Client Alert:

Reassessing AML Efforts As The Heat Is Turned Up On Regulators

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The COVID-19 pandemic may have slowed the global economy and emptied the physical offices of government regulators. However, the coronavirus crisis does not appear to have slowed down anti-money laundering (AML) enforcement, based upon the recent actions of global regulators. From the Baltics to Hong Kong, from the U.K. to the U.S., regulators have been busy enforcing anti-money laundering laws with penalties and consent agreements.

Regulators in many jurisdictions are also coming under scrutiny and/or criticism for perceived supervisory failures. As an example, just last year, the Swedish Financial Supervisory Authority acknowledged that it had failed effectively to supervise anti-money laundering efforts in two of the largest banks in Sweden: Swedbank and Nordea. Brussels has recently taken legal action against the Netherlands, Belgium and Austria for failing to enforce EU rules against money-laundering—part of a broader push to reinforce compliance in the wake of recent dirty money scandals.

What does this mean for financial institutions? If recent enforcement actions are any indication, regulators, feeling the heat of criticism, seem determined to make up for it. In March of this year, the Swedish FSA fined Swedbank $380 million—the largest penalty in Swedish history— for anti-money laundering lapses. In June, the same regulator fined SEB Bank $107 million for AML failings. Also, in June, the Financial Conduct Authority fined the London branch of Commerzbank approximately $45 million for failures in its AML program. Finally, not to be left behind, in June the Office of the Comptroller of the Currency (OCC) entered into a Consent Agreement with the Community Bank of Texas that requires the Bank to remediate multiple AML failings. Most recently, Deutsche Bank was penalized for its relationship with convicted sex offender, "high-risk client" Jeffrey Epstein, and agreed to pay $150 million to settle allegations it maintained weak anti-money laundering internal controls.

Although regulators may be hampered by the spread of the virus, compliance leaders should not assume that AML enforcement actions will abate, as evidenced by the recent regulatory activity. Instead, use this time for a health check of your AML program:

- **Review your transaction monitoring analysis and the people performing the analysis.** As seen in the Epstein matter, reviews that verified, using internet searches, that any woman involved with transactions was at least 18 years old were not sufficient. Nor were protocols that required reviewers to flag transactions only if they could not discern a rational reason for the transaction. Regulators expect a more in-depth monitoring of accounts.

- **If your institution has global operations, make sure these operations are adequately supervised.** Are your subsidiaries following Group policies and if not, are there documented reasons they are not? In the Swedbank action, the Swedish regulator found, among other failings, that Swedbank had failed to manage the activities of its subsidiaries which meant that the Bank did not comply with its own risk management requirements.

- **Make sure the financial crimes roles and responsibilities are documented** and well understood by the entire enterprise, including management committees, first, second and third lines of business. In imposing the $45 million fine, the Financial Conduct Authority criticized the London Branch of Commerzbank, for a lack of clarity around the responsibilities of risk and issue owners, which led to confusion and failings in AML controls.

- **Finally, benchmark your institution's AML efforts against those of bigger, better-resourced global banks.** The recent action by the OCC against the Regional Bank of Texas may forewarn of greater scrutiny of regional banks as regulators look to demonstrate their ability to crack down on misconduct more broadly.

Even during a global pandemic, authorities are paying attention to the AML activities that financial institutions and their compliance officers undertake. Just last month the OCC's "Semiannual Risk Perspective" put banks on notice that heightened compliance risks exist related to the CARES Act, Paycheck Protection Program and similar economic relief programs, and flagged a rise in scams and misconduct. Clearly, now is the time for financial institutions to take a fresh look at high-risk areas post-COVID-19, assign resources and reinforce a culture of integrity, then document all that good work for when the regulators inevitably come calling.

About the Author

Julie Copeland, a Partner with StoneTurn, brings over 20 years of experience advising the world's largest financial institutions on anti-money laundering controls; issues related to economic sanctions, anti-bribery and corruption; as well as multi-jurisdictional business disputes. She provides clients across a range of industries with pragmatic insights into launching and maintaining effective compliance programs worldwide.