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FOCUS

Feds test for compliance with anti-money laundering regs

As recently reported in the press, the comptroller of the currency, the U.S. Department of Justice and other state and federal regulators are investigating several major banks for failing to monitor and report suspicious cash transactions that were processed through the banks' branches.

This development is not a surprise. The government has already moved against several major banks for failing to detect and report suspicious transactions.

For example, in July 2012, the United States Senate released a report that excoriated HBSC Bank for lapses in its compliance with anti-money laundering statutes and regulations. The report chastised the bank for a "pervasively polluted culture" that allowed narco-traffickers and terrorist organizations to receive and transfer money through the bank to confederates in Mexico, Iran and Syria.

Recently, British bank Standard Chartered agreed to pay $340 million to the New York State Department of Financial Services to settle claims that Standard Chartered moved hundreds of billions of dollars in tainted money and lied to regulators.

As a result of these cases and others, regulators and prosecutors — not unreasonably — began to have serious concerns that these banks were the tip of the iceberg and that there were nationwide lapses in compliance by many other banks, too. They feared that these lapses in compliance were allowing billions of dollars from illegal activities to flow undetected through the U.S. banking system. Hence, the government is turning up the heat in this area.

These coming investigations will be broad in scope and will not be limited to the corporate headquarters of large banks. As a former federal prosecutor involved in several large-scale banking and money laundering investigations, I know the government agencies will look hard at the branches because that is where the narco-traffickers and terrorists go to deposit the proceeds of their illegal activity.

The branches are the first line of defense against money laundering, and the reporting obligations rest with the employees in the branches who first come into contact with the illegal cash.

GUEST COLUMN

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Moreover, the regulators and prosecutors will not look just at big banks — they will look at banks of all sizes. If the government sees a pattern of misconduct by several entities in a particular industry (as it has here with the Bank Secrecy Act), it will conduct an industry sweep to investigate all the players in that industry.

A prime example of an industry sweep in the banking arena occurred in the late 1980s, when a cluster of savings and loan banks failed in Orange County, Calif., and in Florida, which sparked scrutiny by regulators and prosecutors of all savings and loan banks in the country.

Thus, it is very likely that all banks and other financial institutions in the Pacific Northwest will be affected in some way by this increased scrutiny from regulators and prosecutors.

Moreover, the scrutiny will not be limited to federal agencies. Many states' attorney generals, district attorneys and state banking regulators have aggressively beefed up their investigations and prosecutions of financial crimes and, no doubt, will put resources into investigating banks for compliance failures.

Accordingly, banks and other financial institutions need to be proactive to limit their exposure to this upcoming storm of regulatory and criminal investigations.

First and foremost, the bank, with the help of an objective outside professional, needs to develop a strong and comprehensive compliance program. It should also invest in sophisticated software to aid its employees in detection of money laundering.

However, the compliance program and the software package can't sit in a binder on a shelf in the HR manager's office. Management needs to embrace the compliance program as part of the ethical culture of the bank. Employees must be vigorously trained on the compliance and software programs, and on the consequences of a failure to comply with the program. Test audits must be conducted periodically to test the viability of the compliance system, and the compliance program should be amended or changed as circumstances warrant.

Finally, experienced outside counsel should be retained if the bank uncovers any type of Bank Secrecy Act violations or if the bank becomes part of any regulatory, civil or criminal investigation by any government entity.

All these steps will go a long way in limiting the bank's exposure to any government punishment. Generally, regulators and prosecutors recognize that there can be sporadic, minor or unintentional failures to comply with anti-money laundering laws and regulations. Government investigators and prosecutors also recognize that no entity can enact a screening system that will prevent it from occasionally hiring the "bad apple" employee who is intent on violating the law.

That said, regulators and prosecutors will take a very different and more aggressive approach if they see repeated and systemic violations.

The steps outlined above will demonstrate to government officials that the bank has been acting in good faith to seek compliance with all applicable regulations and that it does not condone or tolerate such violations. This sends a message to the regulators and prosecutors that there are no repeated or systemic lapses in the system and that any investigation into the bank should be closed.

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