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BSA/AML Compliance and Enforcement: An Update for the Securities and Derivatives Industries

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While the political landscape is in flux, one thing remains constant regardless of changes in leadership at regulatory agencies: the importance of detecting and deterring financial crime before criminals cause irreparable harm to investors or leverage the financial system to further other illegal activity. Financial institutions are increasingly receiving large fines and penalties for failure to detect and report crimes or potential wrongdoing by others, as evidenced by more than $2 billion in penalties assessed against JP Morgan with respect to the Madoff Ponzi scheme, $97.4 million in penalties assessed against Citigroup with respect to remittances and transfers through its Banamex subsidiary, and $41 million in penalties assessed against Deutsche Bank for transaction monitoring deficiencies. The recent assessment of penalties against individual executives at Banamex, Western Union, and other financial institutions also evidences regulators' continued focus on creating incentives for individual accountability at financial firms in a post-Yates Memo landscape.

Since 2000, federal regulators have imposed more than $6.1 billion in civil money penalties, fines, and forfeitures ("monetary penalties")[1] against financial institutions and financial executives in connection with alleged violations of Bank Secrecy Act ("BSA")[2] and Anti-Money Laundering ("AML")[3] regulations.[4] Securities and derivatives firms in particular have paid approximately $60 million in BSA/AML penalties in that time, and have faced expanded compliance expectations from regulators over time.[5] The size of BSA/AML penalties against securities and derivatives firms has spiked substantially upward since 2014, as evidenced by the graphic on page 2.

Money laundering refers to activities in which individuals and criminal enterprises attempt to disguise the proceeds of and/or sources of funds for illicit activities by funneling them through banks or other legitimate financial institutions.[6] This article focuses on recent developments in the US BSA/AML regulatory landscape for securities and derivatives firms, including enforcement actions and new examination priorities announced by federal regulators such as the Securities and Exchange Commission ("SEC") and the Commodity Futures Trading Commission ("CFTC"), as well as industry self-regulatory organizations ("SROs") such as the Financial Industry Regulatory Authority ("FINRA") and the National Futures Association ("NFA"). This article also analyzes rules and advisories released by the Financial Crimes Enforcement Network ("FinCEN"), the federal regulator and financial intelligence unit responsible for enforcing BSA/AML compliance by all types of financial institutions active within the United States.

FinCEN regulations require that financial institutions file Suspicious Activity Reports ("SARs") when their BSA/AML compliance and monitoring programs identify suspicious activity and determine it warrants reporting under BSA/AML regulations and statutes. From 2003 through 2016, increases in regulatory investigations and enforcement actions against securities and derivatives firms have accompanied a roughly four-fold increase in the filing of SARs by such firms.[7] The growth in securities and derivatives firms' SAR filings is only partly explained by expansion in the types of financial entities subject to the SAR and AML reporting requirements, as SAR filings by banks also grew sharply even though they have been subject to the reporting requirements since 1996.[8]

Given regulators' enhanced scrutiny over BSA/AML compliance, the data suggest that the number of regulatory enforcement actions will continue to grow, along with the size of fines and penalties. Financial institutions' expenditures on BSA/AML compliance have grown apace, and such compliance costs are also expected to continue to grow as enforcement actions propel firms to raise compliance standards to meet increasingly strict regulatory expectations.

SEC Examination Priorities Focus on Risk Scoping, Independent Testing, and Applying Analytics to SAR Filings to Assess Compliance

The securities industry's primary federal regulator, the SEC, announces its annual examination priorities for BSA/AML covered securities firms such as broker-dealers at the beginning of each year. These priorities, while not exhaustive and subject to adjustment in light of market conditions, represent the SEC's

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signal to regulated firms of its expected supervisory focus for the coming year.[9] The SEC's examination priorities in 2016 and 2017 are noteworthy for their consistent emphasis on analytics regarding SAR filing quantity and quality, their repeated mentions of the importance of appropriate risk scoping to the design of AML compliance programs, and their exhortations to ensure the effectiveness of the required independent testing pillar of required AML programs.

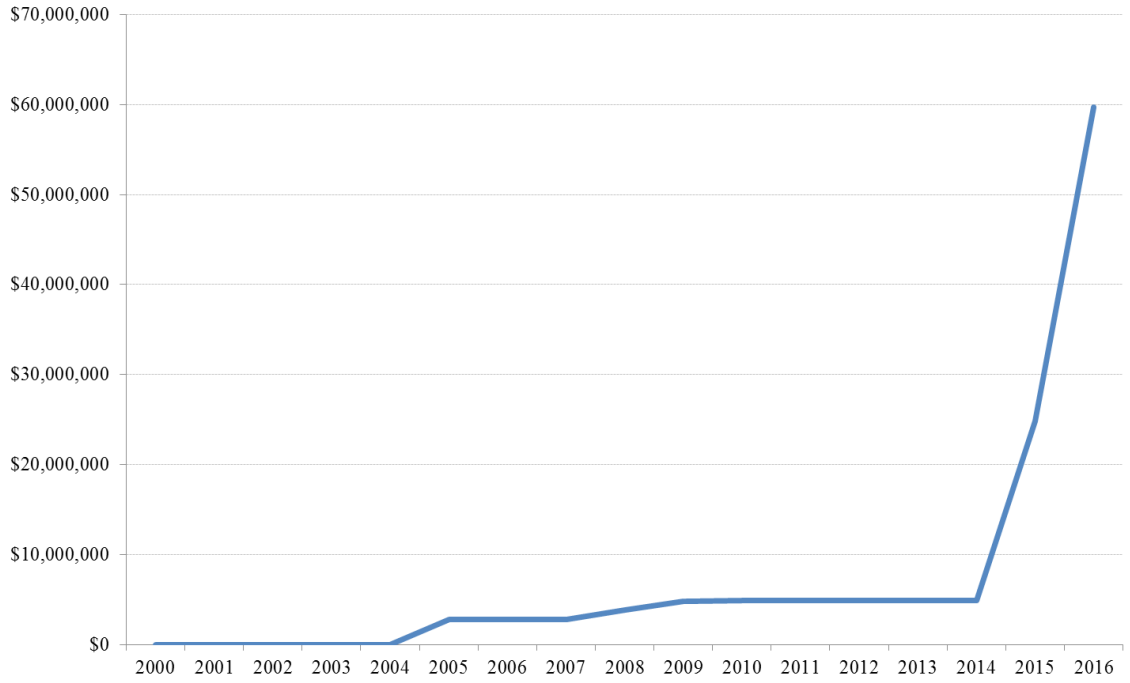
In 2016, the SEC announced that it would analyze securities firms' SAR filings to identify firms that filed relatively few SARs or filed incomplete or late SARs. The SEC also indicated its intent to assess covered securities firms' AML programs, especially the independent testing obligation and risk scoping, e.g., the extent to which firms consider and adapt their AML programs to changing risk factors, such as changing business trends or evolving money laundering and terrorist financing trends.[10]

In 2017, the SEC again emphasized ensuring the effectiveness of independent testing, and particularly encouraged firms to ensure appropriate risk scoping, stating in part:

> *"The recent assessment of penalties against individual executives at Banamex, Western Union, and other financial institutions also evidences regulators' continued focus on creating incentives for individual accountability at financial firms in a post-Yates Memo landscape."*

"We will continue to examine broker-dealers to assess whether AML programs are tailored to the specific risks that a firm faces, including whether broker-dealers consider and adapt their programs, as appropriate, to current money laundering and terrorist financing risks. We will also review how broker-dealers are monitoring for suspicious activity at the firm, in light of

Securities and Derivatives Industries' Cumulative Federal BSA/AML Penalties in the 21st Century



Source: Analysis of data from FinCEN, BankersOnline, SEC, CFTC, NFA, and FINRA.

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the risks presented, and the effectiveness of independent testing. We will also continue to assess broker-dealers' compliance with suspicious activity report ("SAR") requirements and the timeliness and completeness of SARs filed."[11]

FINRA Examination Priorities Focus on Risk Scoping, Monitoring High-Risk Customers, Customer Due Diligence for Accounts Held by Nominee Companies, and Testing Internal Surveillance Systems for Alerts Tailored to AML Red Flags

The securities industry's SRO, FINRA, announces its regulatory and examination priorities in an annual letter. FINRA announced largely consistent priorities in 2016 and 2017, with a focus on risk scoping and risk-tailored monitoring of customer activities, as well as appropriate customer due diligence. FINRA's 2017 letter particularly emphasized the attention it would pay to "gaps in firms' automated trading and money movement surveillance systems caused by data integrity problems, poorly set parameters or surveillance patterns that do not capture problematic behavior" and reminded securities firms that "surveillance must also include alerts tailored to the firm's anti-money laundering red flags."[12] FINRA has also indicated its intent to "assess the adequacy of firms' monitoring of high-risk customer accounts and transactions" and advised firms delegating AML monitoring or compliance functions to third parties to maintain "an open line of communication with the personnel conducting reviews."[13]

FinCEN Adds New Customer Due Diligence Requirements as a "Fifth Pillar" of Required AML Programs

Although Know Your Customer ("KYC") and Customer Identification Program ("CIP") requirements have long been expected elements of most financial institutions' anti-money laundering programs, these requirements were primarily targeted at individual customers and did not always result in financial institutions identifying beneficial owners of legal entity customers. FinCEN first sought public comment on a proposed Customer Due Diligence ("CDD") requirement that would require that financial institutions obtain beneficial owner information from legal entity customers in March 2012.[14]

After several iterations of public comment and revision, FinCEN published a final rule in May 2016 that required covered financial institutions to collect beneficial owner information from legal entity customers, defining beneficial owner to mean a person with either at least a 25% equity interest in a legal entity customer or a significant ability to control

Number of SARs Filed by Type of Securities/Derivatives Institution

Type of Securities/Derivatives Institution	2012	2013	2014	2015	2016
Clearing Broker in Securities	437	11,993	17,860	16,216	15,718
Futures Commission Merchant	53	1,237	1,840	1,484	1,242
Holding Company	0	730	796	1,325	1,344
Introducing Broker in Commodities	9	776	1,058	1,264	1,469
Introducing Broker in Securities	812	9,460	12,356	13,862	13,603
Investment Advisor	26	1,048	1,638	2,285	2,104
Investment Company	12	638	864	911	1,179
Retail Foreign Exchange Dealer	7	53	174	112	85
Subsidiary of Financial/Bank Holding Company	52	7,475	9,743	10,748	11,123
Other	47	2,308	3,229	3,334	4,225

Source: FinCEN. Some SARs may list multiple reporting institutions.

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or direct a legal entity customer. The *Federal Register* filing described the final CDD rule as a "fifth pillar" of an AML program, but downplayed the impact of the new rule on most covered institutions, stating that "FinCEN views the fifth pillar as nothing more than an explicit codification of existing expectations; as these expectations should already be taken into account in a bank's internal controls, FinCEN would expect the confusion caused by this codification, if any, to be minimal."[15]

"Given regulators' enhanced scrutiny over BSA/AML compliance, the data suggest that the number of regulatory enforcement actions will continue to grow, along with the size of fines and penalties."

Financial institutions covered by the CDD rule include federally regulated banks, federally insured credit unions, mutual funds, brokers or dealers in securities, futures commission merchants, and introducing brokers.[16] The final rule excludes from the definition of "legal entity customer" swap dealers, major swap participants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, SEC-registered investment advisers, and several other regulated entity types for which information about beneficial ownership is available from federal or state regulators.[17] As a result of these exceptions to the CDD rule, financial counterparties to such entities will not have to engage in costly beneficial owner searches for such firms, and instead can focus compliance efforts on acquiring beneficial owner information about more opaque legal entity customers.

FinCEN Proposes Redefining Broker-Dealer to Include Funding Portals

In April 2016, FinCEN published a proposed rule that would redefine the terms "broker or dealer in securities" and "broker-dealer" under BSA/AML regulations to include "funding portals that are involved in the offering or selling of crowdfunded securities pursuant to section 4(a)(6) of the Securities Act of 1933."[18] FinCEN's proposed rule is a response to the 2012 passage of the Jumpstart Our Business Startups Act ("JOBS Act") that created a regulatory exemption for crowdfunded securities, and the Securities and Exchange Commission's subsequent adoption of a JOBS Act implementing regulation, Regulation Crowdfunding ("Regulation CF"), which defined a new class of entity that could offer and sell securities in addition to broker-dealers: the funding portal.[19] If the proposed rule is adopted in its current form, funding portals will be considered a type of broker-dealer under BSA/AML regulations, and subject to the same compliance expectations as broker-dealers. It remains to be seen whether new leadership at the SEC and other financial regulators will continue to pursue the redefinition in its proposed form given the importance the administration has placed on increasing economic growth and reducing the cost of doing business in America.

CFTC and NFA Prioritize Compliance with FinCEN's Rules and Advisories

The futures industry's primary federal regulator, the CFTC, and its SRO, the NFA, release issue-specific news releases and emphasize active enforcement priorities in news releases for enforcement actions. In 2016 and 2017, both the CFTC and the NFA primarily used BSA/AML news releases to inform futures firms of FinCEN's latest advisories and guidance, as well as the new CDD rule. For example, the CFTC made a point of issuing Staff Advisory No. 16-60 reminding futures commission merchants and introducing brokers that they are obligated to report suspicious activities to FinCEN via timely SARs and also obligated to comply with economic sanctions programs imposed by the Office of Foreign Assets Control ("OFAC").[20] The NFA's news releases in 2016 and 2017 informed members of FinCEN's new CDD Rule,[21] summarized a FinCEN advisory on SAR reporting of cyber-events and cyber-enabled crime,[22] and notified members of FinCEN advisories on jurisdictions with AML deficiencies and updated OFAC sanctions.[23]

The CFTC and the NFA have expressly required the collection of customer information along the lines of current customer due diligence and KYC strictures since 1986 when NFA Rule 2-30 was adopted.[24] The CFTC has also long required periodic position

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reporting for beneficial owners, with the collection and transmission of futures position information largely resting with intermediaries such as Futures Commission Merchants (FCMs).[25]

Acceptance of Responsi-bility by Subjects of Enforcement Actions

In response to criticism that financial regulators were too lenient in settlement agreements with perpetrators of financial crime, FinCEN has stressed individual and corporate responsibility with respect to BSA/AML compliance. FinCEN's change in approach has paralleled a broader shift in the regulatory approach toward enforcement actions. Historically, financial institutions that were the subject of FinCEN or other regulators' enforcement actions could typically consent to a penalty without admitting or denying the alleged facts. Beginning in 2011, this practice was challenged by several US District Court judges.[26] By 2012, some regulators began to press firms to admit to allegations as part of settlements resolving enforcement actions. For instance, in a mid-December 2012 press release announcing HSBC's record monetary penalty for BSA/AML compliance failures, the Department of Justice ("DOJ") stated:

> "HSBC has waived federal indictment, agreed to the filing of the information, and has **accepted responsibility for its criminal conduct and that of its employees.**" [27]

In late 2016, FinCEN made it clear that the size of civil monetary penalty assessed in an enforcement action depended in part on whether or not the subject of an enforcement action displayed a willingness to accept responsibility for its compliance failures. As FinCEN Associate Director for Enforcement Thomas Ott explained,

> *"The SEC's examination priorities in 2016 and 2017 are noteworthy for their consistent emphasis on analytics regarding SAR filing quantity and quality, their repeated mentions of the importance of appropriate risk scoping to the design of AML compliance programs, and their exhortations to ensure the effectiveness of the required independent testing pillar of required AML programs."*

> "FinCEN does not maintain a strict matrix for assessing penalties. Rather, FinCEN weighs a number of factors and considerations when determining CMPs. I believe that overall, this model promotes greater fairness and proportionality in our enforcement actions. At its broadest level, this approach allows FinCEN the flexibility to move beyond a "one-size fits all" approach to tailor penalties to appropriately reflect the nature of the violation. And, it works to provide parity with CMPs imposed in similar cases. As I mentioned earlier, we devote a tremendous amount of time to ensuring that our public enforcement assessments clearly explain the nature of the violations underlying our enforcement action. The rationale should, in most instances, be evident.
>
> […] a violator's decision to self-disclose the wrongdoing in a timely manner may indicate a willingness to accept responsibility; it may also suggest a stronger likelihood of future compliance. FinCEN may consider the degree to which a financial institution or individual has cooperated with FinCEN, examiners, or law enforcement. A strong level of cooperation may be a mitigating factor in determining a penalty. Such cooperation includes, but is not limited to, the subject's compliance with document requests, professionalism towards and cooperation with examiners, and being fully truthful and forthcoming during interviews."[28]

FinCEN has not been alone in forcing financial institutions that are found to be non-compliant with

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BSA/AML regulations to accept responsibility for their shortcomings; the DOJ has done so as well. Thus, in January 2014, when his office announced a deferred prosecution agreement with JPMorgan Chase for BSA/AML compliance failures related to the Bernard Madoff Ponzi scheme and imposed another record-breaking monetary penalty, then-US Attorney for the Southern District of New York Preet Bharara commented:

> "With today's resolution, the bank has **accepted responsibility** and agreed to continue reforming its anti-money laundering practices."[29]

Such admissions of corporate responsibility in future settlements could bolster evidence of liability for third-party plaintiffs in related legal actions (*e.g.*, civil claims). However, given the new administration's emphasis on reducing the cost of doing business in America, reforming penalty guidance and allowing firms to neither admit nor deny allegations in enforcement actions may be areas of potential regulatory review going forward.

Enforcement Actions Emphasize Individual Accountability for BSA/AML Compliance Failures

Self-regulatory organizations and federal regulators have also stepped up enforcement actions against the executives and directors of financial institutions, making it clear that AML compliance failures can result in personal liability.

In February 2014, the securities industry self-regulatory organization FINRA fined Brown Brothers Harriman & Co.'s former Global AML Compliance Officer Harold Crawford $25,000 and suspended him for one month for AML compliance program failures.[30] In May 2016, FINRA continued displaying an individual enforcement focus with an enforcement action against Raymond James & Associates, Inc.'s former AML compliance officer, Linda Busby, resulting in a $25,000 fine and a three month suspension for the firm's "failure to properly prevent or detect, investigate, and report suspicious activity for several years."[31]

In between FINRA's enforcement actions against individual executives of financial institutions, FinCEN and federal prosecutors initiated an aggressive enforcement action against an executive that sought much steeper penalties. In December 2014, FinCEN filed a complaint via the US Attorney for the Southern District of New York against Thomas Haider, the former Chief Compliance Officer for MoneyGram, for "willful failure" to ensure compliance with BSA/AML statutes and regulations.[32] The enforcement action aimed to secure a $1 million personal penalty and enjoin the defendant from participating in the management of any financial institution for "a term of years—to be determined at trial."[33] In January 2016, a federal judge upheld FinCEN's authority by denying Haider's motion to dismiss, finding that the BSA statutes "demonstrate[d] Congress' intent to subject individuals to liability in connection with a violation of any provision of the BSA or its regulations, excluding the specifically excepted provisions."[34] On May 4, 2017, FinCEN and the US Attorney's Office for the Southern District of New York announced a settlement with Haider in which he agreed to a $250,000 penalty and a three-year injunction barring Haider from performing a compliance function for any money transmitter. In addition, FinCEN emphasized that under the settlement, Haider "admitted, acknowledged, and accepted responsibility for" three categories of AML compliance failures.[35]

While FinCEN and other regulators had occasionally pursued personal liability claims against customer-facing financial institution employees for compliance violations,[36] the Haider case is the first FinCEN enforcement action against an executive of a nationwide financial institution for "willful failure" to ensure compliance with BSA/AML statutes and regulations.[37] The January 2016 ruling and the May 2017 settlement raised the specter of personal liability for chief compliance officers and designated BSA/AML compliance officers going forward.

In September 2015, the Department of Justice made FinCEN's personal accountability emphasis into federal government policy by issuing the so-called "Yates Memo," named after then-Deputy Attorney General, and later acting Attorney General, Sally Yates. Circulated to federal prosecutors under the subject "Individual Accountability for Corporate Wrongdoing,"[38] this widely-reported document articulated the DOJ's position that "one of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals

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who perpetrated the wrongdoing."[39] Declaring that "civil enforcement efforts are designed […] to hold the wrongdoers accountable and to deter future wrongdoing," the Yates Memo expressed the government's intention to focus on "individual misconduct."[40] As of the writing of this article, there have been no indications that this policy will be rescinded under the Trump Administration.

Following the Yates Memo, regulators made a point of pursuing enforcement actions against individuals, including for alleged BSA/AML violations. For example, in March 2016, Charles Sanders, the former chief compliance officer at Gibraltar Private Bank and Trust, was fined $2,500 by the Office of the Comptroller of the Currency after his bank was fined $4 million for AML compliance failures.[41] Securities and futures industry regulators likewise followed suit. FINRA's aforementioned second individual AML enforcement action was announced in May 2016, and in October 2016, the SEC fined the former president and CEO of Miami brokerage firm E.S. Financial, Lia Yaffar-Pena, in the amount of $50,000 and issued a supervisory suspension for a year for allegedly aiding and abetting, as well as causing, violations of AML rules by allowing foreign entities to buy and sell securities without engaging in proper customer identification or due diligence. This individual enforcement action came several months after the SEC brought an enforcement action against the firm, which settled for $1 million.[42] Likewise, the CFTC and NFA have increasingly alleged failure to supervise and/or cited firm-wide AML compliance failures as they brought numerous enforcement actions against individual registrants.[43]

Taken together, these initiatives suggest an expanded scope for individual liability or prosecution regarding corporate AML compliance, with important implications. If individual directors, officers, and executives of financial institutions admit to regulator allegations in future settlements, as some financial institutions and corporations already have, such settlements' Statements of Facts could become central exhibits in related third-party plaintiffs' legal actions, including in director and officer liability cases and class action lawsuits. This should be of particular concern to settling firms and individuals because an increasing number of settlements have included clauses prohibiting the accused firms and individuals from denying the factual basis underlying findings or statements of facts in settlement documents. Both financial institution in-house counsel and white collar defense counsel should take note of this trend.

> *"In response to criticism that financial regulators were too lenient in settlement agreements with perpetrators of financial crime, FinCEN has stressed individual and corporate responsibility with respect to BSA/AML compliance."*

Conclusion

Recent enforcement trends suggest that securities and derivatives firms and individual executives at such firms will face increasingly strict regulatory scrutiny for broader categories of BSA/AML violations. Our analysis indicates that FinCEN, the SEC, FINRA, the CFTC, and the NFA have pursued penalties against alleged BSA/AML violators for a growing range of alleged compliance failures. Although the Trump Administration has suggested it will work to reduce the burdens imposed by costly financial regulations, regulators and policymakers have not announced plans to change tack on BSA/AML supervision or enforcement.

Both judges and regulators have emphasized not only individual accountability for executives at financial institutions, but also a preference for making the subjects of enforcement actions, both individual and corporate, take responsibility for alleged failure by admitting wrongdoing or otherwise acknowledging the accuracy of regulatory findings in enforcement actions. FinCEN and FINRA in particular have demonstrated their preference for making the subjects of enforcement actions agree to not deny the accuracy of some or all regulatory findings. If this practice continues, and especially if it becomes more widespread, it may provide third-party plaintiffs with acknowledgments relevant to their own lawsuits. ■

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> *"Both judges and regulators have emphasized not only individual accountability for executives at financial institutions, but also a preference for making the subjects of enforcement actions, both individual and corporate, take responsibility for alleged failure by admitting wrongdoing or otherwise acknowledging the accuracy of regulatory findings in enforcement actions."*

[1]*Based on analysis of reported enforcement actions from FinCEN and the Bankers Online BSA/AML Penalties List. See http://www.fincen.gov/news_room/ea/. See also https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties.*

[2]*The Bank Secrecy Act is the name given to the Currency and Foreign Transactions Reporting Act of 1970 and successive amendments to the framework thereof. The BSA requires US financial institutions to assist US government agencies to detect and prevent money laundering. See Financial Crimes Enforcement Network, "FinCEN's Mandate from Congress: Bank Secrecy Act," available at http://www.fincen.gov/statutes_regs/bsa/index.html, accessed January 4, 2016.*

[3]*Anti-Money Laundering compliance refers to financial institution practices designed to identify, report, and ultimately prevent money laundering, defined as "the process of making illegally-gained proceeds (i.e. 'dirty money') appear legal (i.e. 'clean')." Several statutes are considered AML laws; all are connected to the BSA legislative framework that was created by the 1970 law. See Financial Crimes Enforcement Network, "History of Anti-Money Laundering Laws," available at http://www.fincen.gov/news_room/aml_history.html, accessed January 4, 2016.*

[4]*Government Printing Office, "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001," 115 Stat. 272, Public Law 107-56, October 26, 2001, available at http://www.gpo.gov/fdsys/pkg/PLAW-107publ56/pdf/PLAW-107publ56.pdf, accessed January 4, 2016.*

[5]*NERA analysis of reported enforcement actions from FinCEN and the Bankers Online BSA/AML Penalties List. See http://www.fincen.gov/news_room/ea/. See also https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties.*

[6]*US Department of the Treasury Resource Center, "Money Laundering," available at http://www.treasury.gov/resource-center/terrorist-illicit-finance/Pages/Money-Laundering.aspx, accessed February 17, 2015.*

[7]*1,726,971 SARs were filed in 2014, and 916,709 were filed in the first half of 2015, for an annualized 2015 rate of 1,833,418 SARs, compared to 306,101 SARs filed in 2002. From NERA analysis of FinCEN's SAR Stats and SAR Activity Review – By the Numbers reports. See Financial Crimes Enforcement Network, SAR Stats, Issue 2 (October 2015) and SAR Activity Review – By the Numbers, Issue 1 (October 2003), available at http://www.fincen.gov/news_room/rp/sar_by_number.html, accessed January 18, 2016.*

[8]*Under BSA/AML regulations, the term "bank" is defined to include a broad range of financial institutions, including organizations chartered under the banking laws of any state and subject to the supervision of the bank supervisory authorities of a state. 31 CFR 103.11(c), July 1, 2000 edition.*

[9]*SEC, https://www.sec.gov/news/pressrelease/2016-4.html; https://www.sec.gov/news/pressrelease/2017-7.html.*

[10]*SEC, "Examination Priorities for 2016," January 11, 2016, https://www.sec.gov/news/pressrelease/2016-4.html; https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf.*

[11]*SEC, "Examination Priorities for 2017," January 12, 2017, https://www.sec.gov/news/pressrelease/2017-7.html; https://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2017.pdf.*

[12]*FINRA, "2017 Regulatory and Examination Priorities Letter," http://www.finra.org/industry/2017-regulatory-and-examination-priorities-letter, http://www.finra.org/sites/default/files/2017-regulatory-and-examination-priorities-letter.pdf.*

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[13]*FINRA, "2016 Regulatory and Examination Priorities Letter," http://www.finra.org/industry/2016-regulatory-and-examination-priorities-letter, http://www.finra.org/sites/default/files/2016-regulatory-and-examination-priorities-letter.pdf.*

[14]*77 FR 13046, March 5, 2012, https://www.federalregister.gov/documents/2012/03/05/2012-5187/customer-due-diligence-requirements-for-financial-institutions.*

[15]*81 FR 29397, May 11, 2016, https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions.*

[16]*FinCEN, "Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions," FIN-2016-G003, July 19, 2016, https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf.*

[17]*FinCEN, "FIN-2016-G003 Frequently asked Questions regarding Customer Due Diligence Requirements for Financial Institutions," July 19, 2016, https://www.fincen.gov/sites/default/files/2016-09/FAQs_for_CDD_Final_Rule_%287_15_16%29.pdf.*

[18] *81 FR 19086, April 4, 2016, https://www.federalregister.gov/documents/2016/04/04/2016-07345/amendments-to-the-definition-of-broker-or-dealer-in-securities.*

[19]*FinCEN, "FinCEN Proposes to Amend Definition of Broker-Dealer in Securities to Include Funding Portals, April 4, 2016, https://www.fincen.gov/news/news-releases/fincen-proposes-amend-definition-broker-dealer-securities-include-funding; 80 FR 71387, November 16, 2015, https://www.federalregister.gov/documents/2015/11/16/2015-28220/crowdfunding.*

[20] *CFTC, "CFTC Staff Advisory No. 16-60, Compliance with Suspicious Activity Reporting Requirements and Office of Foreign Assets Control Economic Sanctions Programs," July 6, 2016, http://www.cftc.gov/idc/groups/public/@lrlettergeneral/documents/letter/16-60.pdf.*

[21]*NFA, "FinCEN issues final rules requiring identification and verification of the beneficial owners of legal entity customers and ongoing customer due diligence requirements," August 12, 2016, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4734.*

[22]*NFA, "FinCEN issues and advisory and frequently asked questions to financial institutions on cyber events and cyber-enabled crime," October 31, 2016, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4754.*

[23]*See, for instance, NFA, "FinCEN issues an advisory on the FATF-identified jurisdictions with AML/CFT deficiencies," April 10, 2017, https://www.nfa.futures.org/news/newsNotice.asp?ArticleID=4809.*

[24]*NFA, "Rule 2-30," https://www.nfa.futures.org/nfamanual/NFAManual.aspx?RuleID=RULE%202-30&Section=4.*

[25]*CFTC, "Large Trader Reporting Program," http://www.cftc.gov/IndustryOversight/MarketSurveillance/LargeTraderReportingProgram/ltrp.*

[26]*Judge Rakoff refused to approve a proposed consent agreement between the SEC and Citigroup because Citigroup was not required to either admit or deny the allegations against it. US—Securities and Exchange Commission v. Citigroup Global Markets Inc., 827 F. Supp. 2d 328 (S.D.N.Y. 2011). Judge Rakoff's order was vacated by the Second Circuit Court of Appeals, USSEC v. Citigroup Global Markets, Inc., 752 F.3d 285 (2d Cir. 2014).*

[27] *Department of Justice, "HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement," December 11, 2012, available at http://www.justice.gov/opa/pr/2012/December/12-crm-1478.html, accessed March 4, 2016 (emphasis added).*

[28]*FinCEN, "Prepared Remarks of FinCEN Associate Director for Enforcement Thomas Ott, delivered at the National Title 31 Suspicious Activity & Risk Assessment Conference and Expo," August 17, 2016, https://www.fincen.gov/news/speeches/prepared-remarks-fincen-associate-director-enforcement-thomas-ott-delivered-national.*

[29]*Preet Bharara, "Manhattan US Attorney And FBI Assistant Director-In-Charge Announce Filing Of Criminal Charges Against And Deferred Prosecution Agreement With JPMorgan Chase Bank, N.A., In Connection With Bernard L. Madoff's Multi-Billion Dollar Ponzi Scheme," US Attorney for the Southern District of New York, January 7, 2014, available at http://www.justice.gov/usao/nys/pressreleases/January14/JPMCDPAPR.php, accessed March 4, 2016 (emphasis added).*

[30]*FINRA, "FINRA Fines Brown Brothers Harriman a Record $8 Million for Substantial Anti-Money Laundering Compliance Failures: Highest Fine Levied by FINRA for AML-Related Violations; AML Compliance Officer Also Fined and Suspended," February 5, 2014, available at https://www.finra.org/newsroom/2014/finra-fines-brown-brothers-harriman-record-8-million-substantial-anti-money-laundering, accessed January 23, 2016.*

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[32]*United States District Court Southern District of New York, "The United States Department of the Treasury v. Thomas E. Haider, Complaint," December 18, 2014, available at https://www.fincen.gov/news_room/ea/files/USAO_SDNY_Complaint.pdf, accessed February 3, 2016.*

[33]*United States District Court Southern District of New York, "The United States Department of the Treasury v. Thomas E. Haider, Complaint," December 18, 2014, available at https://www.fincen.gov/news_room/ea/files/USAO_SDNY_Complaint.pdf, accessed February 3, 2016.*

[34]*The January 2016 order did not rule on the merits of Haider. That case continues to be litigated. "The United States Department of the Treasury v. Thomas E. Haider, Order on Motion to Dismiss," January 8, 2016, available at http://www.buckleysandler.com/uploads/1082/doc/Treasury_v_Haider_Motion_to_Dismiss_January_8.pdf, accessed February 3, 2016.*

[35] *FinCEN, "FinCEN and Manhattan U.S. Attorney Annoucne Settlement with Former MoneyGram Executive Thomas E. Haider," May 4, 2017, https://www.fincen.gov/news/news-releases/fincen-and-manhattan-us-attorney-announce-settlement-former-moneygram-executive.*

[36]*For example, FinCEN imposed a civil money penalty against the VIP Services Manager at a casino in the Northern Mariana Islands for willfully causing the casino to fail to file CTRs and SARs. In the Matter of: George Que, Northern Mariana Islands, Assessment of Civil Money Penalty, August 20, 2014, available at https://www.fincen.gov/news_room/ea/files/GeorgeQue_Assessment_20140820.pdf.*

[37]*"The United States Department of the Treasury v. Thomas E. Haider, Order on Motion to Dismiss," January 8, 2016, available at http://www.buckleysandler.com/uploads/1082/doc/Treasury_v_Haider_Motion_to_Dismiss_January_8.pdf, accessed February 3, 2016.*

[38]*US Department of Justice, "Individual Accountability for Corporate Wrongdoing," September 9, 2015, available at http://www.justice.gov/dag/file/769036/download, accessed January 16, 2016.*

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[40]*US Department of Justice, "Individual Accountability for Corporate Wrongdoing," September 9, 2015, available at http://www.justice.gov/dag/file/769036/download, accessed January 16, 2016.*

[41]*OCC, "In the Matter of George Sanders," #2016-038, March 15, 2016, https://www.occ.gov/static/enforcement-actions/ea2016-038.pdf.*

[42]*SEC, "Former Miami Brokerage Firm CEO Settles with SEC for Violating Anti-Money Laundering Protocols," October 19, 2016, https://www.sec.gov/litigation/admin/2016/34-79124-s.pdf.*

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