers
- Ownership prong (25%) and control prong
- New accounts starting May 11, 2018

SUSPICIOUS ACTIVITY REPORTS

Reportable Events

- Transactions aggregating \geq \$5,000 involving potential money laundering or BSA violations
- Violations aggregating \geq \$5,000 if suspect identified
- Violations aggregating \geq \$25,000 if no suspect identified
- Insider abuse in any amount
- Other suspicious activities

Completing SAR Form

Include information about:

- Suspects(s)
- Suspicious activity categories
- Dollar amount involved
- Any loss to Bank
- Information about Bank
- Narrative description

Immediate Notice Required

- For violations requiring immediate attention, should immediately notify law enforcement/regulators and file SAR
- Contact FinCEN Financial Institutions Hotline (1-866-556-3974) if customer potentially linked to terrorist activity

Case Study

Unusual Activity

- Foreign customer attempts to cash check for \$2,140
- Presents ID with different address
- Signature on check not signature on file
- Bank manager refuses to process check, issues internal fraud alert

Case Study (cont.)

Outcome

- Marwan al Shehhi
 - Hijacker of UA #175 – WTC South Tower
 - Used own name; purportedly on CIA list
- June 2001
- 9/11 Commission Monograph on Terrorist Financing:
 - “Nothing the hijackers did would have alerted any bank personnel to their being criminals, let alone terrorists bent on mass murder. Their transactions were routine and caused no alarm...No financial institution filed a suspicious activity report (SAR) and, even with benefit of hindsight, none of them should have.”

INSTITUTIONAL RISK MANAGEMENT

FinCEN Advisory (August 2014)

Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance

- Engaged leadership
- Compliance not compromised by revenue interests
- Information shared throughout the bank
- Leadership provide adequate human and technological resources
- Effective program tested by independent and competent party
- Leadership and staff understand how BSA reports are used

Institutional Risk Assessment

- Geographic footprint and surroundings
- Customer base
- Products and services
- BSA data
- Employees
- External information
- Derisking

GOVERNMENTAL INQUIRIES AND AUTHORITIES

Section 314(a) of the USA PATRIOT Act

- Identify accounts and transactions involved in terrorism or significant money laundering
- FinCEN queries 37,000 contacts at > 16,000 financial institutions every 2 weeks
- Requests accounts during preceding 12 months and transactions during last 6 months

Section 314(a) of the USA PATRIOT Act (cont.)

- Two weeks to respond with positive matches
- Lead information only – legal process needed for documents
- Processed 3,506 requests involving 572 terrorism cases and 2,934 money laundering cases
- 95% of requests contributed to arrests or indictments

Section 314(b) of the USA PATRIOT Act

- Safe harbor for financial institution sharing regarding terrorism/money laundering
- Voluntary registration with FinCEN
- Only share with other 314(b) participants
- Procedures to safeguard information and only use for permitted purposes

Section 311 of the USA PATRIOT Act

- Countries, institutions, and transaction/account types deemed “primary money laundering concern”
- Requires financial institutions to take “special measures”
 - Transaction recordkeeping and reporting
 - Information collection for beneficial ownership, payable through accounts, correspondent accounts
 - Prohibition on account opening or maintenance

Other Governmental Inquiries

- Informal
- Collaborative
- Subpoenas
- National Security Letters
- Geographic Targeting Orders

CRIMINAL PROSECUTIONS

Providing material support to terrorists

18 U.S.C. § 2339A

- Knowingly attempting to, conspiring to, or actually
- Providing material support or resources, or concealing or disguising: (i) nature; (ii) location; (iii) source; or (iv) ownership of material support or resources
- Knowing or intending that they be used in: (i) preparation for; (ii) carrying out; (iii) preparation for concealment of escape from; or (iv) carrying out the concealment of escape from
- Offense identified as federal crime of terrorism

Punishable by imprisonment for not more than 15 years (or for life if death results) and/or fine of not more than \$250,000 (\$500,000 for organization)

Providing material support or resources to FTOs

18 U.S.C. § 2339B

- Knowingly attempting to provide, conspiring to provide, or actually providing
- Material support or resources
- To FTO
- Knowing that FTO: (i) designated an FTO; or (ii) engages, or has engaged in “terrorism” or “terrorist activity”

Punishable by imprisonment for not more than 20 years (or for life if death results) and/or fine of not more than \$250,000 (\$500,000 for organization)

Other Crimes

- Aircraft piracy and related offenses (49 U.S.C. §§ 46501-07)
- Aircraft sabotage (18 U.S.C. § 32)
- Crimes against immediate family members of federal officials (18 U.S.C. § 115) and internationally protected persons (18 U.S.C. §§ 112, 878, 1116, 1201(a)(4))
- Sea piracy (18 U.S.C. § 1651)
- Hostage taking (18 U.S.C. § 1203)
- Terrorist acts abroad, including murder, against US nationals (18 U.S.C. § 2332)
- Acts of terrorism transcending national boundaries (18 U.S.C. § 2332b)
- Others

PRIVATE LITIGATION

Anti-Terrorism Act

18 U.S.C. § 2333

- U.S. national injured in person, property, or business, by act of international terrorism (or estate, survivors, or heirs)
- May sue in U.S. district court and recover threefold damages sustained and cost of suit, including attorney's fees
- In action for injury arising from act of international terrorism committed, planned, or authorized by FTO (designated when act committed, planned, or authorized)
- Liability asserted for any person who aids and abets, by knowingly providing substantial assistance, or who conspires with person who committed

Other Authority

- Alien Tort Statute
- Justice Against Sponsors of Terrorism Act (JASTA)

TERRORIST FINANCING RED FLAGS

Accounts

- Accounts receiving periodic deposits between dormant periods, artificially creating transaction history
- Small dormant account suddenly receives deposit(s), followed by daily cash withdrawals until deposit(s) removed
- Customer refuses to provide information, attempts to reduce amount of information, or provides misleading/unverifiable information

Accounts (cont.)

- Account for which several persons have authority, yet no apparent relationship
- Account opened by entity with same address as other entities, but with same authority, with no apparent reason
- Account opened for recently formed entity with higher than expected deposits relative to income

Accounts (cont.)

- Opening by same person of multiple accounts into which numerous small deposits are made, inconsistent with income
- Account for entity involved in activities of entity linked to those of terrorist organization
- Account for entity possibly linked to terrorist organization shows funds movements above income

Deposits and Withdrawals

- Deposits for entity in combinations of monetary instruments, atypical of normal activity
- Large cash withdrawals from account not normally associated with cash transactions
- Large cash deposits made to account, when apparent business activity conducted in checks or other payment instruments

Deposits and Withdrawals (cont.)

- Mixing of cash deposits and monetary instruments in account where such transactions unrelated to normal account use
- Multiple transactions on same day at same branch with apparent attempt to use different tellers
- Structuring deposits through multiple branches or by groups of individuals at single branch

Deposits and Withdrawals (cont.)

- Cash transactions in amounts consistently just below identification/reporting thresholds
- After counting uncounted funds for transaction, transaction reduced to amount just below identification/reporting trigger requirements
- Transactions of multiple monetary instruments at amounts consistently just below identification/reporting thresholds, particularly if sequentially numbered

Wire Transfers

- Small transfers to avoid triggering identification/reporting requirements
- Wire transfers to/for individual where information on originator, or person on whose behalf transaction is conducted, is not provided
- Multiple accounts used to collect and funnel funds to foreign beneficiaries
- Foreign exchange transactions performed for customer by third party, followed by wire transfers of funds to locations having no apparent business connection with customer, or to countries of specific concern

Characteristics of Customer and Activity

- Funds generated by business owned by individuals of same origin, or involvement of multiple individuals of same origin from countries of specific concern acting on behalf of similar business types
- Shared address for individuals involved in cash transactions, particularly when address is also business location, and/or does not seem to correspond to stated occupation
- Stated occupation of transactor not commensurate with level/type of activity

Characteristics of Customer and Activity

(cont.)

- For charities, financial transactions for which no logical purpose, or where no link between entity's stated activity and other parties in transaction
- Safe deposit box opened on behalf of entity when business activity is unknown, or activity does not justify use of safe deposit box
- Unexplained inconsistencies in customer identification/verification

Transactions Linked to Locations of Concern

- Transactions involving foreign currency exchanges, soon followed by wire transfers to locations of specific concern
- Deposits soon followed by wire transfers of funds, particularly involving location of specific concern
- Business account through which large number of incoming/outgoing wire transfers take place, and for which no logical purpose, particularly when activity involves locations of specific concern

Transactions Linked to Locations of Concern (cont.)

- Use of multiple accounts to collect and funnel funds to small number of foreign beneficiaries, particularly when in locations of specific concern
- Customer obtains credit instrument, or engages in commercial financial transactions involving movement of funds involving location of specific concern, when no logical business reasons for dealing with that location
- Opening of financial institution accounts from locations of specific concern
- Sending or receiving funds by international transfers involving locations of specific concern

MILITARY OPTION

Military Strikes



QUESTIONS?



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John M. Geiringer leads the Financial Institutions Group's regulatory practice area. John is a well-known banking attorney who handles regulatory issues for banks across the country, including those involving corporate governance, mergers and acquisitions, consumer compliance and operations, enforcement actions, and internal investigations. John is a Vice Chairman of the American Bar Association's Banking Law Committee and the former Chairman of its Enforcement, Insider Liability and Troubled Banks Subcommittee and its Bank Secrecy Act/Anti-Money Laundering Subcommittee.

Prior to joining the firm, he served as legal counsel for the Illinois bank regulatory agency and was in the bank regulatory compliance area of a major accounting firm. He is an Adjunct Professor at Chicago-Kent College of Law's Graduate Program in Financial Services Law and is a member of the Advisory Board of The Anti-Money Laundering Association. He also served as a Faculty Advisor for the Illinois Bankers Association and is a past Chairman of the Chicago Bar Association's Financial Institutions Committee.

John is a frequent speaker at seminars for bankers, lawyers and regulators on issues of financial institutions law. He is the co-editor of a two-volume banking law handbook and is the author of the chapter "Supervisory Enforcement Actions and Related Civil Liability". He is also the co-author of the chapter, "Bank Examination and Enforcement" in *The Keys to Banking Law: A Handbook for Lawyers*. He received his B.A. from American University and his J.D. from DePaul University College of Law.

The Financial Institutions Group was again named as one of the top financial institution groups in the nation in the *U.S. News & Best Lawyers* 2015 report.

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