

# Education pursuant to AML Legislation: what the US needs to learn from the UK

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**I**n previous years, this annual article has addressed topics such as obtaining employment in the international financial services industry through re-tooling of skills, assessing the quality of the many professional association certifications for financial services, and a comparison of graduate international financial service programmes. This year the focus is on a firm's requirement to adequately train its staff as regards complying with money laundering legislation, with staff led by a competent expert in the field.

Resulting from the impetus of the Al Qaeda's terrorist attacks of 9/11, the US financial institution regulators became an enforcement hawk of the money laundering provisions of the Bank Secrecy Act (BSA). In turn, hawkish enforcement has led to a drastic increase in the number of BSA filings. In 2005, the 200,000 US financial institutions filed over 16 million BSA reports, e.g. Suspicious Activity Reports (SARs), as recently reported by the US Government Accountability Office (GAO). In contrast, just 200,000 SARs were filed in the UK in 2006.<sup>1</sup> This begs the question: are too many being filed in the USA, clogging the investigatory system, or are too few filed in the UK?

Notwithstanding this level of apparent US compliance, the GAO noted that the federal regulatory authorities cited well over 7,000 BSA violations, leading to over 2,000 various actions against banking institutions. Interestingly, a majority of 2005 actions were issued against the traditionally smaller credit unions that at first glance may be considered to carry less risk for money laundering.<sup>2</sup> Further, these enforcement figures did not include the actions taken against casinos, jewelry stores, and money service businesses, such as

cheque-cashing, whose anti money-laundering (AML) programme for compliance is audited by the IRS. A review of some of the high dollar value civil penalty actions issued by the US regulators in the last two years illustrates that a lack of money laundering expertise at the management level and a lack of firm wide education and training at the staff level cuts across both large and small banking firms.

## Examples of Lack of Training and Expertise

The most recent high publicity action has occurred against American Express Bank International (AMEX). AMEX's USD25 million penalty and corresponding USD55 million forfeiture resulted partly from the gross amount of errors in just one year in its SAR filings regarding its private banking services to its high net-worth individuals (HNWI) and the individuals' respective businesses throughout Latin America. In the 12 month period from May 2006, over 2,000 filing errors were found for only 1,639 SARs, not including over 1,000 late SAR filings. Other recent large penalties citing the lack of staff training include ABN-AMRO's (USD40 million) and fines of USD10 million each for Bank Atlantic and AmSouth.

Medium size Foster Bank suffered a USD2 million penalty because "management failed to implement adequate training for appropriate personnel to ensure compliance with the suspicious activity reporting requirements". The regulator found that Foster Bank staff was inadequately trained in suspicious activity identification and monitoring, detection of structured transactions, and identification of possible money laundering. Israel Discount Bank, with branches in a few states, paid a USD12 million fine for inadequately

training its staff regarding the heightened risks associated with its transaction involving Delaware LLC shell companies. On the opposite size spectrum from AMEX, a one branch bank, Beach Bank of Miami, with less than USD150 million in assets, suffered an USD800,000 fine for its lack of monitoring of high risk accounts, including six foreign correspondent accounts.

## Not a Quantitative Issue

Consider that the above regulatory enforcement actions, and those referred to by the GAO report, were issued at least three years after the US financial institutions were put on initial notice of the hawkish nature of enforcement of AML programmes. Certainly, neither management nor staff wanted to, by example, be responsible for over 2,000 filing errors for only 1,639 SARs. Enforcement actions generally lead to management and staff level firing holding persons accountable for their errors.

Thus, to avoid enforcement actions and thus being fired, in some markets the training budgets and the compliance cost per-dollar-of-deposit have more than doubled. By example, from 2002-2005, banks offering international financial services in Miami reported a 160% increase both in the total costs of staff resources devoted to AML compliance and in the compliance costs of staff resources per dollar of deposit.<sup>3</sup> Correspondingly, the money laundering conference and training industry has been expanding at double-digits. Miami-based management is using language heard in offshore financial centres – "compliance fatigue". And like offshore centres, the local Miami compliance costs have risen to the level that institutions are either scaling back operations or withdrawing entirely from offering international financial services from Miami.

## Must be a Qualitative Issue

So why are the banks and other financial service providers employees failing in their implementation of AML programmes? As the Miami marketplace apparently illustrates, in general the compliance and training budgets have reached the deal-breaker point. Thus, rather than it being a quantitative issue of bigger budgets, it is more likely a qualitative issue, that is, spending either on poorly designed products or on good products but with poor instruction, follow-up, and support.

## Lack of Regulatory Minimum Standards and Quality Assurance

International financial centres all have a requirement that firms subject to money laundering legislation have a designated compliance officer, known by different acronyms such as MLRO (Money Laundering Reporting Officer). Further, the legislation requires staff training on a continuing basis. By two examples, the USA and the UK respectively:

### 1. Bank Secrecy Act § 5318:

(h) Anti-Money Laundering Programs.

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(1) In general.— In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum— ...

(B) the designation of a compliance officer;

(C) an ongoing employee training program; ....

### 2. The Money Laundering Regulations 2007 Training:

21. A relevant person must take appropriate measures so that all relevant employees of his are —

(a) made aware of the law relating to money laundering and terrorist financing; and

(b) regularly given training in how to recognise and deal with transactions and other activities which may be related to money laundering or terrorist financing.

In a global review of money laundering legislation throughout financial centres, none of the legislation provides specific benchmarks or at least an assessable minimum standard for a level of training of the staff or the MLRO. Further, the regulator guidance, where available, is scant with regards to the issue of quality assurance of training. The US Federal Financial Institutions Examination Council's (FFIEC) Bank Secrecy Act/Anti Money Laundering Manual (Manual) states that a bank must "[T]rain employees to be aware of their responsibilities under the BSA regulations and internal policy guidelines" whereas the UK FSA Handbook states that a firm should ensure that its "systems and

controls include (1) appropriate training for its employees in relation to money laundering ...".<sup>4</sup> The FFIEC Manual's most specific example of what should be contained within a training program is "...training for tellers should focus on examples involving large currency transactions or other suspicious activities; training for the loan department should provide examples involving money laundering through lending arrangements."

## Who is an Expert?

Serving as Chairman of the International Compliance Association (ICA), William Howarth asks the question: can someone become an expert, or at least be classified as "trained" through merely attending a one-day conference? By example, many life insurance agents in the US meet their AML educational requirements through an hour's study online without any expert interaction or ability to receive expert feedback and assessment of acquired skills. Some banks' staff training programmes consist merely of purchasing self study online or CDROM materials.

An "expert", according to the Merriam Webster dictionary, is "one with the special skill or knowledge representing mastery of a particular subject". Another commonly found definition is "someone who, through education or experience, has gained knowledge of a particular subject so that he or she could form an opinion that one without that knowledge could not". Finally, a commonly applied standard for government recognising an expert is one acknowledged as such "by a peer group or professional society certification".

## Best Practices for AML

Based on the above definition, a firm must first identify what special skills sets must be acquired to qualify with mastery of the subject of AML. As of October 2006, the UK internationally has taken the lead on the issue of defining best practices, and the mastery thereof, for AML, thanks in large part to the ICA and the Financial Services Skills Council (FSSC). The FSSC, through joint consultation with industry, regulators, and law enforcement, agreed "Occupational Standards" for both Compliance and for Money Laundering (the Standards).<sup>5</sup> These Standards define the level of competence necessary to perform each particular job function of the staff responsible for the money laundering programme - thirty-six functions in all. Further, the FSSC has an accredited provider programme for providing education pursuant to the Standards.

In order to define a level of competence, the Standards first provide an overview of a particular job function, then set out the "Outcomes of Effective Performance" if the function is performed

competently. The next section for each function - "Behaviours Underpinning Effective Performance" - is divided into distinctive skill sets, such as communicating, influencing, problem solving, professionalism and team working, each one explained in relation to achieving the expected outcomes. Finally, the Standards list the requisite "Knowledge and Understanding" to implement the behaviours and for competence to be considered acquired.

Thus, within the UK regulatory environment, a firm and its educational provider now have a clear platform from which to benchmark, and thus to assess, an employee's competency on a per function basis. Mastery may be obtained by acquiring a robust and in-depth knowledge of the totality of the thirty-six functions. Consequently, industry may with greater certainty and efficiency allocate training budget amongst various functions based on assessed weaknesses, merely updating for strength areas, and thus achieving balanced compliance outcomes.

## Professional Society Certification

As regards the second part of the definition of expert, the UK based non-profit professional association (the ICA) has substantially captured the market in the Commonwealth for professional society certification as regards anti-money laundering, compliance, and financial crimes prevention, similar to its sister association STEP in the trust industry. ICA's success has resulted from partnering with the local banking and compliance associations, and where possible, the regulators, to establish local industry accepted minimum standards of competency. By example of regulator participation, ICA was recently appointed by the Singapore Monetary Authority to establish best practices and to implement an industry wide training programme with a corresponding quality assurance regime.

Through the local partnering approach, ICA is able to overlay its modality of international best practices for training and certification on top of the local association's knowledge of its regulations and regulatory regime.

## Quality Assurance

A substantial difference between ICA and its Miami based market competitor ACAMS is the approach to quality assurance. By example of issues of quality assurance, many of the readers will recall attending a speaker's seminar wherein the speaker had great presentation skills, yet the delegates walked away without obtaining any knowledge. By the same token, sometimes renowned industry experts' presentation skills are so painfully poor that it causes distraction from learning the material. Finally, regulators may better perceive the results of

certification examinations whereby the development and assessment is independent of the professional body offering the training.

Educational institutions address the issue of an independent quality assurance body not just reviewing training materials and assessing the delivery quality of subject matter experts, but more importantly assuring sound learning pedagogy using academic protocols appropriate to the learning audience. Following the lead of STEP, ICA chose to link with established educational institutions, such as Manchester School of Business and Cass Business School in the UK and with Thomas Jefferson School of Law in the US. Finally, because of the education institution partnerships, ICA diploma studies lead to a professional designation that may further be applied toward a Masters degree.

### What the US should take away from the UK Experience

In contrast to the well organised UK's FSA, the US's BSA compliance is audited by a variety of regulators, some with overlapping jurisdiction. By example, banking institutions are examined by what are known as the "five families": Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration,

Office of the Comptroller of the Currency, and the Office of Thrift Supervision. Further, state regulators generally have an overlapping regulatory role. The IRS, as mentioned previously, has audit jurisdiction over certain types of businesses, such as casinos, jewelry stores and money service businesses. As of two years ago, the US federal mandated that AML programmes be established by life insurance and annuity companies, these regulated at the state level.

To address consistency amongst the banking regulatory bodies, under the auspices of the FFIEC, the five families and the state regulators attempt to apply a common approach to BSA audits. However, the FFIEC provides few benchmarks and no best practices on the issue of what constitutes an employee's competency and the requisite training to achieve it. Consequently, firms are substantially increasing training budgets in the attempt to avoid an AMEX or ABN-AMRO result but may not be receiving the bang for the buck. Worse, bad training may be leading to a clogging of the investigatory channels through the filing of 16 million SARs, a counter productive result for the regulators.

Thus, following the lead of the UK's FSSC promulgated Standards, and in light of the US banking regulators' hawkish enforcement, it is time for the US financial

services industry to adopt assessable standards based on job function with particular regard to training. The standards should enumerate the common minimum standards for competency required of all financial services businesses. Then each industry group, such as banking, insurance and casinos, may adopt standards specific to its market segment. Finally, the industry should enumerate best practice quality assurance for training, in the manner accreditation works for educational institutions. As a result of adopting and implementing such standards and corresponding quality assurance, banks and the other industry groups will reduce wasted compliance dollars and obtain greater certainty as to audit outcomes.

### END NOTES

- 1 *Money Laundering Regulations 2007: Regulatory Impact Assessment (HM Treasury July 2007).*
- 2 <http://www.gao.gov/cgi-bin/getrpt?GAO-07-212>
- 3 *The Economic Impacts of International Banking in Florida and Industry Survey: 2005 (Florida International Bankers Association).*
- 4 [http://www.ffiec.gov/pdf/bsa\\_aml\\_examination\\_manual2007.pdf](http://www.ffiec.gov/pdf/bsa_aml_examination_manual2007.pdf) and <http://fsahandbook.info/FSA/html/handbook/SYSC/6/3#D78>
- 5 [http://www.fssc.org.uk/cgi-bin/wms.pl/Standards\\_and\\_accreditation/133](http://www.fssc.org.uk/cgi-bin/wms.pl/Standards_and_accreditation/133)