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International Anti-Money Laundering

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THE YEAR IN REVIEW
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International Anti-Money Laundering

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I. Introduction

In 2013, International Anti-Money Laundering (AML) regulations continued to expand in scope and enforceability. British and American multi-national financial institutions were among those sanctioned and penalized by various regulators in the European Union and United States in 2013 for AML violations. Regulators have increased scrutiny over commercial organizations and have challenged institutions to fully implement appropriate risk-based AML controls.

II. Global Enforcement Actions and Settlements

A. United Kingdom

1. *EFG Private Bank Fined £4.2 Million for Failure to Implement Anti-Money Laundering Controls for High-Risk Customers*

On April 24, 2013, the United Kingdom's Financial Conduct Authority (FCA), the organization responsible for "regulating firms and financial advisers so that markets and financial systems remain sound, stable and resilient,"[1] fined EFG (the UK private banking subsidiary of the Swiss global banking group EFGI) £4.2 million for failing to implement AML controls for high-risk customers.[2] In 2011, the Financial Services Authority (FSA), the predecessor to the FCA, began a review of how the bank was managing money-laundering risks, and it found that about 400 of EFG's customers presented a high risk of money-laundering or reputational risk and that approximately ninety-four of these cus-

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1. *About Us*, FIN. CONDUCT AUTHORITY, http://www.fca.org.uk/about (last visited Feb. 19, 2014).
2. FIN. SERVS. AUTH., FSA REFERENCE NO. 144036, FSA FINAL NOTICE TO EFG PRIVATE BANK LTD. ¶ 1.1 (Mar. 28, 2013), *available at* http://www.fca.org.uk/static/documents/final-notices/efg-private-bank.pdf.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

tomers were politically exposed persons.[3] The FSA's investigation found that, although the bank had AML rules and procedures on paper, the bank had failed to actually implement those AML controls.[4] The investigation revealed that, between 2007 and 2011, seventeen out of thirty-six newly opened customer accounts contained explicit money-laundering risks, including allegations relating to criminal activity, but the bank had failed to document or take action to mitigate those risks.[5] The FSA determined that EFG breached Principle 3 of the Principles for Businesses,[6] which requires that "a firm [ ] take reasonable care to organi[z]e and control its affairs responsibly and effectively, with adequate risk management systems."[7] The FSA also determined that EFG's failings had continued for a period of three years and were serious enough to mandate a fine of £6 million.[8] Because of EFG's cooperation and early settlement, the FCA reduced the fine by 36 percent to £4.2 million.[9]

2. *Guaranty Trust Bank (UK) Ltd. Fined £525,000 for Failure to Implement Anti-Money Laundering Controls*

On August 8, 2013, the FCA fined Guaranty Trust Bank (UK) Ltd., a wholly-owned subsidiary of the Nigerian Guaranty Trust Bank, £525,000 for breaches of Principle 3 of the FCA's Principles for Businesses.[10] The FCA found that, between May 19, 2008, and July 19, 2008, Guaranty Trust Bank had failed to implement an effective AML system and controls in relation to individuals who were identified as presenting a higher risk of being involved in money-laundering or terrorist financing.[11] The FCA also found that there was an "unacceptable risk" that Guaranty Trust Bank could have been used to launder the proceeds of crime because of the lack of adequate controls and because Guaranty Trust Bank provided services to customers in jurisdictions that lack AML regulations.[12] Guaranty Trust Bank agreed to settle the action at an early stage, and, accordingly, the £525,000 fine reflected a 30 percent discount.[13]

3. *Id.* ¶¶ 2.4, 4.3, 4.7.
4. *Id.* ¶¶ 2.1–2.4.
5. *Id.* ¶ 4.13.
6. *Id.* ¶1.1.
7. FIN. CONDUCT AUTH., *Principles for Businesses*, *in* FINANCIAL CONDUCT AUTHORITY HANDBOOK 2.1, 2.1.1 (2014), *available at* http://media.fshandbook.info/content/FCA/PRIN.pdf.
8. FIN. SERVS. AUTH., *supra* note 2, at ¶¶ 2.3, 1.2.
9. *Id.* ¶ 1.2.
10. FIN. CONDUCT AUTH., FRN 466611, FCA FINAL NOTICE TO GUARANTY TRUST BANK (UK) LTD. ¶ 1.1 (Aug. 8, 2013), *available at* http://www.fca.org.uk/static/documents/final-notices/guaranty-trust-bank-uk-ltd.pdf.
11. *Id.* ¶¶ 1.1, 2.4–2.6.
12. *Id.* ¶ 2.8.
13. *Id.* ¶ 1.2.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

B. Israel

1. *Cartisey Ashrai Le'Israel Fined NIS 6 Million for Failure to Comply with Anti-Money Laundering Requirements*

On October 9, 2013, the Banking Corporations Sanctions Committee (a statutory committee authorized to impose financial sanctions of up to NIS 2 million for each infringement on banking corporations as a means of enforcing the prohibition on money laundering and terrorist financing) imposed a fine of NIS 6 million on the Israeli banking corporation Cartisey Ashrai Le'Israel (Cal). The fine was imposed based on the examination and report by the Israeli Banking Supervision Department, which found that Cal had violated the Banking Corporations' Requirements Regarding Identification, Reporting, and Record-Keeping to Prevent Money Laundering and the Financing of Terrorism (Order 5761-2001). Specifically, the report determined that the company had deficiencies in both demanding identification documentation and in transferring information to the Israel Money Laundering and Terror Financing Prohibition Authority. Specifically, the company failed to (1) verify identification vis-à-vis the Population Registry of bank credit card holders, (2) report activities that required reporting based on the size and type of transaction, (3) report a large volume of unusual transactions, and (4) ensure that declarations regarding beneficiaries were in accordance with Order 5761-2001. In determining the amount of the fine, the Banking Corporations Sanctions Committee took into consideration the fact that the company had taken steps to rectify deficiencies and that it had replaced its CEO.[14]

2. *Leumi Card Ltd. Fined NIS 1.2 Million for Failure to Comply with Anti-Money Laundering Requirements*

On October 9, 2013, the Banking Corporations Sanctions Committee imposed a fine of NIS 1.2 million on Leumi Card Ltd. because of the company's infringements of the Banking Corporations' Requirements Regarding Identification, Reporting, and Record-Keeping to Prevent Money Laundering and the Financing of Terrorism (Order 5761-2001). The committee determined that Leumi Card Ltd. was inadequately prepared, that it failed to conduct identification vis-à-vis the Population Registry of bank credit card holders, that its declarations regarding a beneficiary were not in accordance with Order 5761-2001 requirements, and that it had failed to report unusual transactions and transfer accurate information to the Israel Money Laundering and Terror Financing Prohibition Authority. In assessing the fine, the Banking Corporations Sanctions Committee took into account the company's actions to remedy these deficiencies.[15]

14. *Id.*
15. *Id.*

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III. Legislative Developments and Guidance

A. Mexico

Following international trends and in response to the Mutual Evaluation conducted by the Financial Action Task Force (FATF), the Financial Action Task Force on Money Laundering In South America, and the International Monetary Fund (IMF),[16] on October 17, 2012, the Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources (Mexican AML Law) was published in the Federal Official Gazette.[17]

The Mexican AML Law came into effect on July 17, 2013, and it is intended to enhance coordination between government authorities and agencies in charge of its enforcement as well as to provide guidelines for those entities and individuals active in the financial sector and other activities considered to be "vulnerable" (i.e., those most likely to facilitate money laundering activities).[18]

The Mexican AML Law establishes reporting obligations for those acts or transactions that are potentially being used by organized crime with money laundering purposes.[19] Among the acts or transactions that shall be reported are cash payments involving transactions on high-value assets (precious stones, metals, and jewelry), games and draws, service cards not issued by financial entities, real estate, art, vehicles (whether used or new), public notary services, and custom agents, when certain thresholds are met.[20] The Mexican AML Law has incorporated administrative and criminal sanctions for violations.[21]

On August 16, 2013, the Mexican Ministry of Finance published, in the Federal Official Gazette, the Regulations of the Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources (Mexican AML Regulations), which came into effect on September 1, 2013.[22]

The Mexican AML Regulations establish provisions for compliance with the Mexican AML Law and mandate that entities or individuals carrying out "vulnerable activities" should be registered in the Federal Taxpayers Registry and, among other requirements, shall have an outstanding Advanced Electronic Signature.[23] In addition, the Mexican AML Regulations detail how the filing of notices of "vulnerable activities" shall be accomplished, the rules to respond to requests for information issued by the enforcement au-

16. *Mutual Evaluation of Mexico*, Fin. Action Task Force (Oct. 2, 2012), http://www.fatf-gafi.org/countries/j-m/mexico/documents/mutualevaluationofmexico.html.
17. Decreto por el que se Expide la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources], *as amended*, Diario Oficial de la Federación [DO], 17 de Octobre de 2012 (Mex.), *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=5273403&fecha=17/10/2012.
18. *Id.* arts. 2, 3.
19. *Id.* art. 2.
20. *Id.* art. 3, ch. VII–X.
21. *Id.* ch. VII, VIII.
22. Reglamento de la Ley Federal para la Prevención e Identificación de Operaciones con Recursos de Procedencia Ilícita [Regulations of the Federal Law for the Prevention and Identification of Transactions with Funds from Illegal Sources], *as amended*, Diario Oficial de la Federación [DO], 16 de Agosto de 2013 (Mex.), *available at* http://www.dof.gob.mx/nota_detalle.php?codigo=5310763&fecha=16/08/2013.
23. *Id.*

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

thorities, and the process associated with the review of potential acts or transactions in violation of the Mexican AML.[24]

B. New Zealand

On June 30, 2013, the new laws strengthening New Zealand's financial system against serious crime took effect. Justice Minister Judith Collins stated that the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (AML/CFT Act) will most likely make New Zealand safer by helping law enforcement agencies detect and deter serious crimes, such as drug dealing, tax evasion, and fraud.[25]

According to Collins, "[t]he new AML/CFT regime will make it easier to recover money gained illegally and help close the loopholes that criminals can use to launder money. It also aligns New Zealand with international laws and best practice and increases our trading partners' confidence in our financial sector."[26]

The Act applies to a range of businesses technically classified as reporting entities, such as banks, other financial institutions, some financial advisors, and casinos. The reporting entities have had since 2009 to implement all the required changes, which include checking and verifying customers' identities, assessing the risks that the business faces, adopting an AML/CFT program, appointing a compliance officer, and reporting suspicious or unusual transactions. Collins stated that the new law is part of a coordinated international effort to tackle a serious global problem, and New Zealand is advancing systems that mirror those in other countries.[27]

C. Vatican City

In response to the international community's demands for change, the Vatican passed a law to make its public finances fully transparent. Archbishop Dominique Mamberti, the Vatican's foreign minister, said the law would move the Vatican one step closer to meeting the standards set by the Council of Europe's AML committee.[28]

The Holy See Press Office said that the new norm, Legge N. XVIII, "strengthens the current internal system for the prevention and countering of money laundering and the financing of terrorism, in conformity with international guidelines."[29] Law XVIII imple-

24. *Id.* chs. 4, 7, 8.
25. Judith Collins, *Strengthened Money Laundering Laws Take Effect*, NAT'L (June 28, 2013), http://www.national.org.nz/Article.aspx?ArticleID=41370.
26. *Id.*
27. *Id.* For further information, see *Information for Business*, MINISTRY OF JUST., www.justice.govt.nz/policy/criminal-justice/aml-cft/information-for-businesses (last visited Feb. 19, 2014); *Anti-Money Laundering & Countering Financing of Terrorism*, RES. BANK OF N.Z., www.rbnz.govt.nz/regulation_and_supervision/anti-money_laundering/ (last visited Feb. 19, 2014).
28. *Vatican Approves Financial Transparency Law*, EURONEWS (Oct. 10, 2013, 6:53 AM), http://www.euronews.com/2013/10/10/vatican-approves-financial-transparency-law/.
29. *See* DOMINIQUE MAMBERTI, SECRETARIO PER I RAPPORTI CON GLI STATI, SULLA LEGGE N. XVIII DELLO STATO DELLA CITTÀ DEL VATICANO IN MATERIA DI TRASPARENZA, VIGILANZA E INFORMAZIONE FINANZIARIA [ON THE LAW OF THE STATE OF THE XVIII VATICAN CITY ON TRANSPARENCY, SUPERVISION AND FINANCIAL INFORMATION] (Oct. 9, 2013), *available at* http://www.vatican.va/roman_curia/secretariat_state/2013/documents/rc-seg-st-20131009_mamberti-articolo-esplicativo_it.html.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

ments Pope Francis's *motu proprio* of August 8, 2013, which called for a broadening of existing Vatican laws on financial supervision.[30]

IV. FATF Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance

In February 2013, the FATF issued a new Methodology for assessing technical compliance with the FATF Recommendations.[31] The new Methodology will provide the basis for an integrated analysis of the extent to which a country is compliant with the FATF Standards and the level of effectiveness of its AML/CFT system.[32]

Bjørn S. Aamo, President of the FATF, stated,

> [t]he new Methodology adds a new dimension to the evaluation of countries compliance with FATF-standards. It remains as important as before that all countries implement the Recommendations of the FATF in their legal systems, however, the new Methodology lays the foundation for a systematic assessment of the effectiveness of national systems . . . . The future assessments will determine how well countries achieve the objective of fighting Money Laundering and Financing of Terrorism.[33]

"The Methodology will be used by the FATF, the FATF-Style Regional Bodies, and other assessment bodies such as the IMF and the World Bank."[34]

A. U.S. Developments

The Office of the Comptroller of the Currency (OCC) has issued over 195 enforcement actions involving Bank Secrecy Act (BSA) and AML Act violations since September 11, 2011. As bank practices have become more complex and technological advances have made moving money easier, U.S. authorities have ramped up AML enforcement actions to curb the use of U.S. banks to conduct illicit activities, including drug trafficking and terrorism. In 2013, many of the violations of the AML Act emerged from large financial institutions growing into fledgling economies that regulators fear open the door to AML risks. Although sanctions were imposed for past failures to report suspicious activity, regulators concentrated on mandating that banks tighten their AML compliance programs

30. *See* Apostolic Letter issued *Motu Proprio* by the Supreme Pontiff Francis for the Prevention and Countering of Money Laundering, the Financing of Terrorism and the Proliferation of Weapons of Mass Destruction (Aug. 8, 2013), *available at* http://www.vatican.va/holy_father/francesco/motu_proprio/documents/papa-francesco-motu-proprio_20130808_prevenzione-contrasto_en.html.

31. *See* Fin. Action Task Force, Methodology for Assessing Technical Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems (Dec. 2013), *available at* http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology%2022%20Feb%20 2013.pdf.

32. *Id.* at 4.

33. *FATF Issues New Mechanism to Strengthen Money Laundering and Terrorist Financing Compliance*, Fin. Action Task Force (Feb. 22, 2013), http://www.fatf-gafi.org/topics/fatfrecommendations/documents/fatf issuesnewmechanismtostrengthenmoneylaunderingandterroristfinancingcompliance.html.

34. *Id.*

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

and internal controls over punishing unwitting AML or BSA violations with monetary penalties.[35]

B. Enforcement Actions and Settlements

1. *JPMorgan Chase Bank, N.A.*

In January 2013, the OCC and Federal Reserve entered into a consent cease and desist order with JPMorgan Chase Bank (JPMC) following the discovery that the bank lacked meaningful internal controls and a viable BSA/AML compliance program.[36] The OCC found that JPMC and two of its affiliates lacked "internal controls, independent testing, customer due diligence, risk assessment and SAR processes (monitoring, investigating, and decision-making)."[37] The combination of these enterprise-wide compliance failures constituted a violation of the requirement to maintain a BSA and AML compliance program.[38] The consent order requires JPMC to review prior Suspicious Activity Report (SAR) reporting, subject new products to heightened compliance review, and establish responsibilities for compliance within an independent bank compliance staff.[39] This consent order was the culmination of a year-long period of scrutiny surrounding JPMorgan Chase after it announced $6 billion in losses on credit derivative trading out of its London office.[40] No monetary penalties were included in the consent order.

2. *Citigroup*

On March 21, 2013, Citigroup found itself the subject of yet another OCC enforcement action—its second in the preceding twelve months.[41] The new consent order echoed many of the concerns thought to be addressed by previous consent orders surrounding the report of suspicious activities and other internal control gaps leaving room for money laundering schemes.[42] While the consent order did not impose any monetary penalties, it set aggressive timelines for development of a BSA/AML compliance system, requiring a detailed written plan for bolstering compliance within sixty days, and quarterly reports on the effectiveness of its enterprise-wide compliance program.[43]

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35. *Testimony of Thomas J. Curry, Comptroller of the Currency, Before the Comm. on Banking, Hous., & Urban Affairs of the U.S. Senate*, 113th Cong. 10 (2013).
36. Consent Order, *In re* JPMorgan Chase Bank, N.A., Department of the Treasury, Comptroller of the Currency, AA-EC-13-94 (Jan. 14, 2013).
37. *Testimony of Thomas J. Curry*, *supra* note 35, at 16.
38. *Id.*
39. Consent Order, *In re JPMorgan Chase Bank, N.A.*, AA-EC-13-94 at 17, 18, 22, 8.
40. Joe Adler & Rachel Witkowski, *Are Regulatory Orders Against JPMorgan Just a 'Slap on the Wrist'?*, Am. Banker (Jan. 14, 2013, 4:35 PM), http://www.americanbanker.com/issues/178_10/are-regulatory-orders-against-jpmorgan-just-a-slap-on-the-wrist-1055842-1.html.
41. Aruna Viswantha & David Henry, *Fed Orders Citigroup to Improve Money Laundering Checks*, Reuters (Mar. 26, 2013, 4:48 PM), http://www.reuters.com/article/2013/03/26/us-citigroup-moneylaundering-idUSBRE92P0OO20130326.
42. *Id.*
43. Matt Egan, *Fed to Citi: Improve Anti-Money Laundering Controls*, FOX Bus. (Mar. 26, 2013), http://www.foxbusiness.com/industries/2013/03/26/fed-to-citi-improve-anti-money-laundering-controls/.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

3. *TCF National Bank*

Following a five-year investigation by the OCC of unreported suspicious activity, TCF National Bank was assessed a $10 million penalty for violations of the BSA on January 25, 2013.[44] The OCC found multiple late-filed suspicious activity reports involving cash transactions for wire transfers to and from unknown sources.[45] The monetary penalty was imposed for failure to "adequately explain or identify potential terrorist financing."[46]

4. *TD Bank, N.A.*

In September, the OCC and the Financial Crimes Enforcement Network imposed a $37.5 million civil penalty against TD Bank for continuous and significant violations of suspicious activity reporting requirements;[47] this was coupled with a $15 million penalty and cease and desist for Securities Act violations from the Securities and Exchange Commission.[48] TD Bank held accounts for Rothstein Rosenfeldt Adler, P.A., the law firm used by Scott Rothstein to carry out a $1.2 billion Ponzi scheme.[49] Because of the frequency of use and high volume of money flowing through the accounts, the OCC opined that the SAR failures were especially egregious to justify the substantial monetary penalties.[50] Additionally, TD Bank paid $600 million in restitution to the investors who lost money in the Ponzi scheme.[51]

5. *FinCEN*

In May 2013, FinCEN's Office of Regulatory Analysis reported on a recent assessment of depository institutions' SAR filings that describe possible money laundering activities by certified public accountants and associated members of the accounting profession.[52] Accountants and other similar professionals (lawyers, investment brokers, and realtors) have been referred to as gatekeepers because persons in these professions have the ability to provide their clientele access to the financial system, which could be used knowingly or unknowingly for illicit purposes. Accountants have not been designated as "financial institutions" under the BSA and therefore do not have any obligation to report suspicious

44. Press Release, Office of the Comptroller of the Currency, Dep't of the Treasury, OCC Assesses $10 Million Civil Money Penalty Against TCF Nat'l Bank, Bank Secrecy Act Violations Cited (Jan. 25, 2013), *available at* http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-18.html.
45. *Id.*
46. *Id.*
47. Consent Order, *In re* TD Bank, N.A., Department of the Treasury, Comptrolle-r of the Currency, AA-EC-2013-67, at 2 (Sept. 20, 2013).
48. *Id.*
49. Press Release, Office of the Comptroller of the Currency, Dep't of the Treasury, OCC Assesses $37,500,000 Penalty Against TD Bank, N.A. for Failures to File Suspicious Activity Reports (Sept. 23, 2013), *available* at http://www.occ.gov/news-issuances/news-releases/2013/nr-occ-2013-145.html.
50. *Id.*
51. *Id.*
52. BSA ADVISORY GRP., FIN. CRIMES ENFORCEMENT NETWORK, THE SAR ACTIVITY REVIEW: TRENDS, TIPS, & ISSUES 21 (May 2013), *available at* http://www.fincen.gov/news_room/rp/files/sar_tti_23.pdf. FinCEN is the recognized abbreviation for the Financial Crimes Enforcement Network. FinCEN is the U.S. financial intelligence unit.

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

activity of their clients.[53] Accountants have maintained that such obligations would interfere with the duty of client confidentiality. As a result, the U.S. accounting profession has established codes of business standards and ethical conduct that must be observed by members of the profession.

The FinCEN report found that, because financial transactions are frequently conducted through several financial institutions in multiple countries and often involve foreign correspondent accounts, it is difficult for depository financial institutions to detect money laundering activities by accountants and their clients.[54] FinCEN further reported that some financial institutions did not file many of the SARs, that were later examined by FinCEN, until the institution was aware that a law enforcement investigation had been opened or an indictment of the customer had been made for improper financial activities.[55] It was stated, however, that once financial institutions became aware of the improper financial activities, they were diligent in searching and reporting the relevant transactions that have passed through the financial institution's systems.

"SAR filers identified accountants or CPA's as subjects in 227, or 65 percent, of the 350 SARs sampled for the study."[56] The report highlighted that foreign correspondent bank transfers can enable the laundering of illicit funds through the U.S. financial system and can hide the source of funds. In one of the examples reported by FinCEN, "a large bank filed SARs on multiple international companies for suspicious activities conducted through its correspondent bank customers."[57] Locations for members of the parties to the transactions included Cyprus, Gibraltar, and the United Kingdom. The bank suspected that the entities did not exist, although it was assured by one of the banks involved that "it is common for companies registered in Cyprus to provide the address of its lawyers or accountants as its business address."[58]

The FinCEN report concluded that financial institutions have challenges in detecting some forms of suspicious activities and related transactions. The primary problematic activities are those where (1) the financial institution does not maintain a direct relationship with the accountant or CPA, such as in correspondent banking transactions; (2) shell company activities, both in the United States and overseas; and (3) improper trust and fiduciary transactions, both in the United States and overseas.[59]

In May 2013, FinCEN's Office of Special Program Development reported on the 314(b) program. Following the September 11, 2001, terrorist attacks, Congress passed the USA PATRIOT Act, which was signed into law on October 26, 2001. Among the tools provided to the business community and law enforcement to combat illicit activities was section 314(b) of the PATRIOT Act.[60] Section 314(b) is a unique tool that empowers financial institutions or an association of a financial institutions to voluntary share information with other financial institutions "for purposes of identifying, and where appropriate, reporting activities that the financial institution or association suspects may involve

53. *Id.* at 22.
54. *Id.* at 26.
55. *Id.* at 23.
56. *Id.* at 25.
57. BSA Advisory Grp., *supra* note 52, at 34.
58. *Id.*
59. *Id.* at 40.
60. *Id.* at 41.

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possible terrorist activity or money laundering."[61] Once a financial institution or association has properly registered with FinCEN, it may share information under the protection of "safe harbor" from liability to the extent provided under subsection 314(b) of Public Law 107-56 (the USA PATRIOT Act).[62]

FinCEN has stated that the steady rise in section 314(b) filings underscores the acknowledgement by financial institutions and associations that section 314(b) can serve as a useful tool to support the due diligence and transaction monitoring efforts and enhance the "Know Your Customer" efforts. Rather than relying upon the limited information that an institution may have about a customer or activity, the 314(b) participant can access additional valuable information on the customer's new accounts, activities, business associates, and the root of complex financial schemes. This information helps an organization to build a clearer profile of its customers and to accurately rate the risk associated with certain customers.[63]

C. A Concentration on Corporate Governance

With the scope and effect of AML violations increasing, the OCC has expressed an intention to place more rigorous concentration on its supervisory functions with regards to BSA and AML Act violations.[64] In analyzing the most efficient means by which to ensure compliance with AML requirements, the OCC—both in its testimony before the Banking Affairs Committee and in its recent enforcement actions—has identified corporate governance as a key to controlling AML violations.[65] As highlighted above, many recent AML enforcement actions involved complex, large financial institutions. While the individual consent orders placed differing controls on each bank found in violation, orders have trended toward requiring the documentation of internal compliance programs and imposing responsibility on senior managers to implement the plan.[66]

In order to further promote the importance of internal controls over external supervision, the OCC is drafting guidance to banks on corporate governance, "including business line accountability for BSA/AML compliance and the independence of the compliance function."[67] With pressure around internal controls increasing, bank compliance budgets are also increasing to prevent incurring penalties in the future for failure of internal controls now.[68] Bank management is now expected to take a proactive approach toward compliance with AML requirements or face the potential for personal liability for bank compliance failures.[69] Consent orders requiring additions to compliance programs this year could become the basis for future monetary penalties if these megabanks prove themselves not up to the increasing corporate governance challenges posed by compliance with BSA and AML mandates.

61. *Id.*; *see also* 31 C.F.R. § 1010.540(b)(4)(i)(A).
62. BSA Advisory Grp., *supra* note 52, at 41; *see also* 31 C.F.R. § 1010.540(b)(5)(i).
63. BSA Advisory Grp., *supra* note 52, at 51.
64. *Testimony of Thomas J. Curry*, *supra* note 35.
65. *Id.* at 11.
66. *Id.* at 12.
67. *Id.*
68. *More Banks Facing U.S. Anti-Money Laundering Scrutiny*, Fitch Ratings (Apr. 5, 2013), http://www.fitchratings.com/gws/en/fitchwire/fitchwirearticle/More-Banks-Facing?pr_id=787636.
69. *Testimony of Thomas J. Curry*, *supra* note 35, at 12.

THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

D. International Agencies

In October 2013, the FATF and the Group of Twenty Anti-Corruption Working Group jointly convened an Experts Meeting on Corruption.[70] The meeting included ninety-five delegates from twenty-seven countries and fifteen organizations. The organizations included the Asia Pacific Group on Money Laundering, Caribbean Financial Action Task Force, Council of Europe Group of States Against Corruption, Egmont Group, International Monetary Fund, United Nations Office on Drugs and Crime, World Bank, and the World Customs Organization. The FATF continues to emphasize an anti-corruption agenda. Part of its work is focused on gathering AML and counter-terrorist financing experts and anti-corruption experts for the purpose of discussing issues of commonality. One of the primary areas of focus for the meeting was to "identify key challenges in determining the beneficial ownership of legal persons and arrangements in corruption cases, including the problems caused by a lack of transparency in beneficial ownership information."[71]

The FATF and meeting attendees reiterated that countries must recognize the link between corruption and money laundering. Prosecutors and law enforcement need to understand that corruption offenses generate proceeds that "can both qualify as instruments or as the proceeds of corruption the perpetrators of these offences inevitably seek to launder in order to hide their illicit origins."[72] The FATF meeting summary noted that transparency is an issue of relevance beyond the fight against corruption and money laundering; it also impacts questions around tax avoidance, corporate governance, and the fight against all types of illegal activity.[73] The participants expressed strong support for the best practices paper under development by the FATF on how the FATF Recommendations can be effectively used in the fight against corruption.[74]

70. Fin. Action Task Force, President's Summary of Outcomes from the Exerts' Meeting on Corruption 1 (Oct. 12, 2013), *available at* http://www.fatf-gafi.org/media/fatf/documents/statements/Corruption-Expert-meeting-Oct-2013.pdf.
71. *Id.* at 2.
72. *Id.*
73. *Id.* at 4.
74. *Id.* at 5.

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