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CAPITAL SOURCES

Mike Seemuth

Heat put on banks to detect, expose money laundering

As the federal government boosts its enforcement of U.S. trade sanctions and tax laws, banks' regulatory risks in the detection of money laundering are multiplying.

Participants at an anti-money laundering conference also highlighted the heightened risks to banks from the spreading use of prepaid debit cards and remote deposit-capture technology. Banks are also facing increased pressure from the federal Office of Foreign Assets Control, which has been targeting banks in its enforcement of trade sanctions against such nations as Cuba, Iran and Sudan.

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Andres A. Fernandez, a Miami-based shareholder and co-leader of the banking and financial services practices group at the Gunster law firm, and Clemente Vazquez-Bello, a Gunster shareholder and current chairman of the Florida International Bankers Association.

ONUS **PUT ON BANKS** TO DETECT MONEY LAUNDERING

Banks' regulatory risks in the detection of money laundering are multiplying as the federal government intensifies its enforcement of U.S. trade sanctions and tax laws.

Speakers at an anti-money laundering conference in Miami last week also highlighted the heightened risks to banks from the spreading use of prepaid debit cards and remote deposit-capture technology.

Regulatory risk for banks in monitoring for the movement of dirty money "is no longer one-dimensional," said **John Wagner**, the director for Bank Secrecy Act and anti-money laundering compliance at the **Office of the Comptroller of the Currency**.

Banks increasingly offer customers the ability to use prepaid, reloadable debit cards and to remotely deposit checks without the aid of a human or automated teller. But "a lot of these institutions don't have processes in place to back these new products and services" and to ensure they comply with anti-money laundering regulations, Wagner said. Wagner and other speakers at the annual conference in Miami, organized by the **Florida International Bankers Association**, also cited increased pressure from OFAC, the federal

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Office of Foreign Assets Control, which has been targeting banks in its enforcement of trade sanctions against such nations as Cuba, Iran and Sudan.

"OFAC compliance has been and will continue to be one of the most significant challenges for banks today," said **Andres A. Fernandez**, a Miami-based shareholder and co-leader of the banking and financial services practices group at the **Gunster** law firm.

"Probably the most important reason why OFAC has risen to the forefront is, to sum it up in one word, enforcement," Fernandez said." If you track from April 2003 to October 2011, there have been over 174 formal enforcement actions issued against banks and financial institutions for OFAC violations. So folks, these laws are being aggressively enforced. ... Even the small market, domestic community bank has a greater exposure to OFAC and OFAC risk."

Clayton Stevenson, managing director and global economic sanctions executive at **Bank of America**, said OFAC has been going after the biggest violators: "Clearly, there is a focus on cases that are egregious." In one such case, **JPMorgan Chase** paid $88.3 million last year to settle OFAC charges that the bank illegally approved 1,711 wire transfers in late 2005 and early 2006 in violation of U.S. trade sanctions against Cuba. "It was determined to be egregious," Stevenson said, but "there was a reduction in the penalty based on Chase's cooperation."

Pending implementation of a new federal law to deter offshore tax evasion poses another transaction-monitoring challenge for banks. The Foreign Account Tax Compliance Act, signed into law in March 2010, will take effect in phases starting in January 2013. FATCA, as the law is known, will require foreign financial institutions to report accounts owned substantially by U.S. customers or face penalties for failure to do so.

"Everybody is worried about FATCA," said **Dominic Suszek**, president of the anti-money laundering consulting firm **BSA Radar** in Miami, one of the exhibitors at the conference.

Donald Johnson, a senior manager of **Ernst & Young Consulting**, said some banks with operations outside the United States are concerned about FATCA reporting requirements, particularly a mandate to identify partial owners of offshore bank accounts who have as little as a 10 percent share. "You may have a KYC [know your customer] program that does not drill down to 10 percent," said Johnson, who spoke publicly as part of a panel at the conference last week

The federal government's efforts to limit trade with the government of Iran, in particular, have added to regulatory concerns among banks. Compliance

with the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, also known as CISADA, "is of concern here in South Florida because we are all aware there are countries in South America that now have very close trading relationships with Iran," said **Clemente Vazquez-Bello**, a Gunster shareholder and current chairman of the Florida International Bankers Association.

The federal Financial Crimes Enforcement Network has begun enforcing CISADA by asking certain U.S. banks to certify whether any of their foreign correspondent banks maintain accounts for designated Iranian entities. The definition of a correspondent banking relationship for purposes of enforcement is "very broad ... any ongoing financial transactions," said **Suzanne L. Williams**, manager of the Bank Secrecy Act and anti-money laundering compliance section of the **Federal Reserve Bank**.

Several speakers at the conference said anti-money laundering issues at some banks arise from conflicts between compliance staff and customer-relationship managers.

"I still get pushback today from the RMs [relationship managers]. But the world has changed. You can't have unsubstantiated sums coming into a client's account," said **Tim Maroney**, senior vice president and chief compliance officer at the Miami agency of **BNP Paribas**. "I read the other day that 23 percent of enforcement actions are related to account monitoring, so it's an ongoing work in progress that needs to be adjusted."

Maroney said some customer-relationship managers would prefer the bank to issue a suspicious activity report, or SAR, to regulators about a client rather than ask the client directly to explain an unusual transaction: "They will say, 'I'm not going to ask the client for that. Just 'SAR' the account.' "

Simply asking questions to identify the true owners of a suspicious bank account can produce dramatic results. **Jennifer Shasky Calvary**, chief of the asset and forfeiture section at the **Department of Justice**, recalled the stunning outcome when a European bank probed to discover the true ownership of a large deposit account, controlled by "what we all believed to be a Russian organized crime family."

At the urging of a prosecutor, officials of the European bank asked the people who opened the suspicious account about the source of the money, Calvary said, and "initially they got some push-back. But when the financial institution continued asking questions, the people disappeared — and gave up possession of nearly $1 billion."