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VIEWPOINTS

Enforcement Actions Serve as Wake-Up Call

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The past few months have yielded another round of high-profile anti-money-laundering enforcement actions, with their attendant large fines, requirements for extensive remedial measures, and in one case the expulsion of a firm from its self-regulatory organization. The actions have involved institutions large and small from across the financial services industry, including broker-dealers, banks, thrifts, and Edge Act corporations.

In September, for example, the OCC and Fincen obtained a \$10 million civil money penalty from Union Bank of California, which simultaneously entered into a deferred prosecution agreement and a consent to a \$21 million forfeiture with the Justice Department.

Despite the other issues facing the industry, the federal regulators' attention has not strayed from anti-laundering compliance. Financial services firms that ignore anti-laundering requirements do so at their peril.

Recent actions offer important compliance lessons for firms and their anti-laundering legal and compliance staffs. Here are four.

Suspicious activity filings matter. A common element in each of the recent enforcement actions was the alleged failure by the subject firm to monitor for, investigate, and report suspicious transactions on a timely and accurate basis. Union Bank (which is mostly owned by Mitsubishi UFJ Financial Group Inc.) was cited for failing to monitor high-risk customers and

transactions for suspicious activities, for filing over 1,000 late suspicious activity reports during 2005 and 2006, and for filing incomplete reports that did not provide law enforcement with sufficient information to investigate reported activity.

From their actions, it is clear that regulators continue to view suspicious activity reports as a critical tool for law enforcement investigations of money laundering and other financial crimes. As a result, perceived material deficiencies in efforts to detect and report suspicious activity are likely to draw close regulatory scrutiny, and such deficiencies appear to be one sure way to turn a compliance issue into an enforcement problem.

You must have robust and risk-based suspicious activity reporting processes and controls. In several recent enforcement actions, the regulators made a point of noting that the ability to monitor for suspicious activities is predicated on collecting sufficient information about customers, and particularly high-risk customers.

Don't forget old-fashioned money laundering. Many financial firms have spent significant resources in the past few years to ensure adequate compliance with new regulatory requirements from Fincen. In the last year firms have had to implement extensive new diligence programs for dealings with foreign financial institutions and non-U.S. high-net-worth individuals and enhanced due diligence programs for

dealings with senior foreign political figures and certain foreign banks.

The recent enforcement actions serve as a reminder that in complying with new regulatory requirements, you mustn't neglect the risks of garden-variety money laundering. One recent enforcement action stemmed from an institution's failure to discern Black Market Peso Exchange transactions; these are schemes used by Colombian drug cartels to launder money through U.S. financial institutions and have been the subject of Fincen advisories since the mid-1990s. Another recent action was critical of a firm's dealings with a customer known for involvement in "smurfing" schemes; smurfing is a well-known and long-standing practice of splitting large transactions into smaller ones to avoid regulatory scrutiny.

Money can't buy compliance. Ensuring sufficient resources are spent on anti-laundering systems and processes is a necessary first step, but spending money alone will not suffice. According to regulators, in 2004 Union Bank acknowledged it had to improve its management of laundering risks and invested in a Financial Intelligence Unit and other processes to centralize certain compliance efforts. Yet, Fincen claimed this unit failed to achieve desired ends due to weak management and improper staffing. The lesson to be learned is that anti-laundering compliance requires both financial and human resources.

Pay attention to your regulator. Several

of the recent anti-laundering enforcement actions were brought against firms that received repeated warnings from regulators to improve compliance regimes. The regulators, whether rightly or wrongly, appear to have viewed the subject firms as recidivists that needed large-scale and very public sanctions

to pay attention to and fix their compliance program deficiencies.

Clearly, the recent actions demonstrate that institutions must be attuned to what their regulators are saying. At a minimum, they need to move with alacrity to correct examination deficiencies when they arise. Equally

important, financial services firms need to be aware of regulatory trends and developments and ensure that their compliance efforts take regulatory priorities into account.

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