Fact-Based Bi-partisan Investigations by Congress
Sepideh Behram

On February 26, 2019, the U.S. Capital Chapter members had the opportunity to hear from Elise Bean, Co-director of the Levin Center, about the importance of Congressional bi-partisan investigations and a walk through of several cases that Senator Carl Levin commissioned as chairman or ranking member of the Permanent Subcommittee on Investigations, and the resulting legislative action.

Ms. Bean emphasized that there are four key phases to an investigation, which include fact-finding, written product, hearing, and follow-up to act on the findings. Additionally, she highlighted the measure of good oversight to describe the quality of the investigation, the need for bipartisanship, the credibility of the inquiry and the policy impacts that result from the investigation.

“When you conduct an investigation with people who have different points of view, your results are better. A bi-partisan investigation is the gold standard,” she described.

The first of the cases Ms. Bean highlighted involved a credit card abuse investigation. This investigation resulted in the passage of the Credit CARD Act of 2009. She described the key initiatives that were incorporated into the regulation that were a direct result of the findings of the investigation.

The second case involved the creation of hidden bank accounts which were investigated based on information obtained from a whistleblower. These hidden accounts were a complex series of offshore accounts opened for the purposes of evading tax reporting requirements. The investigation resulted in a series of enforcement actions and significant monetary penalties assessed against several financial institutions and individuals. Ms. Bean described the resulting law which was the Foreign Account Tax Compliance Act of 2010. As a result of the actions in the U.S., a global agreement was reached which resulted in over 100 countries exchanging information since 2017.

Next Ms. Bean described the investigation into the causes of the financial crisis. She walked through the cycle of interviews, hearings and research into the mortgage industry to gain insight and transparency into the lending processes. As a part of the investigation there were four cases which developed, focusing on Washington Mutual, the credit rating agencies, the Office of Thrift Supervision and Goldman Sachs. This investigation resulted in the Dodd-Frank Act which amongst its many provisions, removed the Office of Thrift Supervision, created the Consumer Financial Protection Bureau and passed the Volcker Rule.

Note from Chapter Co-Chairs
Dennis Lormel & Sepideh Behram

The U.S. Capital ACAMS Chapter is dedicated to delivering high quality, relevant training events to its members. The Chapter holds timely and topical learning events intended to inform and educate its members and attendees on emerging issues, as well as recognizing industry leaders. Periodically the Chapter recognizes leaders in the industry for their Distinguished Service and this year the Chapter is introducing an award for Excellence in Private-Public Partnership for law enforcement and private sector representatives. The awards will be presented at the annual Bank and Law Enforcement Forum on August 21, 2019. Additionally, the Chapter will be honored to have Rohit Sharma, the President of ACAMS, present at the event.

If you are interested in volunteering for the Program Committee or the Chapter’s Advisory Board, please contact us. You can reach us either through LinkedIn or via email at USCapitalChapter@acams.org

Tentative upcoming Event Topics in 2019:
August 21st: 3rd Annual AML/CTF Financial Institution & Law Enforcement Collaboration Forum
October: Model Governance & Transaction Monitoring
November 5th: Law Enforcement and Cybercrime
December: Annual Year End Review

Please visit our website for up-to-date information: http://www.acams.org/acams-chapters/us-capital/events

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Last, Ms. Bean described the investigation of corporate tax dodging, specifically focused on Apple. She described the interviews that were conducted and how the investigation was able to identify that Apple was amongst a series of corporate entities who deem themselves to not be a tax resident of any country. After this investigation, OECD countries adopted a corporate tax disclosure obligation that requires multinational corporations to disclose where they do business, earn money, and pay taxes, which became effective in 2018. In addition, the agreement also requires annual country-by-country disclosure of employees and facilities, profits or losses, and taxes owed and taxes paid.

Ms. Bean concluded her presentation with a reference to a recent book she authored, *Financial Exposure: Carl Levin’s Senate Investigations into Financial and Tax Abuse*, which further details these investigations.

**Beneficial Ownership and Corporate Transparency**

Bob Pasley

On March 22, 2019, the U.S. Capital Chapter partnered with the FACT Coalition, Global Financial Integrity & Transparency International on an informative panel on beneficial ownership and corporate transparency, moderated by John Byrne with Kelly Gentenaar, Gary Kalman and Lakshmi Kumar as panelists.

The panel reviewed the various issues pertaining to the process of incorporation of companies in the United States and the struggle to obtain information about beneficial owners of qualified legal entities. The FACT Coalition released its new report, “The Library Card Project: The Ease of Forming Anonymous Companies in the United States,” in conjunction with their presentation at the U.S. Capital Chapter event.

With regard to this issue, it was pointed out that there are more corporations in the United States than in 41 identified high-risk countries combined. In addition, it was noted that the United States is the second easiest place in the world to incorporate a company on an anonymous basis. Further, it was explained that, based on the research done for the Library Card Project, in all 50 states, it is easier to incorporate a company than obtain a library card to take books out of a public library. On this point, all states require a person to apply in person for a library card and almost all states require the name and address of the user of the library card. In contrast, no states (with two possible exceptions for which information was not available) requires the applicant to appear in person to incorporate a company and, uniformly, states do not require the name or address of officers or beneficial owners of a company to be incorporated. In addition, no state requires any information about the person(s) who directly or indirectly owns or controls the company.

The panel also discussed pending legislation, including a recently passed House Resolution that calls for more transparency in the formation of corporations in the United States. In addition, the panel explained that there is a pending bill in Congress entitled the Corporation Transparency Act, which would require beneficial ownership information to be provided to FinCEN when a company is incorporated. This information would not be made public but would be made available to law enforcement and to financial institutions. Speakers felt that this bill is the best opportunity to get this information collected and represents a huge step forward. It now has support from the business community. The states do not want the burden of requesting and receiving this information; however, now, even the Secretary of State for Delaware has endorsed the collection of beneficial ownership at the federal level.
Cryptocurrency and Bitcoin Teller Machines: Regulatory, Compliance, Intelligence + Enforcement Perspectives
Barbara I. Keller

On July 18, 2019, the U.S. Capital Chapter held an event focusing on cryptocurrency, sponsored by CipherTrace, a cybersecurity firm. The speakers included Ross Delston, Lourdes Miranda and Pam Garner. Ross commenced by providing an overview of what cryptocurrency is, how it is being used for both legitimate and illegitimate purposes, and what banks should be on the lookout for. Ross Delston described the reasons why cryptocurrency is so popular among bad actors, the primary reason being its anonymity - not every exchanger collects customer identification and some exchangers even advertise anonymity. These are non-face-to-face transactions and cryptocurrency is decentralized currency with limited government involvement. This can create an opportunity for criminal activity, including theft. According to a report from CipherTrace, cryptocurrencies stolen from exchanges and scammed from investors surged more than 400 percent in 2019 to around $1.7 billion. Although cryptocurrency exchangers are considered money services businesses by FinCEN and are required to be registered and follow AML rules, many exchangers reside outside the U.S. to avoid regulatory oversight.

Lourdes Miranda talked about cryptocurrency from the intelligence and investigatory perspectives. Facilitating money laundering through the use of cryptocurrency and Bitcoin Teller Machines (BTMs) is relatively easy. The terminology is a bit different, but the process is the same. “Mixing,” the placement stage, obscures the origin of the funds by using different services in an attempt to break the linear pattern of transactions on the blockchain while remaining in the same cryptocurrency type. It’s the equivalent of exchanging a $100 bill for different denominations. “Shifting,” the layering stage, converts one cryptocurrency to another in a further attempt to obscure the origin of the funds. “Exchanging,” the integration stage, is similar to “shifting” but has an option to convert to a fiat currency and vice versa. This gives a bad actor the opportunity to deposit the fiat currency into the U.S. financial system. Although there are BTMs in the U.S., they are being monitored. However, many BTMs overseas do not require Personally Identifiable Information (PII) in order to use them so bad actors tend to use those. In addition, bad actors are buying their own BTMs all over the world, except in the U.S., of course. Use of BTMs to launder money is the modern-day equivalent of “smurfing” – a bad actor can pay “smurfs” to use the smurf’s PII to conduct transactions at BTMs.

Pam Garner gave an overview of analysis and forensics of cryptocurrency payments. She began by detailing the characteristics of cryptocurrency – digital, decentralized, peer-to-peer, pseudonymous (no PII is necessary for its use), trustless, encrypted, and global. Cryptocurrency is the only true form of peer-to-peer transactions except for cash. Banks may not want to deal with cryptocurrency, but they may be doing so unwittingly. All banks need to understand what it is and be vigilant. Pam discussed a recent criminal case in Spain where 9 million euros were laundered in just three months, January through March 2019, through cryptocurrency ATMs. The funds were ultimately sent to Columbia. Spanish authorities with Europol detained eight members of a criminal gang who were responsible for laundering this money that belonged to a criminal organization. Authorities seized the two cryptocurrency ATMs, cryptocurrency wallets, 11 vehicles, and almost 17,000 euros in precious metals. Nine companies were implicated in the laundering scheme.

As of July 2019, coinmarketcap.com had identified 2,352 cryptocurrencies with a market capitalization of more than $281 billion. Bitcoin dominates the market with about 66 percent. Coinatmradar.com has identified 5,185 cryptocurrency ATMs, 549 operators in 77 countries with 41 cryptocurrency producers. In the U.S., coinnradar.com has identified 3,346 BTMs, which is 65 percent of the global total.
2019—Possible Year of AML Reform?
John Byrne

As we approach the August congressional recess and no apparent agreement on crucial issues such as election security, the notion that something such as AML reform could occur would seem to be a pipe dream. However, for the first time since the passage of the USA PATRIOT Act (2001), there appears a potential for comprehensive reform to the 30 plus years of the AML infrastructure. There is not enough room in this newsletter to cover all of the provisions in a number of House and Senate proposals (for the exact language go to the House and Senate sites), but here are some of the more intriguing possibilities:

On the House side, the so-called “Counter Act” (H.R. 2514), which is heading to the floor in September, addresses innovation, information sharing and enhanced feedback. It also creates new training requirements for examiners, pushes bank agencies to have civil liberties and privacy officers and would require dealers in antiquities to have BSA obligations. Through the dogged determination of Rep. Carolyn Maloney (D-NY), the other important House bill is H.R. 2513 (the Corporate Transparency Act) which would require companies to disclose to FinCEN their true beneficial owners at the time the company is formed. The Senate has a similar bill (title IV of the Illicit Cash Act) that has the companies file with FinCEN, but also contains civil and criminal penalties for willful violations and criminal penalties on the misuse of beneficial ownership data.

The Illicit Cash Act would also put FinCEN employees on a pay scale comparable to other federal financial regulators to recruit more talent and would create a “team of technology experts” there to assist in the development of emerging technologies. To address apparent examiner deficiency in the AML area, the bill directs the Treasury Department “to establish national exam and supervision priorities” for regulators, law enforcement and the financial sector.

LAW ENFORCEMENT CORNER
Dennis Lormel

As criminal and terrorist methodologies continue to mature and become more sophisticated, the challenge of identifying and disrupting illicit funding flows becomes more acute. In recent years, and especially in the current threat landscape, the need for information sharing between the public and private sectors has become more evident. The foundation for information sharing comes from building public and private sector partnerships. A common theme at many AML conferences since 2018 has also been the theme of public and private partnerships.

Establishing meaningful and sustainable partnerships requires understanding perspectives. The two primary stakeholders for information sharing regarding the BSA are law enforcement and financial institutions. Financial institutions serve as both a money laundering and fraud facilitation tool or detection mechanism. Law enforcement and financial institutions share the objective of diminishing facilitation and enhancing detection. This is the intersection where partnerships and perspectives must be balanced and understood.

Even though law enforcement and financial institutions share the objective of diminishing the facilitation, and enhancing the detection, of money laundering, their perspectives are fundamentally different. The perspective of law enforcement is to develop evidence to support criminal prosecutions. The perspective of financial institutions is to protect the integrity of their institution from financial loss, potential litigation and reputational harm. These differing perspectives can potentially lead to impediments in sharing information between public and private sector partners. Thus, it is important to understand each other’s perspectives.

In those instances where perspective causes impediments, understanding is the key to identifying a middle ground acceptable to stakeholders. In this context, you won’t achieve a best-case scenario but you can establish a good case scenario all partners will benefit from. These results in a win – win situation, which we should all strive for. If one partner benefits at the expense of another partner, you achieve a win – lose scenario, which will not be sustainable. Sustainable partnerships require win – win situations.

Once you understand perspective and establish a good case scenario, you can build the foundation for sustainable partnerships. At this point, you can establish the framework to leverage the capabilities and capacity of all stakeholders. This is where information sharing can lead to the implementation of innovative and impactful proactive measures to support law enforcement initiatives. The result in such successful endeavors is that we limit criminals and terrorists from using the financial system as a facilitation tool and enhance detection in order to disrupt their illicit activities. Achieving this outcome is a true win – win situations for law enforcement and financial institutions.
Both the House and Senate bills require a number of studies. While we can all be cynical about the value of studies, I would argue that these bills are focusing on a number of essential areas that for too long have not been analyzed sufficiently or at all. In no particular order, the key studies are:

- Treasury and the DOJ to review CTR and SAR thresholds and determine whether changes are needed;
- GAO to study feedback loops;
- FinCEN to study the value of BSA data;
- Study on de-risking;
- Additional GAO studies on the use of virtual currencies, the effect of AML on the underbanked; and
- The use of shell companies by Putin “and his inner circle to strengthen their control over Russia.”

Finally, the Senate Judiciary Committee just passed another bill that, among other things, increases penalties for bulk cash smuggling and clarifies that “it’s a crime to transfer funds into or out of the United States to evade taxes.” For more, see the “Combating Money Laundering, Terrorist Financing and Counterfeiting Act” (S.1883).

The laws and regulations addressing money laundering today started in 1986 with the Money Laundering Control Act and we need updates, modifications and even some reductions. Hopefully, these reform efforts will move and improve this important infrastructure.

Thank you to our speakers and sponsors: Elise Bean, John Byrne, Ross S. Delston, Pamela A. Garner, Kelly Gentenaar, Gary Kalman, Lakshmi Kumar, Jonathan Lopez, Lourdes C. Miranda, CipherTrace, FACT Coalition, Global Financial Integrity & Transparency International and Orrick.