

# Culture of Compliance: Don't Put the AML Cart Before the Horse

By Kevin Rosenberg

Promoting a culture of compliance remains key to improving and strengthening adherence to the Bank Secrecy Act (BSA) through a healthy anti-money laundering (AML) program. To be sure, a 2014 Financial Crimes Enforcement Network (FinCEN)<sup>1</sup> advisory stressed improving a BSA/AML compliance culture by ensuring that:

1. Leadership is actively involved and engaged,
2. Leadership understands the purposes and uses of BSA reports,
3. Revenue interests do not compromise compliance,
4. Relevant information is shared across departments,
5. Leadership provides adequate human and technical resources to compliance, and
6. Compliance programs are assessed by independent, qualified, unbiased, and conflict-free tests.<sup>2</sup>

That being said, an AML program will only be truly effective if those designing and executing it keep the compliance “cart” (comprehensive AML program supported with a strong culture of compliance) and AML “horse” (basic understanding of money laundering crimes reflecting the real world) in the proper order.

Money laundering is typically thought to be simply the process of removing the “taint” from money generated by criminal activity. In reality, it is much more and shows up in a number of differ-

ent and often unexpected settings. Appreciating how criminals intend to exploit a financial institution to launder funds will help the institution craft a more meaningful AML program and keep the compliance cart behind the AML horse.

This article provides a basic overview of money laundering statutes as a backdrop for appreciating and addressing compliance risks. Next, this article provides “real world examples” of how these crimes show up – allowing financial institutions to better appreciate how to comply with laws and regulations designed to stop and/or detect money laundering.

## Money Laundering Crimes

The Currency and Foreign Transactions Reporting Act of 1970 (aka, the BSA) requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The Money Laundering Control Act, enacted in 1986 and codified at 18 U.S.C. §§ 1956 and 1957, provided law enforcement with a host of then new weapons to combat drug trafficking. Financial institutions covered by these laws include: casinos; card clubs; banks; credit unions; branches or agencies of foreign banks; insurance companies; travel agencies; car, boat, or airplane dealers; securities brokers or dealers; money services businesses; jewelers; pawnbrokers; and futures or commodities brokers.<sup>3</sup> Money laundering crimes fall into two basic categories: those penalizing failure to comply with reporting requirements and those penalizing engaging in certain transactions that help criminals launder funds.



## “Reporting” Crimes

Federal law requires financial institutions to file reports documenting certain transactions. The failure to do so could result in criminal prosecution. For instance, financial institutions must file a Currency Transaction Report for each deposit, withdrawal, exchange of currency or other payment of currency of more than \$10,000 by, through, or to the financial institution.<sup>4</sup> Financial institutions must also file similar reports when individuals transport “monetary instruments” (cash, traveler’s checks, negotiable instruments, and securities or bearer bonds) in or out of the United States on their persons or via the mail or private shipper.<sup>5</sup> Financial institutions must also verify the identity of an account holder buying a bank check, cashier’s check, traveler’s check, or money order of \$3,000 or more, may only sell these instruments to account holders, and must report these transactions.<sup>6</sup>

Anyone engaged in a trade or business, whether a financial institution or not, must complete a Form 8300, which reports any transaction for more than \$10,000 in “coin or currency” of the United States or any other country.<sup>7</sup> FinCEN has the authority to lower the \$10,000 figure in certain areas by issuing geographic targeting orders. In October 2014 FinCEN did that to the Los Angeles Fashion District, temporarily requiring ten types of busi-

nesses there to file Form 8300s for transactions of more than \$3,000.<sup>8</sup>

Lastly, financial transactions must file suspicious activity reports (SARs) for transactions it knows, suspects, or has reason to suspect: (1) involved funds derived from illegal activity or is intended or conducted in order to hide or disguise funds or assets derived from illegal activity; (2) were designed to evade the reporting/recordkeeping requirements of the BSA; or (3) had no business or apparent lawful purpose or was not the sort in which the particular customer would normally be expected to engage, and the institution knew of no reasonable explanation for the transaction after examining the available facts.<sup>9</sup> Casinos must also file SARs for transactions it knows, suspects, or has reason to suspect “involved use of the casino to facilitate criminal activity.”<sup>10</sup>

### “Act” Crimes

Federal law criminalizes actions by individuals and companies involving funds from “specified unlawful activity.” Nearly 200 different federal offenses constitute specified unlawful activity (“SUA”), most notably: Federal health care offenses; certain controlled substances crimes; bringing in and harboring illegal aliens for financial gain; bankruptcy fraud; bribery of public officials or witnesses; smuggling goods into the United States; unlawful firearms importation; bank fraud; unlawful procurement of U.S. citizenship; racketeering; mail theft; sexual exploitation of children; interstate transportation of stolen property; financing terrorism; smuggling or export control violations; and wire fraud.<sup>11</sup> Specifically, federal law criminalizes money laundering occurring by way of:

1. a financial transaction intending or designed to promote an SUA, conceal the nature, location, source, ownership, or control of SUA proceeds, avoid reporting requirements, or evade taxes;
2. an international financial transaction intended to promote an SUA, conceal the nature, location, source, ownership, or control of SUA proceeds, or avoid reporting requirement;
3. a government sting operation involving a financial transaction or attempted financial

transaction with property represented to be the proceeds of an SUA with the intent to promote an SUA, conceal the nature, location, source, ownership, or control of SUA proceeds, or avoid reporting requirement; or

4. conspiracies to commit the same.<sup>12</sup>

Financial transactions are defined broadly as transactions “which in any way or degree affects interstate or foreign commerce involving the movement of funds by wire or other means or involving one or more monetary instruments, or involving the transfer of title to any real property, vehicle, vessel, or aircraft, or a transaction involving the use of a financial institution which is engaged in, or the activities of which affect, interstate or foreign commerce in any way or degree.”<sup>13</sup> “Proceeds” means any property derived from or obtained or retained, directly or indirectly, through some form of unlawful activity, including the gross receipts of such activity.<sup>14</sup>

Federal law also criminalizes knowingly attempting to or actually engaging in a monetary transaction involving more than \$10,000 worth of criminally derived property by or through a financial institution.<sup>15</sup> A monetary transaction is the “deposit, withdrawal, transfer, or exchange, in or affecting interstate commerce, of funds or a monetary instrument by, through, or to a financial institution.”<sup>16</sup> Significantly, to be guilty of this offense a defendant need only know “it was the product of some illegal activity.”<sup>17</sup>

Lastly, Federal law criminalizes breaking up transactions to avoid the four different reporting requirements identified above.<sup>18</sup>

### The Real World

Money laundering is very much alive and well internationally and locally. A 2014 State Department report designated sixty-six countries, including the United States, Afghanistan, Iran, Iraq, Mexico, China, Japan, Israel, Canada, and the United Kingdom, as a “primary concern” for money laundering, and another sixty-nine countries as a “concern” for money laundering.<sup>19</sup> FinCEN’s October 2014 Geographic Targeting Order for the Los Angeles Fashion District confirms the scope of money laundering in just one part of Los Angeles.

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Health care fraudsters, drug traffickers, alien smugglers, Ponzi scheme operators, corrupt lawyers, politicians or judges and other criminals typically use three steps to “cleanse” their illicit funds and get them into the legitimate financial stream. First, money launderers move their funds by placing numerous small amounts into a different financial institution. Second, funds are deposited into various accounts, sometimes around the world, to move the money away from its original source. Third, those funds are used to purchase legal assets like real estate, businesses, or personal property.

## So, what does this all look like in your world?

- Your casino, hotel, or travel agent customer/patron wire transfers large amounts of funds to pay for services or put on account, but the money comes from originators you cannot link to the customer/patron. That same customer’s wires come from businesses, cities, or countries to which he has no visible link. That customer also breaks up his wire transfers into numerous smaller transfers.<sup>20</sup>
- You bank a judge who makes many large, round-dollar transactions, often occurring on a single day, and has an abnormal volume of activity compared to account balances.<sup>21</sup>
- Your casino or hotel patron arrives with thousands of dollars in pre-paid gift cards which he uses to pay his bill or convert to a front-money deposit or that customer’s “friends” overseas send money to the hotel or casino.
- Casino patron, not in cash intensive industry, regularly exchanges small bills for larger bills or makes regular or large cash deposits.
- You operate a check cashing business that accepts hundreds of thousands of dollars a month in personal checks made out to a wildly popular family restaurant and bar in a Los Angeles suburb. Your bank provides accounts

for that same restaurant and accepts those same checks as deposits.<sup>22</sup>

- An attorney accepts wire transfers into his client trust account and then moves those funds into another account as requested by some individuals selling securities for a small cut of the funds.<sup>23</sup>
- Individuals making deposits or transfers into your customer’s accounts do not know much about the customer or his business.
- Casino patron feeds thousands of dollars in \$100, \$50, or \$20 bills into slot machine only to quickly cash out with just a few plays.<sup>24</sup>
- You bank a business account that shows deposits at branches in cities or regions different from where the business operates and/or cash is withdrawn quickly after it is deposited.<sup>25</sup>
- You bank a business account that shows money going out to businesses that do not appear related to the stated business of the account holder.
- Employees of a popular medical weight-loss clinic deposit tens of thousands of dollars in cash, in individual transactions of no more \$8,000 each. The same employees seek to exchange

several thousand dollars in \$20 bills to \$100 bills.<sup>26</sup>

- Jewelry store customer who operates health care clinics buys \$60,000 platinum and diamond ring.<sup>27</sup>
- A customer whose stated business is “producer,” deposits a large number of small checks from many different people.<sup>28</sup>

## What do these scenarios have in common?

Aside from the fact that many of them are based on actual cases, the common thread is the fact that the customer behaviors above are inconsistent with how legitimate customers or businesses typically operate. These scenarios involve individuals presenting behavior that is not what one would normally expect. Of course, this alone does not make the conduct criminal.

However, when these situations are considered against the backdrop of how money launderers operate, they should be sufficient to get your institution asking more questions – sometimes a lot more. Financial institutions that understand how criminals can or will try use them to complete the three steps of money laundering will have their AML “horse” and “cart” in the proper order and be better equipped to detect and report potential criminal activity. ♣

<sup>1</sup> FinCEN is a bureau of the U.S. Treasury Department charged with safeguarding the financial system from illicit use and combating money laundering and promoting national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.

<sup>2</sup> FIN-2014-A007 (August 11, 2014).

<sup>3</sup> See 18 U.S.C. § 5312(a)(2), 31 C.F.R. § 103.11(n).

<sup>4</sup> See 31 U.S.C. § 5313.

<sup>5</sup> See 31 U.S.C. § 5316, 31 C.F.R. § 103.23.

<sup>6</sup> See 31 U.S.C. § 5325.

<sup>7</sup> See 31 U.S.C. § 5331.

<sup>8</sup> See [www.fincen.gov/news\\_room/nr/html/20141002.html](http://www.fincen.gov/news_room/nr/html/20141002.html).

<sup>9</sup> See 31 U.S.C. § 5318(g).

<sup>10</sup> See 31 CFR § 103.21.

<sup>11</sup> See 18 U.S.C. § 1956(c)(7).

<sup>12</sup> See 18 U.S.C. §§ 1956(a), (h).

<sup>13</sup> See 18 U.S.C. § 1956(c)(4).

<sup>14</sup> See 18 U.S.C. § 1956(c)(9).

<sup>15</sup> See 18 U.S.C. § 1957.

<sup>16</sup> See Ninth Circuit Court of Appeal Model Criminal Jury Instruction 8.150.

<sup>17</sup> See 18 U.S.C. § 1957(c); Ninth Circuit Court of Appeal Model Criminal Jury Instruction 8.150.

<sup>18</sup> See Title 31, United States Code, Section 5324

<sup>19</sup> See United States Department of State, Bureau of International Narcotics and Law Enforcement Affairs *International Narcotics Control Strategy Report, Volume II: Money Laundering and Financial Crimes* (March 2014) at 32-36.

<sup>20</sup> See e.g., <http://www.nytimes.com/2013/08/28/us/las-vegas-casino-settles-in-money-laundering-inquiry.html>

<sup>21</sup> See [http://www.fincen.gov/news\\_room/nr/pdf/20150227.pdf](http://www.fincen.gov/news_room/nr/pdf/20150227.pdf) (reporting \$1.5 million penalty against bank for failing to report suspicious activity tied to judicial corruption).

<sup>22</sup> See e.g., <http://nj.gov/oag/newsreleases/14/pr20141021b.html>.

<sup>23</sup> See e.g., <http://www.nydailynews.com/new-york/nyc-crime/fla-lawyer-charged-brooklyn-court-money-laundering-article-1.1997745>.

<sup>24</sup> See e.g., <http://www.wlky.com/news/men-wanted-in-connection-with-money-laundering-at-horseshoe-casino/27305924>

<sup>25</sup> See FIN-2014-A005.pdf (FinCEN advisory on funnel accounts and trade-based money laundering).

<sup>26</sup> See e.g., [http://www.fincen.gov/law\\_enforcement/ss/html/July2014\\_Case1.html](http://www.fincen.gov/law_enforcement/ss/html/July2014_Case1.html)

<sup>27</sup> See e.g., <http://www.justice.gov/opa/pr/bioscan-principal-pleads-guilty-multi-million-dollar-health-care-fraud-and-money-laundering>

<sup>28</sup> See [http://www.nj.com/bergen/index.ssf/2014/10/edgewater-music-producer-convicted-in-multimillion-dollar-ponzi-scheme\\_feds\\_say.html](http://www.nj.com/bergen/index.ssf/2014/10/edgewater-music-producer-convicted-in-multimillion-dollar-ponzi-scheme_feds_say.html)