

THE IDES OF MARCH BRINGS AML ACTIVITY—NOT ALL OF IT BAD

As we approach the end of the month, there were a number of announcements of note to all AML professionals. At the midpoint of the month—the Ides of March (no, not the “one-hit wonders who performed ‘Vehicle’”—we attended the 15th Annual International Anti-Money Laundering Conference run by moneylaundering.com, saw the release of the Wachovia civil penalties and deferred prosecution agreement, FinCEN guidance on the FATF announcements we mentioned in the last blog posting, and a major benchmarking survey by my organization, ACAMS, and Ernst and Young.

Information you can use

Since I was critical of the February FATF announcements on several countries with AML deficiencies, it is only fair that we note FinCEN’s March 18th announcement of guidance for financial institutions regarding those countries.

FinCEN separated the categories of countries and the recommended response into either enhanced or general due diligence. For example, for the following countries, it is expected that general due diligence is required:

Antigua and Barbuda; Azerbaijan; Bolivia; Greece; Indonesia; Kenya; Morocco; Burma (Myanmar); Nepal; Nigeria; Paraguay; Qatar; Sri Lanka; Sudan; Syria; Trinidad and Tobago; Thailand; Turkey; Ukraine; and Yemen.

FinCEN pointed out:

As required under 31 CFR § 103.176(a), covered financial institutions should ensure that their due diligence programs, which address correspondent accounts maintained for foreign financial institutions, include appropriate, specific, risk-based, and, where necessary, enhanced policies, procedures, and controls that are reasonably designed to detect and report known or suspected money laundering activity conducted through or involving any correspondent account established, maintained, administered, or managed in the United States. Additionally, as required under 31 CFR §§ 103.15 - 103.21, if a financial institution knows, suspects, or has reason to suspect that a transaction involves funds derived from illegal activity or that a customer has otherwise engaged in activities indicative of money laundering, terrorist financing, or other violation of federal law or regulation, the financial institution shall then file a Suspicious Activity Report.

For more information on the correct response to dealing with these countries and others, see: <http://www.fincen.gov/>

The Wachovia action—What we can learn

During the conference, a panel with both regulators and bankers that I moderated discussed the continuing question of what can be gleaned from AML enforcement actions for those institutions NOT involved in the action. The answer is always somewhat mixed but all agreed that the action should be noted, read and discussed with senior staff and the AML professionals. Like clockwork, on the last day of the conference, FinCEN announced the assessment of a civil money penalty, in the amount of \$110 million, against Wachovia Bank and the Department of Justice published their deferred prosecution agreement for the same deficiencies. According to FinCEN, the action represented the largest penalty action to date against a financial institution by FinCEN for violations of the Bank Secrecy Act. Specifically, the Treasury bureau noted failures to:

- Institute and maintain an effective anti-money laundering program to prevent, detect and report suspicious activity within the Bank;

- Timely file suspicious activity and currency transaction reports thereby greatly diminishing the value of the reports to both law enforcement and regulatory agencies;

- Comply with the due diligence requirements of Section 312 of the USA Patriot Act to enable the detection and reporting of any known or suspected money laundering activity involving foreign correspondent banking; and

- Apply systems and controls to manage the risk of money laundering within the Bank's business lines such as Remote Deposit Capture, Pouch and Cash Letter activity and the repatriation of Bulk Cash from Mexico to the United States.

In very strong words, James H. Freis, Jr., Director of FinCEN said, "In the recent past, Wachovia was the fourth largest commercial bank in the United States, and one of the largest banks in the world. During our investigation, it became evident that, despite such a prominent role in the domestic and international banking sectors and accompanying resources to such an institution, Wachovia did not institute systems, controls and other measures to manage risk commensurate with the scope and magnitude of its products, services and business lines, particularly foreign correspondent banking."

To learn more of this coordinated effort with the United States Attorney's Office for the Southern District of Florida, the Office of the Comptroller of the Currency, the Drug Enforcement Administration and Internal Revenue Service, Criminal Investigation Division, see:

FinCEN's Assessment of Civil Money Penalty in the Matter of Wachovia Bank

Conference tidbits

In the Florida conference, just concluded, we were witness to a number of fascinating discussions on such disparate topics as how to address the AML challenges of entering new markets, the ground-breaking coverage by ACAMS Board Member Alberto Avila of money laundering risk analysis in the political process, to case studies by well-known prosecutor Adam Kaufmann from the New York County District Attorney's Office.

On March 16, ACAMS, in partnership with Ernst and Young, released the first of our "Global AML Insight Series" to explore AML strategies and practices. The first topic covered, transaction monitoring, gave us a number of interesting results, including respondents indicating that 45% planned a major upgrade to their systems within the next two years.

For more information on the conference highlights and the survey, feel free to contact me at jbryne@acams.org.

A model public servant

Having spent parts of the last three decades in the AML and sanctions field, I have heard presentations by many

government representatives. While they run the gamut from reading speeches to off-the-cuff remarks, you usually do not find yourself thinking about the presentation long after the program.

I have been thinking about the keynote address from Adam Szubin, OFAC's Director on several levels. First, the coverage of OFAC's priorities and how they assess penalties was described in a clear and rationale manner. Next was Director Szubin's ability to handle questions that were not all friendly. It struck me that this public servant was direct and helpful and not at all condescending. After asking several government representatives at the conference if they felt the same way, all mentioned that he was a model public servant.

In this age of polarization, it is nice to know.

Please send me your thoughts and comments, or post them below.

About John Byrne, CAMS

Byrne is Executive Vice-President of the Association of Certified Anti-Money Laundering Specialists (ACAMS). He has written extensively on AML issues for 25 years and has appeared on television and testified before many congressional committees on AML-related policy issues. Prior to joining ACAMS, John was the Global Regulatory Relations Executive at Bank of America. Previous to that, he worked for the American Bankers Association for 22 years and was responsible for ABA's lobbying, regulatory, and educational efforts on money laundering, and other compliance issues. He received the ABA's Distinguished Services Award and was also the first private sector recipient of the "Director's Medal for Exceptional Service" from the Treasury Department's Financial Crimes Enforcement Network (FinCEN). Byrne can be e-mailed at jbyrne@acams.org.