Beneficial Ownership
Michael Loughnane

On October 12th, the US Capital Chapter, cooperatively with Global Witness and the Financial Accountability and Corporate Transparency or FACT Coalition, held a panel discussion on beneficial ownership and corporate transparency. The panel, led by moderator and the US Capital Chapter Co-Chair Dennis Lormel, discussed the topic from three different perspectives - legislative, regulatory, and non-government organization (NGO). The result was a morning that demonstrated a great deal of mutual interest and synergy. Panel members included former ACAMS Executive Vice President John Byrne, who described the compliance related efforts to address beneficial ownership, and Elise Bean, former Staff Director and Chief Counsel, US Senate Permanent Subcommittee on Investigations, who provided insights about former Senator Carl Levin’s interest in corporate transparency, legislative actions he took as chairman of the Subcommittee, and the need to move forward with new transparency legislation. The panel also afforded an opportunity to hear about the NGO sector’s interest in corporate transparency from Global Witness Anti-Money Laundering Campaign leader Mark Hays who discussed his organization’s research and how the beneficial ownership issue aligned with broader interest in transparency to help fight the battle against corruption worldwide.

The panel discussed several examples of attempts to mask beneficial ownership and control that protected individuals, businesses, and countries from exposure, including Riggs Bank in 2004 and the cases against UBS and Credit Suisse. The discussion also encompassed the use of shell companies to mask the actions of transnational criminal organizations such as Hezbollah to circumvent sanctions and support terror funding objectives. The panel also discussed some of the issues with the current due diligence obligations and the significant opportunities for abuse by those in the system who know points of exploitation.

The beneficial ownership and transparency panel was an opportunity for a deep and insightful discussion about the broader needs of increasing transparency and establishing the determination of beneficial ownership as a requirement. The

Upcoming Event Topics in 2018:
February 20: AML and Marijuana
April: CDD Implementation Roundtable
TBD: Financial Intelligence vs. Investigation
TBD: Cryptocurrency
TBD: AML for Small Banks & Credit Unions
TBD: Handling Subpoena Requests
December: Year in Review

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discussion involved the meaning and impact of FinCEN’s Customer Due Diligence rule, as well as Capitol Hill’s interests as Congress looks to close current loopholes for which the US has been criticized internationally, permitting beneficial owners anonymity as they form their businesses in any state.

After an effective framing of the issue, the panel discussed upcoming and proposed activities to meet these challenges, including the three proposed bills in Congress designed to increase transparency of ownership of businesses formed in the US.

The speakers noted how in other parts of the world, such as in the United Kingdom, there is an even greater effort toward disclosure of beneficial ownership with a movement for full public release of the information. The panelists believe we are at a critical moment regarding beneficial ownership and corporate transparency both in the US and around the world and they were hopeful that the US would be taking action soon to increase the transparency of corporations formed here.

Third Party Money Laundering Case Studies
Michael Opiela

On November 6th, the Chapter held a presentation on law enforcement case studies from the perspective of a private sector BSA/AML software surveillance provider and a federal law enforcement agency. David Schiffer of Safe Banking Systems provided an in-depth analysis of two high profile public corruption cases that was gathered by their data collection systems completely from public records and world-wide journalism articles. The first covered the 1MDB Malaysia scandal involving Najib Razak, the Prime Minister of the country, and Jho Low, a business tycoon. Razak initiated a development fund ostensibly to fund business development in Malaysia. Instead, $7 billion of this fund went missing and $700 million of it was found diverted to his personal bank accounts. Some of the stolen funds were found to have financed such main-stream motion pictures as Dumb and Dumber, and ironically, The Wolf of Wall Street. Some of the tainted asset purchases included French Impressionist paintings and jewelry. Movie stars Leonardo Di Caprio and Miranda Kerr received some of these assets as gifts and are now cooperating with authorities in repatriating the assets.

The second Safe Banking Systems case study concerned the wide-spread public corruption in Brazil involving its national oil company, Petrobras. This scandal, nicknamed “Operation Carwash,” involved bribery of both Petrobras employees and high-government officials in Brazil. The first arrested Petrobras employee “named names,” eventually implicating four Presidents of Brazil, including Dilma Rousseff, who was impeached in August of 2016, and her successor, President Michel Temer.

In total, it is estimated that 1.5% of oil company contracts were paid as bribes to Petrobras employees, resulting in 746 seizures, 260 people indicted and a total of 1,300 years of prison time given. Six Brazilian politicians have already been convicted, with many others still under investigation. It is believed that former President Lula di Silva masterminded the scheme which resulted in $26 million in illicit payments. The presentation clearly showed the importance of financial institutions having access to copious data on PEPs and using this data in a vigorous KYC program.
The second presenter of the day was Lee Brown, Supervisory Special Agent with Homeland Security Investigations (HSI), a unit of the Department of Homeland Security (DHS). Special Agent Brown discussed trends and case studies in the Mexican armored car service industry and how it facilitated a huge amount of money laundering of drug-cartel cash. This large-scale cross-border money laundering scheme was started when Mexican President Felipe Calderon initiated a crack-down on cash deposits of US dollars to Mexican banks.

This presentation showed the importance of the CMIR form as an AML tool when it is properly prepared and includes all required data fields. It also demonstrates how law enforcement and FinCEN work together to strengthen the anti-money laundering rules and detect and deter money laundering. FinCEN recognized HSI with one of its Law Enforcement Awards in May 2017. These awards go to law enforcement agencies that use Bank Secrecy Act reporting provided by financial institutions in their criminal investigations.

**Sanctions Developments and Compliance Challenges**

*Barbara I. Keller*

On September 12th, the US Capital Chapter members had a chance to hear from a panel of experts on the current environment for economic sanctions and compliance challenges. Panel members included: Lorraine Lawlor, Wells Fargo; Jesse Spiro, Thompson Reuters/World Check; and Laura Yovanoff, Goldman Sachs. US Capital Chapter Board member John Wagner of Deloitte moderated the panel.

The panel discussed five main topics—the Countering America's Adversaries Through Sanctions Act (CAATSA); Joint Comprehensive Plan Of Action (JCPOA); sanctions against Venezuela; sanctions against North Korea; and enforcement actions against CSE Global and Exxon.

CAATSA was signed into law in early August and it includes sanctions against Iran, North Korea, and Russia, but the main focus of the legislation was tightening sanctions against Russia. The legislation codified several existing executive orders, including four Ukraine/Russia related executive orders and the executive orders that provide the President with the authority to impose sanctions on persons engaged in malicious cyber-related activities. In addition to codifying executive orders, the Act tightens the sectoral sanctions in the Russian financial services and energy sectors. The Act also puts “secondary sanctions” up front which are a relatively new kind of sanctions that targets non-U.S. persons who do business with individuals, countries, and regimes in targeted jurisdictions like Iran and North Korea.

The use of sectoral and secondary sanctions has fundamentally changed sanctions compliance and risk exposures to the financial services sector. Sanctions compliance has evolved to incorporate an increasingly anti-money laundering (AML) focused compliance model, including using customer due diligence and other critical information from pertinent regions (i.e., the financial services and energy sector).

The panelists provided recommendations for financial institutions to conduct due diligence pursuant to OFAC’s FAQ 116, when dealing with these sanctions including looking at all the parties and the firm’s exposure to sanctioned countries; canvassing the firm’s choke points where securities trading could occur; expanding the firm’s reach and
looking across the firm to ensure it is hitting all business lines. Know when to escalate!!! The onus is on the financial institution when onboarding a client.

In the news lately is whether the US will continue to recertify the JCPOA agreement and Iran’s compliance with the agreement. The next US recertification is due on October 15th. The panel briefly discussed the implications and impact to sanctions compliance related to the US not recertifying or withdrawing from the JCPOA. If the US does not recertify the JCPOA, the sanctions in place prior to the adoption of the JCPOA would “snap back” into place. These “snap back” provisions would include the secondary sanctions which were lifted when the JCPOA was adopted. The secondary sanctions would complicate financial transactions and business relationship because a number of countries and their industries have increased their financial relationships and transactions with Iran.

The panel discussed the sanctions targeted against the government of Venezuela and subsidiaries that are 50% or more owned by the government. There is a very narrow set of activities a firm cannot do, but the question remains how do you define “who is the government?” and how persons in government conduct transactions. Are the transactions in question being conducted in the name of the government or the government representatives personally?

The panel also discussed the sanctions against North Korea. There is a broad trade embargo and asset freeze on the government of North Korea and these have been in place for a while. CAATSA added the availability of possible secondary sanctions. As with the prior secondary sanctions imposed on Iran, this process requires an additional focus on an institution's due diligence process to better understand the customers’ potential business financial dealings with North Korea.

The panel then discussed several recent enforcement actions.

- In July, a Singapore-based technology company CSE Global Ltd agreed to pay more than $12 million to settle 104 apparent violations of Iran sanctions by one of its subsidiaries. One of the lessons from this enforcement action is the use of “side letters.” “Side letters” are used by financial institutions when the client signs the letter or agrees in the account contract that it will not violation sanctions requirements or send sanctioned/prohibited transactions through their account at the financial institution. Some institutions have been using these agreements for a long time. The important point here is that these agreements, along with the strength of the institution’s sanctions controls, were taken into account in assessing a civil monetary penalty against the financial institution's customer.

- In July, OFAC assessed a $2 million civil money penalty against ExxonMobil (“Exxon”) for violations of the Ukraine sanctions. This penalty was centered on the placement of Igor Sechin, the CEO of Rosneft OAO (“Rosneft”) on the “SDN List” and specifically, an agreement (i.e., eight legal documents) between Exxon and Rosneft, when Igor Sechin signed the contract for Rosneft. OFAC had previously stated that Igor Sechin’s designation was in his personal capacity.

At this time of the presentation, Exxon had filed an appeal in court to have the penalty overturned on the basis of Sechin being designated as an SDN only in his personal capacity.
2017: Year In Review
Barbara I. Keller

On December 12th, the U.S. Capital Chapter was delighted to hold our third annual “Year-in-Review” event followed by a networking reception. The event featuring two panels--industry practitioners and law enforcement.

John Byrne, former ACAMS Executive Vice President, moderated the first panel. Panelist were John Davidson from E*TRADE and Todd Racque from Deloitte. One of the topics discussed was how the Office of the Comptroller of the Currency (OCC) approaches high-risk customers in bank examinations. Although the OCC’s policy is that a bank is not required to know its customer’s customers, in practice, bank examiners expect the bank to conduct the same level of due diligence for all account relationships that a high-risk customer has with the bank. In the panelists’ view, this treatment leads banks to “de-risk” or drop those high-risk customers. Banks use of artificial intelligence (AI) is in its early stages, similar to “big data” a few years ago. There are a number of vendors marketing AI systems and some financial institutions are starting to pilot and evaluate them; however, they continue to use their tried-and-true automated monitoring systems to ensure that suspicious activity is captured and reported. If they are testing these new systems, they cannot risk turning the other systems off. If something goes wrong, they will not get a pass from their regulator.

John Byrne mentioned that the idea of giving financial institutions a safe harbor to encourage the use of new technologies was discussed at the November House Committee on Financial Services hearing on legislative proposals to combat terrorism and illicit finance at which he testified. One of the proposals discussed at the hearing would have FinCEN act as the repository of beneficial ownership data and hold off on implementation of the Customer Due Diligence (CDD) rule until this system is in place; however, industry representatives, who also testified, discouraged the Committee from suspending implementation of the CDD Rule as they have already invested a lot of time and money in setting up systems to comply with the rule. With regard the CDD rule, neither the Federal Reserve nor the OCC plan to amend the Anti-Money Laundering (AML) Program rule to make CDD/beneficial ownership compliance the fifth pillar of a bank’s AML program. Panelist expected this issue to evolve as banks start complying with the rule in advance of the May 2018 deadline.

John Byrne discussed remittances to high risk geographic areas and access to financial services. He said there is bipartisan support in Congress for finding a way to give banks clarity on compliance procedures needed in order to facilitate remittances to high risk geographic areas. Charities and other non-profit organizations (NPOs) are also having difficulty getting much-needed funds to areas in great need around the world. Regulatory agencies have offered to provide information on how to work with NPOs for inclusion in the next version of the FFIEC manual. The panel concluded with each panelist predicting a hot topic for 2018 – cybersecurity and AML, senior financial abuse, and sales practices in the wake of the Wells Fargo enforcement action.

Dennis Lormel, ACAMS US Capital Chapter co-chair, moderated the second panel, which included panelists Jeff Cannon, FBI/Terrorist Financing Operations Section (TFOS), Steve Gurdak, Northern Virginia Financial Initiative, and Kim Lappin, IRS-Criminal Investigation (IRS-CI). Ms. Lappin explained that IRS-CI’s number one priority is tax evasion. The unit also focuses on tax refund fraud, international and offshore money laundering, and cybercrimes. Use of Bitcoin is an emerging threat. IRS-CI has a Global Illicit Finance Team, which looks at Suspicious Activity Reports and an International Tax and Finance team is being set up. Mr. Cannon explained that TFOS was initially set up to address the Al Qaeda threat.
In late 2015, TFOS began financial targeting and focusing on the use of criminal networks for terrorist purposes. TFOS is partnering with Money Services Businesses (MSBs) to pass intelligence community information to the MSBs and use subpoenas to receive reporting back from them. TFOS now has a lot of data that is rich in suspicious activity and currency transactions. In 2017, TFOS began using Financial Intelligence Units in financial institutions as a force multiplier to increase its intelligence base. TFOS can now do network targeting in its data bases, linking in foreign partners, to disrupt terrorist networks. Mr. Gurdak explained that he is turning his team into “financial institution translators” to enable law enforcement and financial institution investigators to speak a common language. Only a small amount of information that financial institutions has makes it to investigators. Law enforcement investigators do not know what data bases and analytical capabilities financial institutions have. The idea is to better mine the data financial institutions have to better target criminal actors. His advice to financial institutions is to think broadly when they get a data request from law enforcement. Mr. Cannon agreed that financial institution and law enforcement investigators are working in closer partnership today than in the past. In the wake of terrorist attacks, his group provides as much information as possible to financial institutions, including associates of the attacker(s), to bring about more robust reporting.

Ms. Lappin commented that human intelligence shortcuts everything when law enforcement is looking for a needle in a haystack—it points investigators in the right direction. Mr. Gurdak added that, in some instances, human intelligence helps to convince investigators to go after a case.

The panel concluded with a discussion of trends of concern for 2018. One big concern that is only getting worse is the opioid epidemic. There is a lack of data on the opioid market, so law enforcement is trying to develop typologies of the market. Another concern is virtual currency. For the banking industry, a big concern is know-your-customer for foreign correspondent banks. Finally, retailers are willingly or unwittingly supplying components for ISIS, so it is important to extend KYC to the retail sector. Payment providers should identify relationships in the retail sector and talk to retailers about the risks.

**Chapter Partnership with George Mason University (GMU)**

**Jim Wright**

The US Capital Chapter continued expanding its partnership initiative with GMU’s Transnational Crime and Corruption Center (TraCCC) during 2017 by taking leadership positions on projects devoted to antiquities trafficking and the impact of the opioid epidemic.

The October conference, "The Illicit Business behind the Opioid Epidemic," focused on the illicit business causing the opioid epidemic and how it can be countered. Speakers from law enforcement, government agencies, private sector, and academia discussed illicit actors and their business models, as well as new technologies that fuel the epidemic. The speakers indicated that the new technologies can be the key to taming the problem; they also discussed how law enforcement and government agencies can improve their efforts.

TraCCC’s Antiquities Trafficking project is a US State Department-funded project designed to counter antiquities trafficking. This effort brings together GMU professors, the US Army War College, Department of Ancient Near East Art, the Metropolitan Museum of Art and the American Numismatic Society.
Several Chapter members are working with TraCCC in planning other conferences for next year, including one on money laundering through real estate.

Additionally, during the fall 2017 semester, the US Capital Chapter collaborated with GMU to present a new course entitled “International Money Laundering, Corruption and Terrorism.” The class was a graduate level course presented by the Schar School of Public Policy. Twenty students participated in the class. Dr. Louise Shelley, Founder and Director of TraCCC, and Deputy Director Judy Deane, were instrumental in setting up the new course. Chapter Board member Les Joseph, who has previously taught classes at The George Washington University, agreed to take the lead role in putting the course together and leading the class. Chapter Co-Chair Dennis Lormel and Board members Jim Wright, Bob Pasley and John Byrne collaborated with Les to develop the syllabus for the class, and they also presented lectures during the semester.

During the course of the semester, guest lecturers were brought in from the wealth of AML experts in the DC area. Guest lecturers included former DOJ attorney and asset forfeiture expert Stef Cassella, former DOJ attorney Jonathan Rusch (now at Wells Fargo), former DOJ attorney Kevin Downing (now in private practice), current DOJ attorney Andrew Finkelman (Office of International Affairs), and Wells Fargo cyber expert Kelley Chamberlain. Les’ Wells Fargo colleague Christie Ekasingh played an instrumental role in assisting the faculty with the logistics for the class. Perhaps the highlight of the semester was a special presentation on September 11 given by John Byrne, Dennis Lormel and John Roth, who discussed the financing of the 9/11 attack. Their presentation was a campus-wide event that was well attended. The initial feedback on the class was very positive, and indications are that GMU will offer the course again for the fall 2018 semester.

A Special “Thank You” to all our 2017 sponsors and speakers:

**SPONSORS:** BGR Group, Congressional Bank, Deloitte, KPMG, FACT Coalition, Fairfax County Police Department, Global Witness, Northwest Federal Credit Union, Safe Banking System Software LLC, and Thompson Reuters.

**SPEAKERS:** Elise Bean, Lee Brown, John Byrne, Jeff Cannon, Jim Cox, Megan Cerveny, John Davidson, Don Fort, Andrew Gordon, Steve Gurdak, Mark Hays, Barbara Keller, Lauren Kohr, Kim Lappin, Lorraine Lawlor, Dennis Lormel, Mike Louganhane, Tami Newett, Todd Racque, David Schiffer, Shay Smith, Ted Solomy, Joe Soniat, Jessie Spiro, Dan Stipano, Matthew B. Taylor, Peter Vincent, Patrick Wyman, Elaine Yancey, and Laura Yavonoff.