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## Anti-Money Laundering

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# Anti-Money Laundering

MIKHAIL REIDER-GORDON AND TRUMAN KIRKLAND BUTLER\*

This article surveys developments in international anti-money laundering (AML) regulation during 2012.<sup>1</sup>

## I. Introduction

Twenty twelve proved to be an eventful year in AML enforcement. Several major financial institutions in the United States and the United Kingdom were found in violation of AML regulations, leading to record fines in some instances. In nearly all of the enforcement actions brought, institutions were found wanting with respect to the internal controls that they put in place to detect and prevent money laundering. Coupled with violations of the Office of Foreign Assets Control (OFAC) sanctions regime, some of the largest penalties yet were levied this year.

In testimony to the U.S. Senate in 2012, the Comptroller of the Currency observed that “primary responsibility for compliance with the [Bank Secrecy Act (BSA)] rests with the nation’s financial institutions themselves” and that “this is not a static area of compliance as new money laundering and terrorist financing risks emerge and as existing risks change.”<sup>2</sup> The regulators introduced a new approach in 2012 in how they evaluate institutions’ BSA/AML deficiencies, examining them within a safety and soundness context and considering them as part of the “Management” component of a bank’s CAMELS (Capital adequacy, Asset quality, Management, Earnings, Liquidity, and Sensitivity to market risk) rating.<sup>3</sup>

While the Office of the Comptroller of the Currency (OCC) brought only two Bank Secrecy Act related Cease and Desist Orders and imposed only two civil monetary penal-

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1. For developments during 2011, see Mikhail Reider-Gordon, Joanna Ritcey-Donohue & Truman Butler, *International Anti-Money-Laundering*, 46 INT’L LAW. 375 (2012). For developments during 2010, see Mikhail Reider-Gordon, *U.S. and International Anti-Money Laundering Developments*, 45 INT’L LAW. 365 (2011).

2. Testimony of the Office of the Comptroller of the Currency Before the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs of the U.S. Senate, 112th Cong. 3 (July 17, 2012), *available at* <http://www.occ.gov/news-issuances/congressional-testimony/2012/pub-test-2012-109-written.pdf>.

3. See *id.*

ties in 2011, the Federal Deposit Insurance Corporation (FDIC) brought seven Cease and Desist Orders and two civil monetary penalties.<sup>4</sup> The Federal Reserve, for its part, issued only one BSA-related Cease and Desist order.<sup>5</sup>

What is notable about 2012 from the AML perspective was that a number of important settlements augured a distinct shift in both government enforcement bodies and the public's attitude toward financial institutions as related to what constitutes perceived collusion with launderers, tax evaders, off-shore banking, and stolen assets. A number of countries, including Singapore, India, and several inter-governmental organizations, sought to designate tax evasion (or under-reporting) as a predicate money-laundering offense or place them on an equal level. As enforcement of predicate crimes, such as corruption, tax-evasion, and insider trading has increased, so has the inevitable laundering that follows gathered much greater scrutiny. The fines and penalties against institutions this year, as well as more vocal calls for transparency and for multi-lateral efforts to crack-down on off-shore banking havens, presage a more coordinated enforcement regime that seeks to lump tax-evaders with sanctions regime violators, would-be launderers, those who seek to hide the assets stolen from developing states' coffers, and the institutions that provide banking services to some or all of them.

In December 2012, as part of a deferred prosecution agreement (DPA), HSBC agreed to pay the largest fine ever levied on a financial institution for violations of the Bank Secrecy Act to settle with the U.S. Department of Justice,<sup>6</sup> but was notable primarily for its settlement agreement. Numerous other U.K.-based banks were also fined or penalized in 2012 or are still currently under investigation for suspicion of aiding money-laundering related to violations of sanctions against Iran. The following is a global survey of the largest or most significant AML enforcement actions and legal developments that occurred in 2012. It is not intended to capture all of the cases, developments, or even the details of those actions that are recounted here, but rather to provide highlights and direct readers toward sources of additional information.

## II. Global Enforcement Actions and Settlements

### A. UNITED KINGDOM

#### 1. *Coutts & Co*

Coutts & Co, the wealth division of the Royal Bank of Scotland, was fined £8.75 million in the United Kingdom's largest ever fine for violating money laundering statutes for failing to conduct sufficient due diligence on nearly three-quarters of its clients that held politically sensitive positions.<sup>7</sup> The case was the first brought by the Financial Services Authority (FSA) as part of an industry-wide probe into the manner in which banks have

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4. *Id.*

5. *Id.* at 10, 13-14.

6. Press Release, U.S. Dep't of Justice, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement (Dec. 11, 2012), <http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html>. For further discussion of the HSBC DPA, see *infra* notes 30-39 and the accompanying text.

7. Letter from Fin. Serv. Auth. [FSA], to Coutts & Company, ¶ 1, at 1 (Mar. 23, 2012), available at <http://www.fsa.gov.uk/static/pubs/final/coutts-mar12.pdf>.

been dealing with accounts of foreign politicians and other clients that have the potential to be exposed to corruption. The FSA accused Coutts of routinely failing to conduct due diligence on politically exposed persons (PEPs), including failure to determine the source of their deposits. Of the 103 files it reviewed, the FSA examiners identified 73 as deficient.<sup>8</sup> The high-risk clients and transactions primarily emanated from the bank's Middle East and eastern European clients. As part of Coutts' agreement to settle the case early, the FSA discounted the originally imposed £12.5 million fine by 30 percent.<sup>9</sup> Coutts agreed to pay £8.75 million and enhance its AML controls, particularly with respect to its high risk clients, as part of the settlement.<sup>10</sup>

## 2. *Habib Bank AG Zurich*

In May 2012, the FSA fined Habib Bank AG Zurich (Habib) £525,000 for failure to establish and maintain adequate anti-money laundering systems and controls.<sup>11</sup> The FSA found that the deficiencies at Habib continued for almost three years from 2007 to 2010 and exposed Habib to an unacceptable risk of handling the proceeds of crime.<sup>12</sup> Habib breached Principle 3 of the FSA's Principles for Businesses. Principle 3 is set out in the FSA's Handbook and states "a firm must take reasonable care to organize and control its affairs responsibly and effectively, with adequate risk management systems."<sup>13</sup> The FSA determined that Habib had failed to: (1) establish and maintain an adequate procedure for assessing the level of money-laundering risk posed by prospective and existing customers, including maintaining a flawed High Risk Country List; (2) conduct sufficient enhanced due diligence in relation to higher risk customers; (3) carry out adequate reviews of its AML systems and controls; and (4) revise training adequately to address shortcomings in AML practice.<sup>14</sup>

## 3. *Turkish Bank (U.K.) Ltd.*

In August 2012, Turkish Bank (U.K.) Ltd. (TBUK), a member of TurkishBank Group, was fined £294,000 by the FSA for failing to establish proper controls to prevent money laundering.<sup>15</sup> The Bank came to the attention of the regulators under one of the FSA's thematic reviews. In 2011, the FSA undertook such a review, focused on banks' management of high money-laundering risk situations.<sup>16</sup> The FSA's report found that "nearly half" of the institutions in their review sample failed to demonstrate adequate procedures

8. *Id.* ¶ 6, at 2.

9. Press Release, FSA, FSA/PN/032/2012, Coutts Fined £8.75 Million for Anti-Money Laundering Control Failings (Mar. 26, 2012), <http://www.fsa.gov.uk/library/communication/pr/2012/032.shtml>.

10. *Id.*

11. Press Release, FSA, FSA Fines Habib Bank AG Zurich £525,000 and Money Laundering Reporting Officer £17,500 for Anti-Money Laundering Control Failings (May 15, 2012), <http://www.fsa.gov.uk/library/communication/pr/2012/055.shtml>.

12. *Id.*

13. FSA, FSA HANDBOOK ch. 2, s. 2.1.1 (2013) (U.K.), available at <http://media.fsahandbook.info/pdf/PRIN/2/1.pdf>.

14. FSA Fines Habib Bank, *supra* note 11.

15. Press Release, FSA, Turkish Bank (UK) Ltd Fined £294,000 for Money Laundering Failings (Aug. 2, 2012), <http://www.fsa.gov.uk/library/communication/pr/2012/081.shtml>.

16. See FSA, BANKS' MANAGEMENT OF HIGH MONEY-LAUNDERING RISK SITUATIONS: HOW BANKS DEAL WITH HIGH-RISK CUSTOMERS (INCLUDING POLITICALLY EXPOSED PERSONS), CORRESPONDENT

with respect to controls around PEPs.<sup>17</sup> The enforcement actions described here against Coutts and Habib Bank AG Zurich also emanated from the same thematic review, however, the fine imposed on TBUK was unprecedented as it focused on the Bank's correspondent banking arrangements, particularly to Turkey and North Cyprus.<sup>18</sup> It is worth noting that in the time period (2007-2010) during which TBUK served as a correspondent bank to these countries, neither of them had anti-money laundering provisions or strictures consistent with the then FATF-40<sup>19</sup> or similar to those in the U.K. on its law books. In 2013, FATF cited Turkey as one of fifteen countries with a purported lack of substantial anti-money laundering and threat financing controls and thus a high risk.<sup>20</sup> Under the U.K.'s Money Laundering Regulations of 2007,<sup>21</sup> consistent with the Third Directive,<sup>22</sup> financial institutions engaged in providing correspondent banking services to banks in high-risk jurisdictions must have enhanced customer due diligence and implement controls to allow for heightened monitoring of transactions.

## B. UNITED STATES

### 1. *Citibank, N.A., Sioux Falls, South Dakota*

In April 2012, the OCC entered into a consent order with Citibank, N.A., to address Bank Secrecy Act deficiencies involving internal controls, customer due diligence, audit, monitoring of its Remote Deposit Capture and international cash letter instrument processing in connection with foreign correspondent banking, and suspicious activity reported relating to that monitoring.<sup>23</sup> These findings resulted in violations by the bank of statutory and regulatory requirements to maintain an adequate BSA compliance program, to file SARs, and to conduct appropriate due diligence on foreign correspondent accounts.

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BANKING RELATIONSHIPS AND WIRE TRANSFERS (June 2011), available at [http://www.fsa.gov.uk/pubs/other/aml\\_final\\_report.pdf](http://www.fsa.gov.uk/pubs/other/aml_final_report.pdf).

17. *Id.* § 1.2. 14.

18. Press Release, Turkish Bank (UK) Ltd. Fined, *supra* note 15.

19. See FIN. ACTION TASK FORCE [FATF], FATF 40 RECOMMENDATIONS (Oct. 2003), available at <http://www.fatf-gafi.org/media/fatf/documents/FATF%20Standards%20-%2040%20Recommendations%20rc.pdf>.

20. See *FATF Public Statement 22 February 2013*, FATF (Feb. 22, 2013), <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement22february2013.html>. For Turkey's current AML laws, see Law No. 5549, Law on the Prevention of Laundering the Proceeds of Crime, Official Gazette, Oct. 18, 2006 (Turk.); Law No. 5237, Turkish Criminal Code, Official Gazette, Oct. 12, 2004, amended by Law No. 5377, Official Gazette, July 8, 2005 (Turk.); Law No. 5271, Criminal Procedure Law, Official Gazette, Dec. 12, 2004 (Turk.); Law No. 42

08, Law on Prevention of Money Laundering, Official Gazette, No. 22822, Nov. 19, 1996 (Turk.); Law No. 3713, Anti-Terror Law, Official Gazette, Apr. 12, 1991, amended by Law No. 5532, Official Gazette, June 29, 2006 (Turk.); Regulation on Program of Compliance with Obligations of Anti-Money Laundering and Combating Financing of Terrorism, Official Gazette, No. 26999, Sept. 16, 2008, as amended on 2 January 2010 (Turk.); and Regulation on Measures Regarding Prevention of Laundering the Proceeds of Crime and Financing of Terrorism, Official Gazette, No. 26751, Jan. 9, 2008, as amended on June 26, 2010 (Turk.).

21. See *The Money Laundering Regulations 2007*, 2007, S.I. 2007/2157 (U.K.), available at <http://www.legislation.gov.uk/ukSI/2007/2157/introduction/made>.

22. Directive 2005/60/EC, of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, 2005 O.J. (L 309) 15.

23. Consent Order, *In re Citibank, N.A. Sioux Falls, S.D.*, [2012] Fed. Banking L. Rep. (CCH) ¶¶ 151-274 (Apr. 4, 2012), available at <http://www.occ.gov/news-issuances/news-releases/2012/nr-occ-2012-57a.pdf>.

## 2. *Commerzbank AG, Frankfurt am Main, Germany*

In June 2012, Commerzbank AG entered into an agreement with the Federal Reserve to address deficiencies in its BSA/AML compliance program.<sup>24</sup> Commerzbank AG was found to have “failed to establish internal controls and independent testing for the Bulk Cash Transactions business line,” and the “New York Branch [was to found to have] failed to perform adequate customer due diligence on the correspondent account maintained for Commerzbank AG.”<sup>25</sup> Notably, the settlement with the regulator did not include a fine as part of the enforcement action.

## 3. *First Bank of Delaware, Wilmington, Delaware*

On November 19, 2012, the FDIC and the FinCEN announced a joint assessment of concurrent civil money penalties of US \$15 million against First Bank of Delaware (FBD) for violations of the BSA and other related AML laws and regulations.<sup>26</sup> The CMP was concurrent to the settlement of civil charges brought by the U.S. Department of Justice on related activities.<sup>27</sup> FBD was found to have failed to implement an effective BSA/AML Compliance Program to detect and report evidence of money laundering and suspicious activity specifically related to adequate oversight of its third-party payment processor relationships. The FDIC cited the penalty as partly resultant from the bank’s history of non-compliance with laws and regulations and its numerous violations of the BSA in the past.

## 4. *Jean Rene Duperval and Telecommunications D’Haiti S.A.M.*

On March 12, 2012, Jean Rene Duperval, a former director of international relations for Telecommunications D’Haiti S.A.M. (Haiti Teleco), a Haitian state-owned telecommunications company and the sole provider of land-line telephone service in Haiti, was convicted of two counts of conspiracy to commit money laundering and nineteen counts of money laundering by a federal jury for his role in a scheme to launder bribes paid to him by two Miami-based telecommunications companies.<sup>28</sup> In his role as director of international relations for Haiti’s state-owned telecommunications company, Duperval awarded business in exchange for bribes and then used South Florida shell companies under his control. “According to the charges, the funds that were laundered were the proceeds of violations of the Foreign Corrupt Practices Act (FCPA), Haitian bribery law, and the wire fraud statute.”<sup>29</sup>

24. Written Agreement by and among Commerzbank AG Frankfurt am Main, Germany, Commerzbank AG New York Branch and Federal Reserve Bank of New York, Docket Nos. 12-042-WA/RB-FB 12-042-WA/RB-FBR (June 8, 2012), available at <http://www.federalreserve.gov/newsevents/press/enforcement/enf20120614a2.pdf>.

24. See *id.* at 3-6.

25. *Id.* at 2.

26. Press Release, FDIC & Fin. Crimes Enforcement Network, FDIC and FinCEN Assess Civil Money Penalty Against First Bank of Delaware (Nov. 19, 2012), available at <http://www.fdic.gov/news/news/press/2012/pr12135.html>.

27. *Id.*

28. Press Release, U.S. Dep’t of Justice, Former Haitian Government Official Convicted in Miami for Role in Scheme to Launder Bribes Paid by Telecommunications Companies 1-2 (Mar. 13, 2012), <http://www.justice.gov/opa/pr/2012/March/12-crm-310.html>.

29. *Id.* at 1.

### 5. *HSBC North America Holdings Inc. and HSBC plc, London, England*

After a year-long investigation, the U.S. Senate Permanent Subcommittee on Investigations released a 335-page report on July 17, 2012, concluding that HSBC Holdings PLC ignored warnings that money-launderers and potential terrorists were abusing the bank's operations.<sup>30</sup> HSBC North America Holdings Inc. (HNAH) is the holding company for HSBC's operations in the United States. HNAH is controlled by HSBC plc, London, England (HSBC Group). The bank is "a [US] \$2.5 trillion global banking company with hundreds of financial institution subsidiaries throughout the world," serving "3.8 million customers through its personal financial services, commercial banking, private banking, asset management, and global banking and markets segments."<sup>31</sup> Among other things, the report found that (1) HSBC Mexico's business maintained a branch in the Cayman Islands that, in 2008, handled 50,000 client accounts and US \$2.1 billion in holdings but had no staff or offices;<sup>32</sup> (2) suspicious funds from countries including Mexico, Iran, and Syria had passed through the bank to evade U.S. sanctions and U.S. regulators;<sup>33</sup> and (3) critical identifying data was stripped from transactions with Iran (handling nearly 25,000 transactions from 2001-2007,<sup>34</sup> North Korea, and Sudan to evade U.S. sanctions and U.S. regulators.<sup>35</sup> The report observed that in 2007 and 2008, HSBC's Mexico unit shipped \$7 billion in cash to the bank's U.S. affiliate and held a number of high profile clients linked to drug trafficking.<sup>36</sup> The report also noted that HSBC worked extensively with Saudi Arabia's Al Rajhi Bank, designated by some intelligence agencies as being associated with terrorist financing.<sup>37</sup> HSBC's U.S. affiliate supplied Al Rajhi with nearly US \$1 billion worth of U.S. banknotes until 2010.<sup>38</sup> In December 2012, as part of a deferred prosecution agreement with the DOJ, HSBC agreed to pay the largest fine ever by a financial institution in the history of BSA enforcement. The Bank paid US \$1.256 billion in partial settlement for failing to prevent laundering and for violating the Office of Foreign Asset Control (OFAC) sanctions.<sup>39</sup> The Bank also agreed to pay an additional US \$665 million in civil penalties.<sup>40</sup> The U.K. FSA continues to investigate the Bank.

### 6. *ING Bank NV*

In what turned out to presage the HSBC settlement for similar violations of OFAC block-listed countries, Amsterdam-based ING Bank NV paid what at the time (June 12,

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30. *U.S. Vulnerabilities to Money Laundering, Drugs, and Terrorist Financing: HSBC Case History: Hearing Before Subcomm. on Investigations, of the S. Comm. on Homeland Sec. & Gov't Affairs*, 112th Cong. 4, 6-7, 36, 42, 113, 114, 121 (2012) [hereinafter *July 17 Report*], available at <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/us-vulnerabilities-to-money-laundering-drugs-and-terrorist-financing-hsbc-case-history> (click on link under "Related Files" on left side of screen).

31. Testimony of the Office of the Comptroller of the Currency, *supra* note 2, at 14.

32. *July 17 Report*, *supra* note 30, at 36.

33. *Id.* at 116, 164, 177.

34. *Id.* at 121.

35. *Id.* at 113-14.

36. *Id.* at 4.

37. *Id.* at 6-7, 189-221.

38. *Id.* at 7.

39. Press Release, HSBC Holdings Plc. and HSBC Bank USA N.A. Admit, *supra* note 6.

40. *Id.*

2012) was a record fine of US \$619 million as part of a deferred prosecution agreement with the U.S. Justice Department and the New York County District Attorney's Office for violating not just OFAC block lists by providing banking services to sanctioned states Cuba and Iran, but for conspiring to violate both the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA).<sup>41</sup> In circumstances similar to HSBC, ING banking personnel were said to have removed payment data on transactions that would have identified the transactions as being performed on behalf of sanctioned countries. Among other activities, with transactions totaling in excess of US \$2 billion, the Venezuelan branch of ING provided on-going banking requests on behalf of Cuba-based entities. For its behavior over a decade, the Bank was charged with "knowingly and willfully conspiring to violate the IEEPA and TWEA,"<sup>42</sup> two of several laws that underlie the sanctions administered by OFAC. Because ING's actions violated New York state laws as well as U.S. Federal regulations, the fine was split equally between the U.S. Justice Department and the New York County District Attorney's Office and served to partially settle a parallel proceeding with OFAC.<sup>43</sup>

ING processed more than 20,000 wire transfers and other transactions in violation of Cuba sanctions from October 2002 to July 2007, totaling more than US \$1.65 billion; over 40 transactions between December 2003 and September 2007 in violation of sanctions against Myanmar worth approximately \$15.5 million; in excess of 40 transactions violating sanctions against Sudan; and several transactions against sanctioned countries Iran and Libya.<sup>44</sup>

## 7. *Lebanese Canadian Bank*

In a follow-on action to the 2011 U.S. Department of Justice action against Lebanese Canadian Bank (LCB), the U.S. Department of the Treasury in August 2012 identified LCB and its subsidiaries as a financial institution of primary money-laundering concern under section 311 of the USA PATRIOT Act for the bank's role in facilitating the money laundering activities of an international narcotics trafficking and money laundering network.<sup>45</sup> The Treasury's Financial Crimes Enforcement Network also prohibited U.S. financial institutions from opening or maintaining correspondent or payable-through accounts for LCB. In August 2012, U.S. officials seized US \$150 million from an escrow account by Société Générale de Banque au Liban, the institution that purchased most of LCB's assets in 2011.<sup>46</sup> The United States claimed the funds were proceeds routed through the bank on behalf of an organization designated as a terrorist group. U.S. officials seized an equivalent amount from a U.S. correspondent account of Lebanon's Banque Libano Française (BLF) as the funds had been in a BLF escrow account.

41. Press Release, U.S. Dep't of Justice, ING Bank N.V. Agrees to Forfeit \$619 Million for Illegal Transactions with Cuban and Iranian Entities (June 12, 2012), <http://www.justice.gov/opa/pr/2012/June/12-nsd-742.html>.

42. *Id.* at 3.

43. *Id.*

44. *Id.*

45. Press Release, U.S. Attorney's Office S. Dist. of N.Y., Manhattan U.S. Attorney Announces Seizure of \$150 Million in Connection with a Hizballah-Related Money Laundering Scheme (Aug. 20, 2012), <http://www.justice.gov/usao/nys/pressreleases/August12/lcbseizure.html>.

46. *Id.*



8. *Mario Ernesto Villanueva Madrid*

In August 2012, the former governor of the Mexican state of Quintana Roo, Mario Ernesto Villanueva Madrid, pled guilty to conspiring to launder millions of dollars in bribe money that he had received from the Juarz Cartel narcotics trafficking organization.<sup>47</sup> Madrid had been extradited from Mexico on two separate counts: accepting the bribes and laundering the proceeds of the bribes. Much of the money had been transmitted through banks in the United States and other countries outside of Mexico. Elected to the office of Governor of Quintana Roo in April 1993, Madrid entered into an agreement with the Cartel in 1994 to not only ensure passage of high volumes of narcotics, but to put Quintana Roo police and other state government employees and infrastructure at the disposal of traffickers. Madrid conspired to launder over US \$19 million in bribe payments through U.S. and foreign bank accounts.<sup>48</sup> In exchange for his on-going cooperation with the Juarez Cartel, Madrid received regular payments between US \$400,000 and US \$500,000 per shipment.<sup>49</sup>

In an effort to hide the illicit funds, Madrid began transferring the money to bank and brokerage accounts in the United States, Switzerland, the Bahamas, Panama, and Mexico, with many of the accounts being held in the names of British Virgin Islands shell corporations. In 1999, Madrid's gubernatorial term expired, and with it, immunity from prosecution. He fled Mexico and remained a fugitive for two years. Around the time of his flight, Madrid liquidated over US \$11 million in illegal proceeds that had been deposited over a period of four years into a Lehman Brothers account.<sup>50</sup> Madrid had opened various bank and brokerage accounts in a number of off-shore havens, including Switzerland, the Bahamas, British Virgin Islands and the United States using a variety of shell corporations and colluding financial institution representatives.<sup>51</sup> The funds held at Lehman and many of the other U.S.-based accounts were seized and ultimately forfeited by U.S. authorities.<sup>52</sup>

9. *MoneyGram International, Inc. (Dallas, Texas)*

On November 19, 2012, the Department of Justice announced that MoneyGram International, Inc., agreed to forfeit US \$100 million and enter into a five-year deferred prosecution agreement, including a corporate monitorship, confessing to criminally aiding and abetting wire fraud and failing to maintain an effective anti-money laundering program.<sup>53</sup> MoneyGram agents and others defrauded tens of thousands of people in the United States through mass marketing and consumer fraud phishing schemes. The monetary forfeiture will be used to compensate victims through its Victim Asset Recovery Program. MoneyGram's BSA failures spanned five years and resulted, among other things, from the

47. Press Release, U.S. Attorney's Office S. Dist. of N.Y., Former Governor of Mexican State Pleads Guilty in Manhattan Federal Court to Money Laundering Charge in Connection with Narcotics Bribes (Aug. 2, 2012), <http://www.justice.gov/usao/nys/pressreleases/August12/villanuevamadridplea.html>.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Press Release, U.S. Dep't of Justice, Moneygram International Inc. Admits Anti-Money Laundering and Wire Fraud Violations, Forfeits \$100 Million in Deferred Prosecution (Nov. 9, 2012), <http://www.justice.gov/opa/pr/2012/November/12-crm-1336.html>.

failure of its fraud and AML compliance functions to share information and from its regularly resolving disagreements between its sales and fraud departments in the sales department's favor.

#### 10. *PokerStars, Full Tilt Poker, and Absolute Poker*

In July 2012, the online gambling company PokerStars agreed to settle charges brought by the U.S. Department of Justice (DOJ) for US \$731 million.<sup>54</sup> The settlement included an agreement to reimburse some customers whose funds were frozen on April 15, 2011, when the DOJ seized control of the three largest online gambling sites in the United States: PokerStars, Full Tilt, and Absolute Poker.<sup>55</sup> The company also agreed to make available to foreign players all balances (approximately US \$184 million) that were held in the Full Tilt accounts.<sup>56</sup> Under the terms of the agreement, PokerStars did not admit to any wrongdoing, but "the Government will maintain a portion of the US \$547 million forfeited by PokerStars as a substitute for the forfeited Full Tilt assets to cover the litigation of claims by other parties asserting interests in the Forfeited Full Tilt Assets."<sup>57</sup> The settlement included an agreement that Isai Scheinberg, who is presently under indictment in a related criminal case, shall not serve in any management or director role at PokerStars and that also bars former Full Tilt officers Raymond Bitar, Howard Lederer, Rafael Furst, Chris Ferguson, and Nelson Burtonick from ever being employed or hired again by the company. "PokerStars is prohibited from offering online poker in the [United States] for real money unless and until it is legal to do so under U.S. law."<sup>58</sup>

In a separate matter, but one related to offshore gambling, in December 2012, the U.S. District Court for the District of Columbia granted the U.S. government a consent order it had sought to forfeit nearly US \$7 million in proceeds it claimed were derived from the laundering of offshore gambling operations.<sup>59</sup> The forfeiture related to the 1998 criminal case brought against William Paul Scott, one of the owners of World Wide Tele-Sports (WWTS), an on-line gambling site operated out of Antigua. U.S.-based gamblers comprised the largest volume of WWTS's clientele and used the company's offshore bank accounts to purchase "credits" with which they could place wagers on U.S. sporting events. Because Scott resided in Antigua, the U.S. could not obtain extradition. But, in 2003, the U.S. government identified a shell company held by Scott, Soulbury Limited, that was used to funnel the profits from WWTS. Soulbury's WWTS accounts were physically held on the island of Guernsey. In the first-ever employment of a forfeiture provision under 18 U.S.C. § 981(k),<sup>60</sup> the United States, with assistance from authorities in Guernsey, were able to file a civil forfeiture action against WWTS's accounts and seize

54. Press Release, U.S. Attorney's Office S. Dist. of N.Y., Manhattan U.S. Attorney Announces \$731 Million Settlement of Money Laundering and Forfeiture Complaint with Pokerstars and Full Tilt Poker (July 31, 2012), <http://www.justice.gov/usao/nys/pressreleases/July12/pokersettlement.html>.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.*

59. Press Release, U.S. Dep't of Justice, Department of Justice Forfeits Nearly \$7 Million in Proceeds of Unlawful Offshore Gambling and Money Laundering Following Guilty Plea by William Paul Scott (Dec. 14, 2012), <http://www.justice.gov/opa/pr/2012/December/12-crm-1500.html>.

60. To define interbank accounts, § 981 states:

the proceeds from a Royal Bank of Scotland International (Guernsey) correspondent bank account that was located in the United States.<sup>61</sup> In 2004, Scott was first indicted by the U.S. District Court for the Southern District of New York, and a second time for different crimes by the U.S. District Court for the District of Columbia. Scott returned to the United States in 2012 and pled guilty in both cases on September 25, 2012.<sup>62</sup>

#### 11. *Standard Chartered*

In August 2012, one of Britain's largest banks agreed to pay US \$340 million to the New York State Department of Financial Services to settle allegations that it was involved in money laundering for Iranian clients.<sup>63</sup> Standard Chartered settled allegations that it broke U.S. money laundering laws, hiding illegal transactions with Iran and other embargoed countries. New York State's Financial Services Department accused Standard Chartered of violating federal OFAC regulations involving Iranian and North Korean clients, camouflaging thousands of financial transactions. The U.S. Department of Justice, the Office of Foreign Asset Control, and several other countries' regulators have not yet reached conclusions with the institution.

### III. Legislative Developments and Government Guidance

#### A. BRAZIL

In July 2012, President Dilma Rousseff signed Law 12.683/2012,<sup>64</sup> designed to strengthen Brazil's existing money laundering statute.<sup>65</sup> Whilst the original Law 9613 required that monies being laundered be derived from a predicate offense of arms trafficking, terrorism, narcotics trafficking, extortion through abduction, or crimes undertaken by organized criminal entities, the 2012 amendment makes the proceeds of the crime of any

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For the purpose of a forfeiture under this section or under the Controlled Substances Act (21 U.S.C. 801 et seq.), if funds are deposited into an account at a foreign financial institution (as defined in section 984(c)(2)(A) of this title), and that foreign financial institution (as defined in section 984(c)(2)(A) of this title) has an interbank account in the United States with a covered financial institution (as defined in section 5318(j)(1) of title 31), the funds shall be deemed to have been deposited into the interbank account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding the funds may be served on the covered financial institution, and funds in the interbank account, up to the value of the funds deposited into the account at the foreign financial institution (as defined in section 984(c)(2)(A) of this title), may be restrained, seized, or arrested.

18 U.S.C. § 981(k)(1)(A).

61. Press Release, Department of Justice Forfeits Nearly \$7 Million, *supra* note 59.

62. *Id.*

63. Press Release, N.Y. Dep't of Fin. Serv., Statement from Benjamin M. Lawskey, Superintendent of Financial Services, Regarding Standard Chartered Bank (Aug. 14, 2012), <http://www.dfs.ny.gov/about/press/pr1208141.htm>.

64. Lei No. 12.683, de 9 de Julho de 2012, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 9.7.2012 (Braz.), available at [http://www.planalto.gov.br/CCIVIL\\_03/\\_Ato2011-2014/2012/Lei/L12683.htm](http://www.planalto.gov.br/CCIVIL_03/_Ato2011-2014/2012/Lei/L12683.htm). For an English description of 12.683/2012, see *Brazil Moves Forward in the Fight Against Money Laundering*, U.N. OFF. ON DRUGS & CRIME (July 10, 2012), <http://www.unodc.org/southerncone/en/frontpage/2012/07/10-brasil-avanca-no-combate-a-lavagem-de-dinheiro.html>.

65. See Lei No. 9613, de 3 de Março de 1998, DIÁRIO OFICIAL DA UNIÃO [D.O.U.] de 3.3.1998 (Braz.).

offence capable of activating a laundering charge.<sup>66</sup> The new provisions simplify investigatory options, removing the requirement for prosecutors and law enforcement to seek court orders for access to routine informational databases; affixes disclosure obligations on the part of accountants, real estate brokers and other gate-keepers relating to customer information and activities; and significantly increases civil penalties for laundering offenses. The gate-keeper provisions include broad definitions of those associated with financial institutions, mandating new record-keeping and transactional reporting and covering several surprising industries whose products are deemed of “material value,” including those involving athletes, artists, and those who trade in livestock.<sup>67</sup> The amended law raises fines from R\$200,000 to up to R\$20 million and increases prison sentences from three to ten years.<sup>68</sup>

## B. BRITISH VIRGIN ISLANDS

In August 2012, BVI announced, through recent amendments, increased fines and penalties for violations of the BVI Proceeds of Criminal Conduct Act 1997, the Anti-Money Laundering Regulations 2008, and the Anti-Money Laundering and Terrorist Financing Code of Practice 2008.<sup>69</sup> The amendments take effect immediately. In January 2011, the Caribbean Financial Action Task Force (CFATF) published a report<sup>70</sup> citing a number of deficiencies and recommending that amendments to the BVI’s AML laws and new reporting regulations be adopted. The most significant deficiency cited by the report was that then-current penalties did not sufficiently dissuade would-be offenders.<sup>71</sup> Specifically, the report observed that whilst the penalties had “substantially” increased, they were “still not considered dissuasive when compared with jurisdictions of similar development.”<sup>72</sup>

## C. CHINA AND HONG KONG

On April 1, 2012, the Hong Kong Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance went into effect. In July 2012, the Hong Kong Monetary Authority issued a Guideline document superseding Guideline No. 3.3 and the Supplement to the Guideline (both of July, 2010), directed at Authorized Institutions.<sup>73</sup> The new ordinance places money service operators, which includes remittance agents and

66. See Lei No. 12.683 art. 1.

67. *Id.* art.9(XII).

68. *Id.* arts. 1, 14.

69. Virgin Is. Fin. Serv. Comm’n, Virgin Is. Statutory Instrument 2012 No. 22, Proceeds of Criminal Conduct Act, 1997 (No. 5 of 1997), Anti-Money Laundering and Terrorist Financing (Amendment), Code of Practice (2012), [Gazetted May 10, 2012], available at [http://www.bvifsc.vg/Portals/2/Anti-Money%20Laundering%20and%20Terrorist%20Financing%20\(Amendment\)%20Code%20of%20Practice,%202012.pdf](http://www.bvifsc.vg/Portals/2/Anti-Money%20Laundering%20and%20Terrorist%20Financing%20(Amendment)%20Code%20of%20Practice,%202012.pdf).

70. See CFATF, THIRD FOLLOW UP REPORT, VIRGIN ISLANDS (Jan. 18, 2011), available at [https://www.cfatf-gafic.org/index.php?option=com\\_docman&task=cat\\_view&gid=296&Itemid=414&lang=en](https://www.cfatf-gafic.org/index.php?option=com_docman&task=cat_view&gid=296&Itemid=414&lang=en).

71. *Id.* at 14.

72. *Id.*

73. See H.K. MONETARY AUTH., GUIDELINE ON ANTI-MONEY LAUNDERING AND COUNTER-TERRORIST FINANCING (July 2012), available at <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/guideline/g33.pdf>.

money-changers, under the statutory licensing regime of the Hong Kong Customs and Excise Department.<sup>74</sup> As part of the new ordinance and under the Guideline, Authorized Institutions (AIs), including insurance companies, remittance agents, money-changers, and intermediaries, are obligated to conduct customer due diligence and maintain records of said efforts for no less than six years.<sup>75</sup> Non-compliant AIs will be subject to supervisory and criminal sanctions.<sup>76</sup> The law also empowers the relevant Hong Kong authorities to supervise financial institutions and imposes supervisory and criminal sanctions on breaches or non-compliance with the requirements. It applies to licensed corporations (LCs), authorized institutions, insurers, insurance agents and brokers, remittance agents, and money-changers in Hong Kong.<sup>77</sup> Additionally, the new law will create the independent Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Review Tribunal to “review decisions made on the imposition of supervisory sanctions, and decisions on licensing matters made by the Commissioner of Customs & Excise in respect of money service operators.”<sup>78</sup>

#### D. COSTA RICA

Costa Rica amended Article 15 of Law 8204 as of July 1, 2012, to require that foreign nationals present proof of immigration status via the country’s Immigration Identification Card for Foreign Persons (DIMEX) when making bank transfers using the National Electronic Payment System to transfer money between or through Costa Rican banks.<sup>79</sup> Before the new rule, foreigners visiting the country needed only to show their passports and tourist visas as evidence of their identification when conducting financial transactions between in-country banks. The DIMEX requirements will bring to the foreign population in Costa Rica the same oversight in financial transactions that Costa Rican citizens have already been following. Officials have said the new law is aimed at combating money laundering as it will allow the tracking of bank transactions by foreigners in the country and provide greater transparency to the individuals conducting the transactions.<sup>80</sup> Costa Rica is classified in the U.S. State Department’s 2012 International Narcotics Control Strategy Report as a “major money laundering country.”<sup>81</sup>

74. Press Release, H.K. Gov’t, Commencement of Anti-Money Laundering Law and Appointment of Review Tribunal (Mar. 30, 2012), <http://www.info.gov.hk/gia/general/201203/30/P201203300255.htm>.

75. *Id.* at S.18(4)(a), Sch. 2, 4.17.5

76. GUIDELINE ON ANTI-MONEY LAUNDERING, *supra* note 73.

77. *Id.* at 66-78.

78. *Hong Kong’s Anti-Laundering Law to Take Effect*, CHINA.ORG.CN (Mar. 30, 2012), [http://www.china.org.cn/china/2012-03/30/content\\_25031830.htm](http://www.china.org.cn/china/2012-03/30/content_25031830.htm).

79. Clayton R. Norman, *More Control on Bank Transfers*, TICO TIMES, May 25, 2012, at 1, 3, available at [http://www.ticotimes.net/Current-Edition/Top-Story/More-control-on-bank-transfers\\_Friday-May-25-2012](http://www.ticotimes.net/Current-Edition/Top-Story/More-control-on-bank-transfers_Friday-May-25-2012).

80. *Id.*

81. Jaime Lopez, *Requirements for Banking in Costa Rica Become Similar to the U.S.*, COSTA RICA STAR (May 22, 2012), <http://news.co.cr/requirements-banking-costa-rica-become-similar-us/6944/>.

## E. GERMANY

In response to a report issued by the Financial Action Task Force on February 19, 2010<sup>82</sup> that identified a number of deficiencies related to its anti-money laundering efforts, Germany amended its Anti-Money Laundering Code. The amendments went into effect on March 1, 2012 and expanded coverage to include issuers of electronic currency and those individuals and financial institutions involved in transmitting digital currencies to financial entities regulated under the AML Code.<sup>83</sup> The list of newly affected entities also includes banks, financial institutions, attorneys, notaries, chartered accountants, patent attorneys, tax advisers, property brokers, and casinos.<sup>84</sup>

## F. NEPAL

In June 2012, the central bank, Nepal Rastra Bank (NRB)'s Foreign Exchange Management Department, issued new regulations requiring money-changers and remitters in the country to inform the Financial Information Unit (FIU) of the NRB of any suspicious transactions; demanding that they track within a fifteen day period any transmissions exceeding Rs 1 million thresholds by any one customer.<sup>85</sup> The regulation also requires mandatory reporting of those customers seeking to transmit in single or multiple transactions within a single day exceeding Rs 1 million.<sup>86</sup> Any entity that can exchange foreign currency, such as financial institutions, money-changers, hotels, travel agencies, or courier companies, must, within fifteen days of the transaction, report to FIU any foreign currency exchanged over US \$5,000 by one entity.<sup>87</sup>

## G. PAKISTAN

In June 2012, the State Bank of Pakistan (SBP) issued guidelines for combating money laundering and terrorist financing to all exchange companies (ECs) operating in the country in order to avert the risks posed by money laundering and terrorist financing.<sup>88</sup> Exchange companies must now review and submit their policies for combating money

82. FATF, *MUTUAL EVALUATION OF GERMANY, ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM* (Feb. 19, 2010), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Germany%20full.pdf>.

83. Fed. Fin. Supervisory Auth., Circular No. 2/2012 (GW), Gesetz zur Optimierung der Geldwäscheprävention – GwOptG [Act on Optimising the Prevention of Money Laundering] (Mar. 21, 2012) (Ger.), available at [http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs\\_1202\\_gw\\_fatf\\_en.html?nn=2821306#doc2934214bodyText](http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Rundschreiben/rs_1202_gw_fatf_en.html?nn=2821306#doc2934214bodyText).

84. Joachim Kaetzler & Sabrina Salewski, *Money-Laundering Prevention in the Non-Financial Sector*, INT'L L. OFF. (Apr. 10, 2012), <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=d222c66a-be55-4246-9fc6-5848bd092c3f&redir=1>.

85. See *NRB Tightens Grip on Money Laundering*, HIMALAYAN TIMES (June 1, 2012, 9:44 PM), <http://www.thehimalayantimes.com/fullNews.php?headline=NRB+Tightens+grip+on+money+laundering+&NewsID=3344>. For a copy of the new regulations in Hindi, see *Laws & Legislation*, NEPAL RASTRA BANK, [http://www.nrb.org.np/lgd/rules\\_bylaws.php](http://www.nrb.org.np/lgd/rules_bylaws.php) (last visited Feb. 17, 2013).

86. *NRB Tightens Grip*, *supra* note 85.

87. *Id.*

88. See STATE BANK OF PAK., *ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM (AML/CFT) REGULATIONS FOR BANKS & DFIs 15* (Sept. 13, 2012), available at [http://www.sbp.org.pk/l\\_frame/AML-CFT-Regulations.pdf](http://www.sbp.org.pk/l_frame/AML-CFT-Regulations.pdf).

laundering and terrorist financing on an annual basis and their Board of Directors must approve those policies. Additionally, SBP FE Circular No. 3 of May 31, 2012 requires exchange companies to: (1) obtain from customers information on the purpose and intended nature of every transaction; (2) conduct due diligence in identifying every customer prior to the completion of a transaction; (3) monitor all complex and large transactions; (4) seek to identify all unusual transaction patterns; and (5) file suspicious transaction reports when necessary.<sup>89</sup> The new law brings Pakistan closer to international customer due diligence standards, although deficiencies remain.<sup>90</sup>

#### H. THE PHILIPPINES

In June 2012, the FATF upgraded the Philippines to its international "grey list" on money laundering and terrorist financing after the Philippines enacted two new laws: (1) An Act To Further Strengthen The Anti-Money Laundering Law, and (2) The Terrorism Financing Prevention And Suppression Act of 2012.<sup>91</sup> The Philippines is one of twenty-three countries where the FATF monitors implementation of measures designed to reduce money laundering and terrorist financing.<sup>92</sup> Previously, the Philippines was listed on the "dark grey list," a classification reserved for countries that have not made sufficient progress. The passage of these two bills prevented the downgrading of the Philippines to the black list, which would have subjected the country to increased inspections on financial transactions, delayed remittances, and higher transaction fees.<sup>93</sup>

#### I. THAILAND

Effective in August 2012, Thailand's Anti-Money Laundering and Suppression Office implemented a new measure mandating that banks operating in the country will be expected to freeze accounts that are suspected of being used for money-laundering activities.<sup>94</sup> In response to the blacklisting of Thailand by the FATF on Money Laundering for failing to have adequate anti-money laundering laws, under the new regulations, financial institutions will be obligated to: (1) verify their depositor's sources of income; (2) freeze accounts that are suspicious; (3) close accounts with irregular money movements; and (4) report all suspicious activities.<sup>95</sup> The new law will apply not only to banks, but also to

89. Memorandum from State Bank of Pak., FE Circular No. 3, to the Chief Executives of All Exchange Companies, Guidelines for Combating Money Laundering and Terrorist Financing (May 31, 2012), available at <http://www.sbp.org.pk/epd/2012/FEC3-Guidelines.pdf>.

90. See *High-Risk and Non-Cooperative Jurisdictions: FATF Public Statement - 19 October 2012*, FIN. ACTION TASK FORCE (Oct. 19, 2012), <http://www.fatf-gafi.org/topics/high-riskandnon-cooperativejurisdictions/documents/fatfpublicstatement-19october2012.html>.

91. *Philippines Evades FATF Blacklist, Gets Upgrade*, SUN STAR (June 24, 2012), <http://www.sunstar.com.ph/ililo/local-news/2012/06/24/philippines-evades-fatf-blacklist-gets-upgrade-228415>. See also *Statement of Sec. Florencio B. Abad on the Passage of the Act to Improve the Anti-Money Laundering Law*, REPUBLIC PHIL. DEP'T BUDGET & MGMT. (June 19, 2012), <http://www.dbm.gov.ph/?p=3224>.

92. *Philippines Evades Blacklist*, *supra* note 91.

93. *Id.*

94. Royal Thai Government, Ministerial Regulation Prescribing Rules and Procedures for Customer Due Diligence, B.E. 2555 (2012), Government Gazette, Vol. 129 pt. 44 A; Anti-Money Laundering Act B.E. 2542, available at [http://www.amlo.go.th/amlofarm/farm/en/files/Anti-Money%20Laundering%20Act\(1\).pdf](http://www.amlo.go.th/amlofarm/farm/en/files/Anti-Money%20Laundering%20Act(1).pdf) (International Cooperation Bureau's unofficial translation, edited July 12, 2012).

95. *Id.* chs. II-III.

electronic service providers, companies listed on the Stock Exchange of Thailand, credit unions, foreign exchange houses, money transfer service providers, fund management companies, agriculture and gold futures trading companies, and other financial services companies.<sup>96</sup>

## J. UNITED STATES

### 1. *Financial Crimes Enforcement Network (FinCEN) – Mortgage Lenders*

On February 14, 2012, FinCEN issued a final rule defining non-bank residential mortgage lenders and originators as loan or finance companies for the purpose of requiring them to establish AML and SAR programs and comply with other requirements under FinCEN's Bank Secrecy Act regulations.<sup>97</sup> The rule went into effect on August 13, 2012. Accordingly, the rule confirms that when a subsidiary loan or finance company is obligated to comply with the AML and SAR regulations that are applicable to its parent financial institution, and is subject to examination by the parent financial institution's federal functional regulator, the loan or finance company is deemed to comply with FinCEN's regulations.

### 2. *FinCEN — Casinos*

On August 13, 2012, FinCEN issued new guidance on interpreting the Bank Secrecy Act as it relates to casinos' recordkeeping, recording, and compliance program requirements. The guidance was presented as a set of frequently asked questions and answers, including (1) admonishments that casinos should not rely on a "two-strike" system, as they may result in inaccurate or incomplete reports; (2) new requirements stating that, where reasonable, casinos should obtain identifying information from a customer and mandatory identification of representatives of "junkets" (groups of players traveling together); (3) new regulations requiring card clubs to report transactions involving sums of US \$10,000 or more; (4) removing allowances for casinos to rely on Individual Taxpayer Identification Numbers (ITIN) as a means of verifying customer identity; (5) requirements to create and retain a list of transactions involving personal checks, extensions of credit, negotiable instruments (including counter checks and markers), and other instruments in the amount of US \$3,000 or more; and (6) making adjustments to required cash-in/cash-out accounting and reporting.<sup>98</sup>

As of July 1, 2012, FinCEN ceased to accept paper filings—including Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs). For the first time in the agency's history, all filings made to it are mandated to be in electronic format. Only a select few forms are exempt from the electronic filing requirement, including: the Cur-

96. *Id.* ch. I.

97. U.S. DEP'T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, RUL. FIN-2012-R005, COMPLIANCE OBLIGATIONS OF CERTAIN LOAN OR FINANCE COMPANY SUBSIDIARIES OF FEDERALLY REGULATED BANKS AND OTHER FINANCIAL INSTITUTIONS (2012); *see generally* 31 C.F.R. pts. 1010, 1029 (2012).

98. U.S. DEP'T OF TREASURY, FIN. CRIMES ENFORCEMENT NETWORK, NO. FIN-2012-G004, FREQUENTLY ASKED QUESTIONS CASINO RECORDKEEPING, REPORTING, AND COMPLIANCE PROGRAM REQUIREMENTS, GUIDANCE (Aug. 13, 2012), *available at* [http://www.fincen.gov/statutes\\_regs/guidance/html/FIN-2012-G004.html](http://www.fincen.gov/statutes_regs/guidance/html/FIN-2012-G004.html); *see generally* 31 C.F.R. pt. 1021 (2012).



rency and Monetary Instrument Report (CMIR) and FinCEN Form 8300 (Report of Cash Payments Over US \$10,000 Received in a Trade or Business). Reports of Foreign Bank and Financial Accounts (FBARs) are also exempt from electronic filing until June 30, 2013.<sup>99</sup>

3. *Federal Reserve System, Consumer Financial Protection Bureau, Federal Deposit Insurance Corporation, National Credit Union Administration, and Office of the Comptroller of the Currency*

In conformity with the Dodd-Frank Act, section 1025(a)(2)<sup>100</sup> on supervision of very large banks, savings associations, and credit unions, which mandates coordination of supervisory activities by the primary prudential regulators and state banking authorities, a Memorandum of Understanding (MOU) between five federal supervisory agencies was signed on June 4, 2012.<sup>101</sup> The Consumer Financial Protection Bureau, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency are to coordinate under the Bureau of Consumer Financial Protection, to whom they will now report. The five regulatory bodies are responsible for supervision of insured depository institutions and credit unions with more than US \$10 billion in assets, but the Bureau will hold exclusive authority to command examinations and demand reports.<sup>102</sup> The agencies are now mandated to coordinate the scheduling of examinations of institutions that fall under the Bureau's purview, conduct simultaneous examinations of covered insured financial institutions, and share draft reports with each other.<sup>103</sup>

#### IV. Financial Action Task Force (FATF)

In June 2012, the FATF released its report titled, "Specific Risk Factors in Laundering the Proceeds of Corruption."<sup>104</sup> The report was designed for financial and non-financial reporting institutions, offering analysis and examples of specific risks to aid them in better detection of corruption-related money laundering activities. The report focuses closely on politically exposed persons (PEPS), geographical and specific country risks, channel risks, and international corruption indexes.

99. Press Release, Fin. Crimes Enforcement Network, FinCEN Marks the End of Paper SARs and CTRs: Final Reminder for Electronic Filing Requirement (June 29, 2012), *available at* [http://www.fincen.gov/news\\_room/nr/pdf/20120629.pdf](http://www.fincen.gov/news_room/nr/pdf/20120629.pdf).

100. 12 U.S.C. § 5515 (2006).

101. Press Release, FDIC et al., Agencies Sign Memorandum of Understanding on Supervisory Coordination (June 4, 2012), <http://www.fdic.gov/news/news/press/2012/pr12061.html>; *see also* Memorandum of Understanding on Supervisory Coordination, FDIC, *available at* <http://www.fdic.gov/news/news/press/2012/pr12061a.pdf> (last visited Feb. 17, 2013).

102. Dodd-Frank Wall Street Reform Act and Consumer Protection Act § 1025(a)(1), 12 U.S.C.A. § 5515 (2010).

103. *Id.* § 1025(e)(1)(A)-(C).

104. *See* FIN. ACTION TASK FORCE [FATF], SPECIFIC RISK FACTORS IN LAUNDERING THE PROCEEDS OF CORRUPTION 3 (June 2012), *available at* <http://www.fatf-gafi.org/media/fatf/documents/reports/Specific%20Risk%20Factors%20in%20the%20Laundering%20of%20Proceeds%20of%20Corruption.pdf>.

## V. Money Laundering and the Vatican

On July 4, 2012, the Council of Europe's Committee of experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) released a report calling on the Vatican to strengthen measures aimed at preventing money laundering and terrorist financing.<sup>105</sup> The report warns that Holy See regulators lack the power to oversee the flow of money through one of the world's smallest states. The Vatican is undergoing evaluation in a bid to persuade foreign lenders and regulators that the Vatican bank and other Holy See financial institutions are adequately regulated.

## VI. Stolen Asset Recovery Actions and Initiatives

### A. UNITED STATES

On June 28, 2012, the first forfeiture judgment obtained under the U.S. Department of Justice's recently formed Kleptocracy Asset Recovery Initiative occurred with the forfeiture of US \$401,931 in assets traceable to former Nigerian Governor of Bayelsa State, Diepreye Solomon Peter Alamieyeseigha.<sup>106</sup> Alamieyeseigha was twice elected, first in 1999 and again in 2003, but was impeached in 2005. Bayelsa State is located at the core of the Niger Delta and is one of the primary oil-producing regions of Nigeria. During Alamieyeseigha's tenure, he amassed a fortune derived from embezzlement from the Bayelsa State Development Fund and by accepting bribes from contractors seeking to develop in the State. Whilst his reported annual salary was estimated at the equivalent of only US \$81,000, U.K. and Nigerian investigators identified bank accounts, properties, and cash exceeding £10 million.<sup>107</sup> Accounts associated with Alamieyeseigha were identified in the United Kingdom, Cyprus, Denmark, and the United States. Many of his financial holdings were accomplished through shell companies and blind trusts domiciled in known off-shore havens including the BVI, Seychelles, and Bahamas. Alamieyeseigha ultimately pled guilty to money laundering violations in Nigerian court. As part of a coordinated forfeiture effort led by U.K. authorities and the Nigerian government, civil forfeiture proceedings were instigated in the United States and South Africa, criminal confiscation of his assets was carried out in Nigeria, and civil judgments in Cyprus and Denmark were effected.<sup>108</sup>

105. COMM. OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FIN. OF TERRORISM (MONEYVAL), MUTUAL EVALUATION REPORT: ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM: THE HOLY SEE (INCLUDING VATICAN CITY STATE) 206-218 (July 4, 2012), *available at* [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/MONEYVAL%282012%2917\\_MER\\_HS\\_en.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round4/MONEYVAL%282012%2917_MER_HS_en.pdf).

106. Press Release, U.S. Dep't of Justice, Department of Justice Forfeits More Than \$400,000 in Corruption Proceeds Linked to Former Nigerian Governor (June 28, 2012), <http://www.justice.gov/opa/pr/2012/June/12-crm-827.html>.

107. *Id.*

108. Fed. Rep. of Nigeria v. Santolina Investment Corporation et al. Chancery Division, [2007] EWHC (QB) 3053 (Eng.), *available at* [http://judgmental.org.uk/judgments/EWHC-QB/2007/\[2007\]\\_EWHC\\_3053\\_\(QB\).html](http://judgmental.org.uk/judgments/EWHC-QB/2007/[2007]_EWHC_3053_(QB).html).

## B. UNITED KINGDOM

In April 2012, former Nigeria Delta State Governor, Chief James Ibori, pled guilty to ten counts of money laundering and was sentenced to thirteen years in prison.<sup>109</sup> Ibori governed the oil-rich Delta State from 1999-2007 and, during his tenure as governor, embezzled in excess of £50 million, making his case one of the largest money-laundering matters ever prosecuted in that country.<sup>110</sup> Ibori, who evaded capture in Nigeria after a mob of supporters attacked police, was arrested in Dubai in 2010. He was extradited to the United Kingdom, where he was prosecuted based on evidence from the Metropolitan Police. It took the Police over seven years to trace and untangle his international network of shell companies and bank accounts. The assets he acquired and the proceeds recovered will be confiscated and repatriated to Nigeria by the British government. His decision to plead guilty was taken into consideration by the judge, who granted him a reduced sentence for lessening the cost and time to prosecute him. In July 2012, the U.S. Department of Justice, through the Criminal Division's Kleptocracy Asset Recovery Initiative, applied to register and enforce two orders from U.K. courts and secured a restraining order against more than US \$3 million in corruption proceeds located in the United States related to Ibori.<sup>111</sup> The application was granted and a mansion in Houston and two Merrill Lynch brokerage accounts were restrained.<sup>112</sup>

## C. THE WORLD BANK

In 2012, the World Bank went live with a database of over 150 large-scale corruption cases. The database was created as part of the U.N.-led Working Group of states who are signatories to the U.N. Convention Against Bribery.<sup>113</sup> The joint-effort on the creation of the database involved the World Bank. The database was compiled as part of a study commissioned by the Stolen Asset Recovery (StAR) initiative and the U.N. Office of Drugs and Crime.<sup>114</sup> A related database known as the The Puppet Masters Database of Grand Corruption Cases was launched in October 2011. The World Bank's searchable database is a consolidated repository of three U.N., World Bank, and UNODC databases, including The Puppet Masters, Asset Recovery Watch, and World Bank debarment actions. The cases range from 1980 to 2011 and involve the misuse of at least one legal

109. Angus Crawford, *Former Nigeria Governor James Ibori Jailed for 13 Years*, BBC NEWS (Apr. 17, 2012, 1:08 PM), <http://www.bbc.co.uk/news/world-africa-17739388>.

110. *Id.*

111. Press Release, U.S. Dept. of Justice, U.S. Restrains More Than \$3 Million in Corruption Proceeds Related to Former Governor of Nigeria (July 23, 2012), <http://www.justice.gov/opa/pr/2012/July/12-crt-906.html>.

112. *Id.*

113. See U.N. Conference of the State Parties to the United Nations Convention Against Corruption, Vienna, Austria, Aug. 30-31, 2012, *Overview of Progress Made in the Implementation of Conference Resolution 4/4 and the Recommendation of the Working Group*, U.N. Doc. CAC/COSP/WG.2/2012 (June 27, 2012). See also StAR Corruption Cases Search Center, STOLEN ASSET RECOVERY INITIATIVE, [http://star.worldbank.org/corruption-cases/assetrecovery/?ff\[0\]=bundle%3Apuppet\\_masters](http://star.worldbank.org/corruption-cases/assetrecovery/?ff[0]=bundle%3Apuppet_masters) (last visited Feb. 17, 2013) [hereinafter *StAR Database*].

114. See EMILE VAN DER DOES DE WILLEBOIS ET AL., *THE PUPPET MASTERS: HOW THE CORRUPT USE LEGAL STRUCTURES TO HIDE STOLEN ASSETS AND WHAT TO DO ABOUT IT* (2011).

entity or legal arrangement to obscure its beneficial owner(s) and conceal the origin or destination of stolen assets.<sup>115</sup> With limited exceptions, the amount involved in the cases had to equal US \$1 million at the time of the scheme.<sup>116</sup>

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115. *Id.* at 27-28.

116. *Id.* app. B; *see also StAR Database, supra* note 113.

