Introduction to Anti-Money Laundering and OFAC Sanctions Compliance

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7 December 2016
Introduction to Anti-Money Laundering
What is Money Laundering?

“What money laundering generally refers to financial transactions in which criminals, including terrorist organizations, attempt to disguise the proceeds, sources or nature of their illicit activities. Money laundering facilitates a broad range of serious underlying criminal offenses and ultimately threatens the integrity of the financial system.” – U.S. Department of the Treasury

The process generally involves three stages:

1. **Placement** – Placing illicit funds into the financial system by converting those funds into some other financial instrument or medium;
2. **Layering** – Separating illicit funds from their source by involving those funds in a series of legitimate transactions; and
3. **Integration** – Involving funds in a series of transactions intended to make it appear that the funds have been derived from a legitimate source.
US Anti-Money Laundering Statutes

The Money Laundering Control Act (MLCA) of 1986

- The MLCA is a complex criminal statute targeted toward financial transactions that involve the proceeds of certain specified unlawful activities, or that are intended to promote or conceal such activities.

- This also includes economic sanctions violations, FCPA violations, bank fraud, among many other “SUAs.”

- The transaction itself doesn’t need to include illegal proceeds if it is designed to conceal such activity.
Key US Anti-Money-Laundering Statutes

Bank Secrecy Act

- The “BSA” was enacted in 1970 to prevent banks and other financial institutions from being used as intermediaries for, or to hide the transfer or deposit of money derived from, criminal activity. The BSA is intended to safeguard the U.S. financial system and the financial institutions that make up that system from the abuses of financial crime, including money laundering, terrorist financing, and other illicit financial transactions.

- The BSA has been amended substantially over time, most significantly right after 9/11 with the passage of the USA PATRIOT Act.

USA PATRIOT Act

- Enacted in 2001 to further inhibit the use of the US financial system for illicit purposes through, among many other things, the imposition of new and heightened due diligence, monitoring, reporting, and recordkeeping requirements for US financial institutions, including MSBs.
BSA Regulatory and Enforcement Agencies

Financial Crimes Enforcement Network ("FinCEN"), a bureau of the U.S. Treasury, is the designated administrator of the BSA. In this capacity and in accordance with the USA PATRIOT Act, FinCEN issues regulations and interpretive guidance, provides outreach to regulated industries, supports the examination functions performed by federal banking agencies, and pursues civil enforcement actions when warranted. FinCEN relies on the federal banking agencies to examine banks within their respective jurisdictions for compliance with the BSA.

The Federal Banking Agencies are responsible for the oversight of the various banking entities operating in the United States, including foreign branch offices of U.S. banks. The federal banking agencies are required to include a review of the BSA compliance program at each examination of an insured depository institution. The Federal Banking Agencies require each bank under their supervision to establish and maintain a BSA compliance program, which must be approved by the Board. The Federal Banking Agencies may use their authority to enforce compliance with appropriate banking rules and regulations, including compliance with the BSA.

A bank regulated by a Federal Banking Agency is deemed to have satisfied the AML program requirements of the USA PATRIOT Act if the bank develops and maintains a BSA compliance program that complies with the regulatory requirements and related guidance of its federal functional regulator governing such programs.

The Federal Financial Institutions Examination Council ("FFIEC") was established in March 1979 to prescribe uniform principles, standards, and report forms and to promote uniformity in the supervision of financial institutions. FFIEC Bank Secrecy Act (BSA)/Anti-Money Laundering (AML) Examination Manual is an excellent primer and resource regarding regulatory expectations.

State Banking Agencies, for state-licensed banks, as a matter of supervision, safety and soundness, also have a role in monitoring BSA compliance. The DFS, in particular has been quite active in examining and enforcing BSA compliance for New York licensed banks.

Criminal Authorities at both the Federal and state level can and do bring cases against both institutions and individuals.
Introduction to OFAC Sanctions
Background: History of US Sanctions

- Date back to the earliest days of US history
- Used as a wartime tactic to weaken the enemy
- Now a standard tool of US foreign policy

(slide created by OFAC)
Office of Foreign Assets Control (OFAC)

OFAC is an office of the US Department of the Treasury that implements and administers economic sanctions under applicable US laws.

OFAC is an office of the U.S. Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted individuals and entities such as foreign countries, regimes, terrorists, international narcotics traffickers, and those engaged in certain activities such as the proliferation of weapons of mass destruction or transnational organized crime. OFAC acts under Presidential wartime and national emergency powers, as well as various authorities granted by specific legislation, to impose controls on transactions and to freeze assets under U.S. jurisdiction. OFAC has been delegated responsibility by the Secretary of the Treasury for developing, promulgating, and administering U.S. sanctions programs. Some sanctions are multilateral, and some are unilateral.

- International Emergency Economic Powers Act ("IEEPA")
- Trading with the Enemy Act of 1917 ("TWEA")
- Joint Comprehensive Plan of Action ("JCPOA")
OFAC Sanctions Programs

OFAC sanctions programs may be imposed against whole countries or targeted individuals and entities.

- Comprehensive Sanctions Programs: Iran, Sudan, Cuba, Crimea, Syria, and North Korea.
- List-based Sanctions Programs: Balkans Region, Belarus, Burundi, Central Africa Republic, DRC, Iraq, Lebanon, Libya, Somalia, South Sudan, Ukraine/Russia, Venezuela, Yemen, Zimbabwe.
- Specially Designated Nationals (SDNs) (associated with terrorism, weapons proliferation, narcotics trafficking and other nefarious activities).
- The sanctions require US persons either to block or to reject transactions, depending on the applicable program. In either case, there follows reporting and record keeping obligations.

OFAC has the authority, through a licensing process, to permit certain transactions that would otherwise be prohibited under its regulations.

Export Denied Persons (listed by US Commerce and State Departments).
OFAC does not conduct examinations, but does bring very significant enforcement actions against banks, both US-based and banks located outside the United States if they have utilized correspondent accounts inside the United States. On November 9, 2009, OFAC issued a final rule entitled “Economic Sanctions Enforcement Guidelines” in order to provide guidance to persons subject to its regulations. The document explains the procedures that OFAC follows in determining the appropriate enforcement response to apparent violations of its regulations. Some enforcement responses may result in the issuance of a civil penalty that, depending on the sanctions program affected, may be as much as $250,000 per violation or twice the amount of a transaction, whichever is greater. The Guidelines outline the various factors that OFAC takes into account when making enforcement determinations, including the adequacy of a compliance program in place within an institution to ensure compliance with OFAC regulations. OFAC encourages banks to take a risk-based approach to designing and implementing an OFAC compliance program. OFAC has issued targeted guidance to various industries, including to banks that is available on their website.

Federal Banking Agencies examine a bank’s OFAC Compliance Program, including its OFAC risk assessment, and evaluate OFAC compliance programs to ensure that all banks subject to their supervision comply with the sanctions. Banks should establish and maintain an effective, written OFAC Compliance Program that is commensurate with their OFAC risk profile (based on products, services, customers, and geographic locations). Similar to the AML Compliance Program, the OFAC Compliance Program should identify higher-risk areas, provide for appropriate internal controls for screening and reporting, establish independent testing for compliance, designate a bank employee or employees as responsible for OFAC compliance, and create training programs for appropriate personnel in all relevant areas of the bank.

FFIEC Examination Manual has an OFAC module and is an excellent primer and resource regarding regulatory expectations.

DFS has been involved in numerous investigations/enforcement actions involving OFAC compliance of New York licensed banks. As a result of these investigations and its regular examinations for safety and soundness, DFS has stated that it has “identified shortcomings in the transaction monitoring and filtering programs of these institutions attributable to a lack of robust governance, oversight, and accountability at senior levels.” In response, DFS now have gone further than any Federal Banking Agency issuing a new rule, Part 504. This new regulation sets forth in some detail DFS’ expectations as to the required attributes of a Transaction Monitoring and Filtering Program and require that the Board of Directors or Senior Officer(s) to submit an annual certification regarding the institution’s compliance with the Part 504 requirements.

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