

American Express AML Case Offers Important Compliance Lessons, Consultants Say



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Maybe it helps to put a pretty face on an ugly week.

On Monday, the same day American Express Co. was ordered to pay the largest anti-money laundering related penalty assessed against a U.S. financial institution, the company said it had hired pop singer Beyoncé Knowles to be its celebrity representative.

But the bad news didn't end with that \$65 million penalty: on Tuesday the company's American Express Bank Ltd. unit reached an agreement with the New York State Banking Department to improve its AML regime. That agreement requires the unit to improve its suspicious activity reporting and customer due diligence, issues also addressed in Monday's settlement and other American Express penalties.

AML professionals this week considered what lessons could be gleaned from the \$65 million settlement, which included actions issued by the Justice Department, Federal Reserve and Financial Crimes Enforcement Network, and American Express's troubled compliance past.

This week's landmark case stemmed from a Drug Enforcement Administration investigation of a Colombian narcotics operation. As part of the probe, DEA agents posing as drug dealers moved money using the black market peso exchange into American Express's Miami-unit and Fort Lauderdale, Fla.-based BankAtlantic Bancorp, said Don Semesky, the DEA's chief of financial operations. BankAtlantic agreed in April 2006 to pay \$10 million to resolve charges stemming from the investigation.

Regulators said Monday that American Express had allowed \$55 million in Colombian drug proceeds to be laundered through its Miami-based private banking unit, and failed to establish sufficient AML controls.

As part of Monday's settlement, the unit was ordered to pay a \$55 million forfeiture and the company's Salt Lake City, Utah-based travel services unit was hit with a \$5 million penalty for failing to file accurate and timely SARs for transactions totaling \$500 million. Under the Patriot Act, banks must report suspicious activity and protect against money laundering for private accounts with at least \$1 million in assets.

Suspicious Activity Reports

The SAR deficiencies identified by FinCEN's are striking, said Carmina Hughes, executive director at Daylight Forensic & Advisory, a New York-based regulatory compliance firm, because of the size of Monday's penalty and the attention paid to how the reports were misfiled — in some cases, with specific data missing and fields left blank.

"That's got to be a wake up call to a lot of compliance officers," said Hughes. "It sounds like FinCEN is saying to the industry, 'We've given you tons of guidance and now we're actually going to look at this and penalize you for it.'"

And the problem may be widespread, according to Kenneth Bryant, managing director of Bryant & Associates, a Hayesville, North Carolina-based AML consultancy. "Banks still can't seem to file SARs correctly," said Bryant, adding that, despite guidance, some institutions continue to leave out explanatory details in the report. "It's pretty shameful."

American Express was also cited by FinCEN for not having its compliance personnel verify customer data provided by account relationship managers. That is unusual, said Hughes, because such verifications are often done outside of compliance departments.

"It seems like [FinCEN] certainly expects it," said Hughes.

Relationship Managers

The case also served as a reminder for old compliance lessons on private banking, know-your-customer (KYC) requirements and the hazards of accepting bearer share transactions.

Private banking is considered high risk for money laundering, in part because account relationship managers, always seeking to satisfy their clients, may be reluctant to press new customers with questions that might seem intrusive, according to Loren Grant, a senior AML specialist with San Francisco-based M² Consulting, a professional services consulting firm.

While senior management may mandate certain KYC procedures for the typically reticent wealthy clientele, there is little assurance that branch and account managers will follow the mandates, he said.

"You almost have to have a compliance delegate at each branch to oversee the KYC as new accounts are being open, but that's just cost prohibitive," said Grant. "That's what needs to be done, that's not what's being done."

In the case of foreign clients, bankers should be sure to establish why the client wants money in a U.S. institution account as well as the risk of accepting a transaction from an institution in a high risk area, where AML controls may be less stringent, said Hughes.

"How do you satisfy yourself that they haven't been able to put dirty money into their account in another place where it's easier, and simply transfer it into the U.S.?" said Hughes.

The American Express deferred prosecution agreement noted that "almost all" accounts targeted at the company's private bank were held in the names of bearer share corporations incorporated in offshore jurisdictions. In one case, a Colombian national controlled an account through a bearer share corporation in the British Virgin Islands, which was in turn controlled by three other bearer share corporations.

Because it is so difficult to identify the true owners of bearer share corporations, because they are owned by the person holding the stock, financial institutions should typically decline such transactions, according to Hughes. "This is not something new," she said.

History of Problems

But few should be surprised at the size of the fine and breadth of the enforcement actions given American Express's previous run-ins with regulators, consultants said.

American Express Bank International, the banking unit that received the brunt of regulator attention in Monday's settlement, was hit in 1994 with a \$35.2 million fine relating to laundered drug money from Mexican and Colombian cartels. The fine, then the largest for a U.S. institution in an AML case, was followed by the sentencing of two former employees for helping launder \$30 million in drug proceeds.

In 1997 and 1999, the U.S. Treasury Department alerted the private banking unit and other financial institutions of money laundering schemes involving the black market peso exchange. Although the staff at American Express Bank International was "well aware" of the risks of the targeted transactions, they considered them a "fact of life" in South America, regulators said.

"If they were caught the first time, it should've been corrected the first time," said Bryant.

However, large financial institutions may see getting AML penalties as more cost effective than spending on compliance programs, said Bryant.

AML expenses are on the rise, according to consulting firm KPMG's July 2007 Global Anti-Money Laundering Survey, which estimated a 71 percent jump in costs for North American banks over the past three years.

"You would look at \$5 million dollars as a pretty reasonable tradeoff between staffing and/or contracting out to an independent firm for services," said Bob Sottile, director of M² Consulting's BSA and AML consulting services. "Sixty-five million dollars is a big number and it gets people to think."

Of the \$65 million, American Express will forfeit \$55 million to the U.S. Department of Justice. FinCEN and the Federal Reserve assessed additional \$25 million and \$20 million penalties, but all of the Federal Reserve fine and \$15 million of FinCEN's fine are settled by the company's \$55 million forfeiture.