ANTI-MONEY LAUNDERING

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Introduction

- Money laundering is the process of making illegally gained proceeds ("dirty money") appear legal ("clean"). Typically, it involves three steps: placement, layering and integration.
- Money laundering can facilitate crimes which can adversely impact the global economy.
- The introduction of anti-money laundering policies was done so with the mission to safeguard the financial system from the abuses of financial crime, including **terrorist financing,** money laundering, and other illicit activity.

Bank Secrecy Act

The BSA was established in 1970 and has become one of the most important tools in the fight against money laundering. Numerous other laws have enhanced and amended the BSA .

The Financial Crimes Enforcement Network (FinCEN) acts as the designated administrator of the BSA.

Specifically, the BSA established requirements for recordkeeping and reporting by private individuals, banks and other financial institutions.

In 1996 the Suspicious Activity Report (SAR) became the standard form to Report suspicious activity.

SARs are due to FinCEN, within 30 days regarding any account deemed suspicious by the financial institution.

BSA continued

Designed to help identify the source, volume, and movement of currency and other monetary instruments transported or transmitted into or out of the United States or deposited in financial institutions. Under this act, banks are required to (1) report cash transactions over $10,000 using the Currency Transaction Report (CTR filings); (2) properly identify persons conducting transactions; and (3) maintain a paper trail by keeping appropriate records of financial transactions.

Banks are responsible to monitored consecutive transactions, which singularly may not give rise to a CTR, but collectively require the reporting.

Money Laundering Control Act

- In 1986, the Money Laundering Control Act made money laundering a federal crime for the first time in the history of the United States, and other countries soon followed in its footsteps. In addition to recognizing money laundering as a federal crime, this act prohibited structuring transactions to evade CTR filings. The act introduced civil and criminal forfeiture for BSA violations as well as directing banks to establish and maintain procedures to ensure and monitor compliance with the reporting and recordkeeping requirements of the BSA.

Penalties

- Under BSA violations, a person convicted of money laundering can face up to 20 years in prison and a fine of up to $500,000. Any property involved in a transaction or traceable to the proceeds of the criminal activity, including property such as loan collateral, personal property, and, under certain conditions, entire bank accounts (even if some of the money in the account is legitimate), may be subject to forfeiture.
- BSA reporting requirements under 31 USC 5324(d). For example, a person, including a bank employee, willfully violating the BSA or its implementing regulations is subject to a criminal fine of up to $250,000 or five years in prison, or both. A person who commits such a violation while violating another U.S. law, or engaging in a pattern of criminal activity, is subject to a fine of up to $500,000 or ten years in prison, or both.

Penalties continued

- A bank that violates certain BSA provisions, including 31 USC 5318(i) or (j), or special measures imposed under 31 USC 5318A, faces criminal money penalties up to the greater of $1 million or twice the value of the transaction.

Annunzio-Wylie Anti-Money Laundering Act

- In 1992, the Annunzio-Wylie Anti-Money Laundering Act strengthened the sanctions for BSA violations. This act introduced Suspicious Activity Reports (SARs) and eliminated previously used Criminal Referral Forms. With a boom in globalized industrialization, Wire Transfers became increasingly popular. As more and more people started working with contractors and innovators overseas, banking became increasingly globalized, including how people sent and received funds internationally on an individual basis. In response to this, this act expanded identity verification requirements to include wire transfers as well as applying BSA recordkeeping mandates to wire transfers.

Money Laundering Suppression Act/Money Laundering and Financial Crimes Strategy Act

- In 1994, the government began rolling out plans to educate employees in the financial sector to recognize potential money laundering activity and provide procedures to monitor this activity. Under the Money Laundering Suppression Act and the Money Laundering and Financial Crimes Strategy Act, banking agencies were now required to review and enhance training, as well as develop anti-money laundering (AML) examination procedures. Additionally, requiring bank agencies to develop anti-money laundering training for examiners.
- These acts Created the High Intensity Money Laundering and Related Financial Crime Area (HIFCA) Task Forces to concentrate law enforcement efforts at the federal, state and local levels in zones where money laundering is prevalent. HIFCAs may be defined geographically, or they can also be created to address money laundering in an industry sector, a financial institution, or group of financial institutions.

USA Patriot Act (2001)

- The USA Patriot Act was introduced in response to the 9/11 attacks and gave the government sweeping new powers to fight terrorism. This act did cover a variety of anti-terrorism efforts, but the main part of the Patriot Act that focused on money laundering was the Title III provision – the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001. Criminalized the financing of terrorism and augmented the existing BSA framework by strengthening customer identification procedures.

USA Patriot Act (2001) continued

I. Prohibiting financial institutions from engaging in business with foreign shell banks
II. Requiring financial institutions to have due diligence procedures (and enhanced due diligence procedures for foreign correspondent and private banking accounts)
III. Improved information sharing between financial institutions and the U.S. government by requiring government-institution information sharing and voluntary information sharing among financial institutions
IV. Expanded the anti-money laundering program requirements to all financial institutions
V. Increased civil and criminal penalties for money laundering
VI. Provided the Secretary of the Treasury with the authority to impose "special measures" on jurisdictions, institutions, or transactions that are of "primary money laundering concern"
VII. Facilitated records access and required banks to respond to regulatory requests for information within 120 hours
VIII. Required federal banking agencies to consider a bank's AML record when reviewing bank mergers, acquisitions, and other applications for business combinations

Anti-Money Laundering Act of 2020

On January 1, 2021, the US Senate voted to override President Donald Trump's veto of H.R. 6395, the National Defense Authorization Act for Fiscal Year 2021 (NDAA). As part of the NDAA, the Anti-Money Laundering Act of 2020 (AML Act) became law and amended the BSA for the first time since 2001.

The AML Act is intended to modernize the BSA, derail attempts by bad actors to evade detection by using shell companies, address emerging financial threats, improve coordination and information sharing, and encourage technological innovation. The key changes under the AML Act include imposing new ultimate beneficial ownership reporting requirements on certain U.S. state-law-organized corporations, limited liability companies, and other similar entities formed under the laws of a foreign country that register to do business in the U.S. (UBO Reporting Law). Under the UBO Reporting Law, any reporting company must submit, as part of the company formation or registration process, a report to FinCEN that includes specific identification information for each "beneficial owner." FinCEN will then issue to the reporting individual or entity a unique FinCEN identifier number.

Anti-Money Laundering Act of 2020

- The act provides a “declaration of purpose” for the BSA, which essentially reinforces and codifies a risk-based approach to AML. The BSA purpose, as amended by the USA Patriot Act of 2001, was “to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations, or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”. The AML Act amends the BSA purpose to include goals of preventing money laundering and the financing of terrorism by requiring financial institutions to establish risk-based programs that incorporate highly useful BSA-related reports in assessing risks of money laundering, terrorism finance, tax evasion, and fraud to such financial institutions.

Anti-Money Laundering Act of 2020

To modernize AML policies, the AML Act also mandates that, in connection with suspicious activity reporting (SAR) requirements, FinCEN establish streamlined (automated) processes for filing noncomplex categories of reporting. Importantly, the U.S. Treasury will also be required to review and determine whether currency transaction reports and SAR dollar thresholds, including aggregate thresholds, should be adjusted. Also expanding BSA coverage system by recognizing previously unregulated channels that may be exploited to launder money and finance terrorism, including the antiquities trade and virtual currencies.

Anti-Money Laundering Act of 2020

The AML Act significantly amends BSA enforcement and investigation-related provisions. This includes heightened civil & criminal penalties, expanded subpoena authority for foreign banks with U.S. correspondent accounts, and expands the BSA's existing provisions for rewarding informants and the protection of whistleblowers. The amendments will provide protections against retaliation against individuals who provide original information to their employer, Treasury or DOJ, relating to violations of U.S. money laundering laws. Treasury also will be permitted to award up to 30% of the total recovered monetary sanctions for BSA violations provided that the sanctions exceed $1 million.

Whistleblower provisions

- The whistleblower program in the AML Act is modeled after the program implemented by the US Securities and Exchange Commission (SEC) following the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. That program has led to the SEC's recovery of more than $2 billion in monetary sanctions due to whistleblower tips. Since 2015, annual AML penalty figures have been steadily rising each year. Multi-million-dollar fines have been commonplace for a while, but we are now seeing more penalties of one billion dollars or over.

Foreign Account Tax Compliance Act

- Under FATCA, certain U.S. taxpayers holding financial assets outside the United States must report those assets to the IRS on Form 8938, Statement of Specified Foreign Financial Assets. There are serious penalties for not reporting these financial assets (as described below). This FATCA requirement is in addition to the long-standing requirement to report foreign financial accounts on FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) (formerly TD F 90-22.1).

More than just banks

- FATCA also requires certain foreign financial institutions to report directly to the IRS information about financial accounts held by U.S. taxpayers or by foreign entities in which U.S. taxpayers hold a substantial ownership interest. The reporting institutions will include not only banks, but also other financial institutions, such as investment entities, brokers, and certain insurance companies. Some non-financial foreign entities will also have to report certain of their U.S. owners.

The Safe Banking Act of 2021

The US House of Representatives recently approved the Secure and Fair Enforcement (SAFE) Banking Act of 2021, also known as the SAFE Banking Act.

This law provides the possibility for financial institutions, such as banks, to conduct business with cannabis enterprises that are licensed in states
which allow cannabis for either recreational, medical use, or both (2).

The SAFE Banking Acts' purpose is to remove the fear banks have of being penalized by federal authorities due to the illegality of cannabis at the federal level.

With a 321-101 vote, the House of Representatives passed the bill along to the US Senate where it may be considered for ratification.

The issues surrounding cannabis' status at the federal level have made banks hesitant to transact business with establishments that are involved in selling cannabis or cannabis-related products.

The intentions of the SAFE Banking Act are to give clarification on any proceeds that are generated by licensed cannabis firms within states that have cannabis laws should not be looked at as illegal. Instructions are included in the bill for federal regulatory agencies to draft appropriate guidelines so that banking activities could be overseen at a national level.

Due to the limited options to do financial transactions, cannabis industry businesses were forced to run their establishments in cash or use smaller financial institutions .

Currently in the US, 36 states have structures established to regulate medical cannabis and 17 states have approved the recreational use of cannabis.