

# 2018/2019 Anti-Money Laundering Review and Outlook

February 5, 2019

In the second half of 2018, financial regulators around the world imposed more than \$1.2 billion in fines related to anti-money laundering (“AML”) compliance failures, which combined with more than \$1.7 billion in fines imposed in the first half of the year<sup>1</sup> surpassed 2017’s annual total of \$2 billion.<sup>2</sup>

To assist financial institutions in understanding the evolving AML priorities of law enforcement and financial regulators, the Debevoise Banking Team has compiled the 2018 Anti-Money Laundering Review and Outlook, summarizing 22 AML enforcement actions initiated or concluded in the second half of 2018. Four key AML enforcement trends emerge:

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- **Personal Liability:** Regulators continue to emphasize the role of individual compliance officers, senior executives and board members, and have increased attempts to hold them personally liable for compliance failures.
- **Focus on Fundamentals:** As in the past, all U.S. enforcement actions cite to the five pillars of an effective AML program, the reported actions have placed a particular focus on failures of due diligence, risk assessment and suspicious activity reporting. For example, regulators have indicated that reviews of employee misconduct should lead to consistent practices for AML review of suspicious activity report filing obligations.
- **Increased SEC Enforcement:** There has been an increase in enforcement by the U.S. Securities and Exchange Commission but with modest fines so far against broker-dealers in standalone AML enforcement actions.
- **A Global Rise in AML Enforcement:** While AML enforcement has long been a focus for U.S. regulators, increasingly we are seeing AML garner the attention of

<sup>1</sup> See Debevoise *In Depth*, 2018 Mid-Year Anti-Money Laundering Year in Review and Outlook, Debevoise & Plimpton LLP (July 2018), available [here](#).

<sup>2</sup> See Debevoise *In Depth*, 2017 Anti-Money Laundering Year in Review and 2018 Outlook, Debevoise & Plimpton LLP (Feb. 2018), available [here](#).

regulators in other jurisdictions, such as China, India and across Europe, with meaningful fines in one new resolution.

We also provide an overview of proposed changes to U.S. AML regulations currently pending before Congress and an overview of two key pieces of AML-related guidance issued by banking regulators this year.

We hope that you find the 2018 Anti-Money Laundering Review and Outlook to be a helpful reference guide, and we look forward to discussing AML developments and best practices with you.

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## Enforcement Actions and Related Developments, by Agency

### Department of Justice

#### MoneyGram International, Inc.

##### *Breach of prior deferred prosecution agreement; \$125 million forfeiture*

On November 8, 2018, MoneyGram International, Inc. ("MoneyGram") agreed to extend and amend its 2012 deferred prosecution agreement ("DPA") with the Department of Justice, originally entered into to avoid charges of willfully failing to maintain an effective AML program and aiding and abetting wire fraud, which occurred as part of consumer fraud schemes perpetrated by corrupt MoneyGram agents. In the alleged fraud scams, which generally targeted the elderly and other vulnerable groups,

perpetrators contacted victims in the United States and falsely posed as victim's relatives in urgent need of money, falsely promised large cash prizes, or promised items for sale over the internet at deeply discounted prices. The perpetrators required the victims to send funds through MoneyGram's money transfer system.<sup>3</sup>

During the course of the original DPA, the government found that a number of significant weaknesses persisted in MoneyGram's AML and anti-fraud programs, and that MoneyGram had inadequately disclosed these weaknesses to the government, and failed to complete all of the DPA's enhanced compliance undertakings. As a result of these failures, MoneyGram processed at least \$125 million in additional fraudulent consumer transactions between April 2015 and October 2016. The amended DPA will continue for thirty additional months, at which time the government will dismiss the charges if MoneyGram has complied with the agreement.<sup>4</sup> As part of the amendment to and extension of the DPA, MoneyGram has agreed to additional enhanced compliance obligations. Moneygram also agreed to forfeit \$125 million.

In a related case, MoneyGram agreed to settle contempt allegations by the Federal Trade Commission ("FTC"), alleging that MoneyGram violated its 2009 FTC order. The settlement with the FTC incorporated the \$125 million forfeiture under the DPA and also included an expansion of the 2009 FTC order. The FTC alleged that MoneyGram failed to implement the comprehensive fraud prevention program mandated by the 2009 order, which required the company to promptly investigate, restrict, suspend, and terminate high-fraud agents. According to the FTC, MoneyGram was aware for years of the high levels of fraud and suspicious activities of certain agents but failed to take the corrective actions required by the 2009 order.<sup>5</sup> The modified order requires, among other things, that the company block the money transfers of known perpetrators of fraud schemes and provide refunds to fraud victims in circumstances where its agents fail to comply with applicable policies and procedures. In addition, the modified order includes enhanced due diligence ("EDD"), investigative, and disciplinary requirements.<sup>6</sup>

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<sup>3</sup> Press Release, Department of Justice, MoneyGram International Inc. Agrees to Extend Deferred Prosecution Agreement, Forfeits \$125 Million in Settlement with Justice Department and Federal Trade Commission (Nov. 8, 2018), available [here](#).

<sup>4</sup> Amendment to and Extension of Deferred Prosecution Agreement, at 1-3, *United States v. Moneygram International, Inc.*, No. 1:12-cr-291 (M.D. Pa. 2018), available [here](#).

<sup>5</sup> Press Release, Department of Justice, MoneyGram International Inc. Agrees to Extend Deferred Prosecution Agreement, Forfeits \$125 Million in Settlement with Justice Department and Federal Trade Commission (Nov. 8, 2018), available [here](#).

<sup>6</sup> *Id.*

## Federal Reserve Board ("FRB")

### United Bank Limited, Karachi, Pakistan, and United Bank Limited, New York Branch

#### *Violated BSA/AML compliance program requirements; no monetary penalty*

On July 2, 2018, the FRB entered an agreement with United Bank Limited ("UBL") to correct deficiencies in the risk management and compliance of UBL's New York branch. The agreement requires UBL to (1) improve board oversight of its Bank Secrecy Act ("BSA") compliance program,<sup>7</sup> (2) improve management information systems reporting,<sup>8</sup> (3) ensure BSA/AML issues and the Office of Foreign Assets Control ("OFAC") Regulations are appropriately tracked, escalated, and reviewed by the New York branch's senior management,<sup>9</sup> and (4) ensure that the BSA compliance program has adequate resources and expertise.<sup>10</sup> In addition, the FRB required UBL to retain an independent third party to conduct a comprehensive review of its compliance with BSA/AML requirements and to prepare a written report of findings.<sup>11</sup> Following the independent consultant's report, UBL must submit a revised and comprehensive BSA/AML compliance program to the FRB along with quarterly progress reports.<sup>12</sup> The FRB did not impose a fine or penalty in this case.

### AllNations Bank

#### *Requiring manifold improvements including to the BSA/AML compliance program; no monetary penalty*

On October 22, 2018, the FRB in conjunction with the Oklahoma State Banking Department, entered into an agreement with AllNations Bank to correct deficiencies in a number of the bank's programs, including credit risk management, lending and credit administration, asset quality, liquidity, capital earnings, interest rate risk, and internal controls.<sup>13</sup> The agreement required the bank to submit a plan to improve its BSA/AML compliance program. The agencies specifically directed the bank to improve its customer due diligence ("CDD") and suspicious activity monitoring and reporting. Additionally, they required that the bank allocate adequate resources for the BSA/AML compliance officer and staff.<sup>14</sup> The FRB did not impose a penalty in this case.

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<sup>7</sup> Federal Reserve Board, Consent Order with United Bank Limited at 2-3 (July 2, 2018), available [here](#).

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 3-4.

<sup>12</sup> *Id.* at 7-8.

<sup>13</sup> Federal Reserve Board, Consent Order with AllNations Bank at 2 (Oct. 22, 2018), available [here](#).

<sup>14</sup> *Id.* at 10-11.

## Financial Industry Regulatory Authority ("FINRA")

### Morgan Stanley Smith Barney LLC

On December 26, 2018, FINRA entered into an agreement with Morgan Stanley Smith Barney LLC ("MSSB"), fining the firm \$10 million for failing to implement an AML program complying with BSA requirements.<sup>15</sup> Specifically, MSSB failed to establish procedures to detect and report potentially suspicious activity in three ways: (1) failing to ensure that all transaction systems transmitted information to the automated AML surveillance system, thus undermining surveillance of tens of billions of dollars of transfers; (2) failing to devote sufficient resources to review of AML system alerts, leading to analysts' closing alerts without conducting and/or documenting investigations; and (3) failing to monitor customers' deposits and trades of penny stocks for potential AML issues.<sup>16</sup> FINRA discovered that MSSB was aware of many instances of deficiencies as early as 2015 but did not begin to take action to remedy these deficiencies until years later. FINRA also noted that MSSB failed to conduct risk-based reviews of the correspondent accounts of certain foreign financial institutions, as required by the BSA and the firm's own policies, violating FINRA Rules 3310(b) and 2010. Finally, MSSB violated Section 5 of the Securities Act by relying primarily on customer representations that penny stocks were not restricted from sale and by relying on representations of issuers' counsel that their customers' sales complied with an exemption from registration requirements. FINRA thus believed the firm failed to reasonably evaluate customers' penny stock transactions for red flags of potential Section 5 violations.

## Office of the Comptroller of the Currency ("OCC")

### Dirceu P. Magalhaes

#### ***Willfully avoided AML due diligence; \$100,000 civil money penalty and blackballed from U.S. financial industry***

On September 6, 2018, Dirceu P. Magalhaes entered into a consent order to settle charges that he facilitated high-risk international money transfers without conducting adequate due diligence as required by AML law.<sup>17</sup> Mr. Magalhaes formerly served as the private banking senior manager of the Miami branch of the Royal Bank of Canada ("RBC"). RBC had policies prohibiting certain high-risk international money transfers. However, Mr. Magalhaes engaged in such transfers, withheld material information from the OCC regarding them, and at times actively concealed their nature in order to ensure their execution. The OCC found that Mr. Magalhaes recklessly engaged in unsafe

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<sup>15</sup> Financial Industry Regulatory Authority, Letter of Acceptance, Waiver, and Consent with Morgan Stanley Smith Barney LLC (Dec. 26, 2018), available [here](#).

<sup>16</sup> *Id.* at 2.

<sup>17</sup> Office of the Comptroller of the Currency, Consent Order with Dirceu P. Magalhaes at 2 (Sept. 6, 2018), available [here](#).

or unsound practices and breached his fiduciary duty to his employer as part of a pattern of willful misconduct which resulted in his pecuniary gain.<sup>18</sup> As part of the settlement, Mr. Magalhaes agreed not to participate in any manner in a U.S. financial institution of any kind and paid a \$100,000 civil money penalty.<sup>19</sup>

#### **Capital One, N.A.**

##### ***Civil money penalty of \$100 million for issues underlying prior consent order***

On October 23, 2018, Capital One, N.A. (“Capital One”) entered into a consent order with the OCC requiring the bank to pay a civil money penalty of \$100 million in relation to alleged BSA/AML deficiencies cited in a 2015 consent order with the agency.<sup>20</sup> The 2015 order alleged that the bank (1) lacked an enterprise-wide BSA/AML risk assessment; (2) had systemic deficiencies in its (a) transaction monitoring systems, risk management, and quality assurance programs for its remote deposit capture services and (b) CDD processes; (3) lacked a process by which BSA/AML control decisions are escalated to Risk Management; and (4) failed to certain suspicious activity and file the required SARs.<sup>21</sup>

In addition, the 2018 consent order alleged the bank failed to timely achieve full compliance with its 2015 consent order.<sup>22</sup>

#### **MidSouth Bank, N.A.**

##### ***Violated BSA/AML compliance program requirements; no monetary penalty***

On October 25, 2018, MidSouth Bank N.A. (“MidSouth”) entered into a consent order to settle charges by the OCC that it failed to adopt and implement an effective compliance program.<sup>23</sup> Specifically, the OCC noted that the bank (1) had an inadequate system of internal controls and a weak BSA staffing function; (2) had systemic deficiencies in its transaction monitoring system, which resulted in monitoring gaps as well as alert and investigation backlogs; and (3) had systemic deficiencies in its CDD, EDD and customer risk-rating processes.<sup>24</sup>

The OCC also required MidSouth’s board of directors to make numerous specific improvements to the BSA/AML compliance program. Specifically, OCC required the

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<sup>18</sup> *Id.* at 3.

<sup>19</sup> *Id.* at 3-5.

<sup>20</sup> Office of the Comptroller of the Currency, Consent Order with Capital One, N.A. at 1 (Oct. 23, 2018), *available* [here](#).

<sup>21</sup> *Id.* at 3.

<sup>22</sup> *Id.*

<sup>23</sup> Office of the Comptroller of the Currency, Consent Order with MidSouth Bank, N.A. at 2 (Oct. 25, 2018), *available* [here](#).

<sup>24</sup> *Id.*

MidSouth board to create an independent compliance committee that would meet monthly and submit a quarterly progress report on MidSouth's progress on the tasks outlined in the consent order.<sup>25</sup> Second, the OCC required agency approval for a board-appointed qualified BSA Officer, tasking the board with ensuring that the BSA Officer have sufficient executive authority, time, and resources to ensure BSA compliance. The board was also required to periodically review the adequacy of the BSA compliance program.<sup>26</sup>

The OCC's consent order outlined 11 specific internal controls which must be adopted by MidSouth and tasked the board with reviewing, revising, and ensuring MidSouth's "adherence to a written program of policies and procedures to provide for compliance with the Bank Secrecy Act and the appropriate identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA."<sup>27</sup> This included developing and implementing appropriate policies and procedures and adopting and implementing appropriate training for all directors and employees to ensure their awareness of their responsibility for compliance with the requirements of the (i) BSA and OFAC, and (ii) the Bank's relevant policies, procedures, and processes. These parties were also required to be trained to identify relevant examples of red flags for money laundering, terrorist financing, and suspicious activity.<sup>28</sup> The OCC did not impose a civil monetary penalty in this case.

#### **Eastern National Bank**

##### ***Various banking law violations including deficiencies in BSA/AML program; no monetary penalty***

On October 25, 2018, Eastern National Bank ("ENB") entered into a consent order with the OCC to settle numerous charges that it breached banking laws, including having a deficient BSA/AML program.<sup>29</sup> Though the agency did not elaborate on the particular deficiencies uncovered in its investigation, it set out several steps for ENB to take to improve its compliance function. These steps included (1) the adoption of a comprehensive BSA/AML program and risk management processes, (2) that EDD be applied to new foreign correspondent banking account relationships, (3) a look-back review of potentially suspicious activity, (4) the appointment of a qualified BSA Officer, (5) the development of internal controls regarding suspicious activity monitoring and reporting, and (6) the development and implementation of appropriate policies and procedures for (a) CDD and EDD information collection, (b) appropriate identification,

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<sup>25</sup> *Id.* at 2-3.

<sup>26</sup> *Id.* at 3-5.

<sup>27</sup> *Id.* at 5-7.

<sup>28</sup> *Id.* at 11.

<sup>29</sup> Office of the Comptroller of the Currency, Consent Order with Eastern National Bank at 8-21 (Oct. 25, 2018), available [here](#).

analysis, monitoring of all accounts and transactions, and (c) filing timely and appropriate SARs.

ENB was required to conduct a look-back review of potentially suspicious activity during 2017 for (i) all transactions processed for the bank's largest foreign correspondent banking relationship; (ii) transactions of more than \$1 million; and (iii) transactions involving identified banking relationships with insufficient customer due diligence.<sup>30</sup> The review includes prompt filing and amendment of any SARs found to be necessary.<sup>31</sup> Further, ENB is required to submit an annual report certifying the effectiveness of the BSA program and staff.<sup>32</sup> The OCC did not impose a fine in this case.

## U.S. Securities and Exchange Commission ("SEC")

### Charles Schwab & Co., Inc.

#### *Failed to file SARs consistent with internal reviews resulting in the termination of certain independent investment advisors; \$2.8 million settlement*

On July 2, 2018, the SEC filed a complaint in the Northern District of California alleging that Charles Schwab & Co., Inc. ("CSC") violated section 17(a) of the Securities Exchange Act and SEC rule 17a-8 by failing to file SARs for suspicious transactions by independent investment advisers that CSC had terminated from its custodial platform.<sup>33</sup> CSC's failure to file these SARs was a result of inconsistent implementation of policies and procedures for identifying and reporting suspicious transactions.<sup>34</sup> Although CSC investigated and terminated certain advisers for illicit conduct, it did not have clear or consistent policies and procedures regarding the types of transactions for which SARs needed to be filed. For example, CSC did not file SARs in certain instances where it investigated and terminated advisers because it suspected that the advisers had charged certain customers excessive advisory fees, had allowed their state registrations to lapse, or were engaged in "cherry-picking" (a fraudulent trade allocation scheme where the adviser allocates profitable trades to the adviser's personal account and unprofitable trades to client accounts).<sup>35</sup> In addition, in a number of instances where CSC investigated and terminated advisers for conduct that led it to suspect that the advisers misappropriated or misused client funds, CSC applied an unreasonably high standard for determining whether to file a SAR on the suspicious transactions.<sup>36</sup>

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 10-12.

<sup>33</sup> Complaint at 2, *SEC v. Charles Schwab & Co., Inc.*, No. 18-cv-3942 (N.D. Cal. 2018), available [here](#).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*



On July 9, 2018, CSC agreed to settle the charges by consenting to a permanent injunction from violating section 17(a) of the Exchange Act and agreeing to pay a \$2.8 million civil money penalty.<sup>37</sup>

#### **TD Ameritrade, Inc.**

##### ***Failed to consistently file SARs based on termination of certain independent investment advisors; \$500,000 civil money penalty***

On September 24, 2018, the SEC instituted a cease-and-desist order against TD Ameritrade, Inc. (“TD”) for violating section 17(a) of the Securities Exchange Act and SEC rule 17a-8 thereunder, which requires broker-dealers to comply with the BSA’s SAR filing provisions.<sup>38</sup> From 2013 to September 2015, TD terminated its business relationship with 111 independent investment advisers that it determined presented unacceptable business, credit, operational, reputational, or regulatory risk to TD or its customers. Although it filed a number of SARs relating to suspicious transactions of some of those terminated advisers, it failed to do so for others. This occurred because the bank did not consistently and appropriately refer terminated advisers and their possibly suspicious transactions to the firm’s AML department.<sup>39</sup> Rather, TD’s unwritten practice was that the risk oversight employee processing the termination had sole discretion whether to make that referral, and those employees often applied a higher bar for reporting than what was mandated by the BSA. As a result, there was a failure to file SARs for transactions involving (1) suspicious securities trading, such as by advisers that TD terminated for apparently engaging in trades to improperly shift losses on trade errors to clients; (2) questionable transfers to the adviser, such as transfers to an adviser who was acting as trustee over a client’s account or investing clients in a penny stock affiliated with the adviser and charging the clients’ accounts fees on unrealized gains on the penny stock; and (3) managing client assets at TD while the adviser was making materially false and misleading statements to the client.<sup>40</sup>

#### **UBS Financial Services, Inc.**

##### ***Numerous AML violations including failure to monitor all transactions and accounts; \$15 million penalty***

On December 17, 2018, the SEC, FINRA, and Financial Crimes Enforcement Network (“FinCEN”) each levied penalties totaling \$15 million against UBS Financial Services, Inc. (“UBS”) for violations of its BSA/AML obligations and entered into consent orders

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<sup>37</sup> Press Release, Securities and Exchange Commission, SEC Charges Charles Schwab with Failing to Report Suspicious Transactions (July 9, 2018), available [here](#).

<sup>38</sup> Securities and Exchange Commission, Cease-and-desist order to TD Ameritrade, Inc. at 1-2 (Sept. 24, 2018), available [here](#).

<sup>39</sup> *Id.* at 2.

<sup>40</sup> *Id.* at 3.

with UBS.<sup>41</sup> In particular, the agencies found UBS failed to establish an adequate BSA/AML compliance program for its bank-like services (e.g., check writing, ATM withdrawals, cash advances, ACH transfers, and wires). The agencies also found that UBS failed to implement an adequate due diligence program for foreign correspondent accounts and to detect suspicious activity in nonresident alien accounts with elevated AML risk.<sup>42</sup> The orders noted in particular that UBS's compliance systems did not monitor wire transfers of foreign currency into and out of customer commodities accounts until 2017,<sup>43</sup> and that UBS did not monitor transactions in penny stocks between 2013 and 2017.<sup>44</sup> As a result, UBS did not file required SARs relating to these accounts.

## **New York State Department of Financial Services ("DFS")**

### **Mashreqbank PSC and its New York branch**

#### ***Persistently deficient transaction monitoring and documentation; \$40 million penalty***

On October 10, 2018, Mashreqbank PSC and its New York branch ("MP") entered into a consent order with the DFS to settle charges that its BSA/AML compliance infrastructure was not commensurate with the risks presented by the markets MP serves. One of the bank's key activities is dollar clearing for foreign financial institutions in Southeast Asia, the Middle East, and Northern Africa, which the DFS argued are high-risk markets.<sup>45</sup> MP had received low ratings in its two previous examinations, and, although it made some progress in addressing shortcomings, DFS deemed it to be insufficient. In particular, the DFS pointed to failures in MP's transaction monitoring mechanisms, which used manual processes that failed to capture necessary levels of detail in CDD and sanctions screening documentation leading to a five-month backlog of alerts.<sup>46</sup> Furthermore, the third-party consultants and vendors which MP employed to remedy these problems merely continued the same deficient practices for which MP had been penalized. DFS also took issue with the bank's external auditing, saying that little oversight and substandard practices led to a report that was unreliable. In large

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<sup>41</sup> Securities and Exchange Commission, Cease-and-desist order to UBS Financial Services Inc. (Dec. 17, 2018), available [here](#) ("UBS SEC Order"); Financial Industry Regulatory Authority, Letter of Acceptance, Waiver, and Consent with UBS Financial Services Inc. and UBS Securities LLC (Dec. 17, 2018), available [here](#) ("UBS FINRA Order"); Press Release, Financial Crimes Enforcement Network, FinCEN Assesses \$14.5 Million Penalty against UBS Financial Services for Anti-Money Laundering Failures (Dec. 17, 2018), available [here](#).

<sup>42</sup> UBS SEC Order at 2, 4-7.

<sup>43</sup> UBS FINRA Order at 2.

<sup>44</sup> UBS FINRA Order at 2.

<sup>45</sup> New York State Department of Financial Services, Consent Order with Mashreqbank, PSC at 2-3 (Oct. 10, 2018), available [here](#).

<sup>46</sup> *Id.* at 6-7.

part, the auditor merely signed off on documentation provided by management, defeating the point of the audit.<sup>47</sup>

To remedy these problems, the DFS required MP to engage a compliance consultant chosen by the DFS to oversee the implementation of recommended BSA/AML program improvements.<sup>48</sup> The bank was also required to engage a “lookback consultant” to review its transaction monitoring program’s effectiveness during 2016.<sup>49</sup> Finally, the DFS required a variety of improvements covering internal controls, knowledgeable personnel, suspicious activity reporting, CDD, and corporate governance.<sup>50</sup>

### **Société Générale SA and Its New York branch**

#### ***Inadequate progress with BSA/AML remediation; \$95 million civil monetary penalty and potential independent monitor***

On November 19, 2018, Société Générale SA and its New York branch (“SG”) entered into a consent order with the DFS to settle charges that the bank failed to promptly remediate previously identified issues with its BSA/AML compliance program over multiple examination cycles.<sup>51</sup> SG first entered into a written agreement with the DFS and the FRB in 2009, where SG acknowledged certain shortcomings and agreed to remediate them.<sup>52</sup> By 2013, the DFS believed SG’s BSA/AML compliance was effective but decided not to lift the terms of the 2009 agreement.<sup>53</sup> In subsequent years, DFS’s examinations highlighted several issues requiring further remediation, including suspicious activity monitoring, program resources, the independence of internal audit, and governance of the compliance function.<sup>54</sup> Although acknowledging progress by the bank on these issues, by 2018 the DFS concluded that a monetary punishment was appropriate, and imposed a \$95 million civil monetary penalty.<sup>55</sup> In determining the amount of the penalty, the regulator recognized SG’s “very substantial cooperation” during the course of its investigation.<sup>56</sup>

Beginning eighteen months after the execution of the consent order, SG must engage an independent consultant to conduct a thorough evaluation of the bank’s implementation of these improvements.<sup>57</sup> Based on the results of this evaluation, the DFS has the option

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<sup>47</sup> *Id.* at 7-8.

<sup>48</sup> *Id.* at 10.

<sup>49</sup> *Id.* at 10-11.

<sup>50</sup> *Id.* at 12-17.

<sup>51</sup> New York Department of Financial Services, Consent Order with Société Générale, SA at 2 (Nov. 19, 2018), available [here](#).

<sup>52</sup> *Id.* at 3.

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* at 5-7.

<sup>55</sup> *Id.* at 9.

<sup>56</sup> *Id.* at 8.

<sup>57</sup> *Id.* at 13-14.

then to require SG to engage an independent monitor to conduct a comprehensive review of the effectiveness of SG's BSA/AML program and prepare a written report of findings.<sup>58</sup> Afterward, the monitor would oversee implementation of any additional corrective measures undertaken and submit progress reports to both SG and the DFS for up to two years or longer if the DFS.<sup>59</sup>

### **Standard Chartered Bank**

#### ***Extension of prior heightened supervision; no monetary penalty***

On November 21, 2018, the DFS entered into an agreement with Standard Chartered Bank ("SCB") to extend the term of its heightened supervision following three biennial consent orders stretching back to 2012.<sup>60</sup> The enforcement actions originated from apparent violations of several banking laws, including safety and soundness violations arising out of SCB's financial dealings with Iranian entities. Pursuant to the prior consent orders, SCB has had an onsite independent monitor for six years. In the current action, the DFS recognized SCB's demonstrated commitment to complying with state and federal AML laws through its substantial remediation and enhancement of its compliance program.<sup>61</sup> In particular, the DFS noted information systems upgrades which resulted in a more effective transaction monitoring system. Because of the improvements, the DFS ended SCB's independent monitor requirement in accordance with the terms of its 2016 consent order. However, the DFS renewed heightened supervision of SCB by requiring it to engage an independent consultant for one year to assist in further remediating its BSA/AML compliance program and retained an option to extend the term for an additional year.<sup>62</sup>

### **International**

#### **Bank of Communications, the Shanghai Pudong Development Bank, Ping An Bank, Galaxy Securities and China Life Insurance (PBOC)**

##### ***The People's Bank of China imposed fines against five banks for AML violations***

On August 3, 2018, it was reported that the People's Bank of China ("PBOC") imposed penalties on the Bank of Communications, the Shanghai Pudong Development Bank ("SPDB"), Ping An Bank, Galaxy Securities and China Life Insurance in the amount of 6.1 million yuan (~\$890,000).<sup>63</sup> These penalties were a result of violations of AML regulations, with the largest penalty of 1.7 million yuan issued to SPDB for due diligence

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<sup>58</sup> *Id.* at 14-15.

<sup>59</sup> *Id.* at 15-16.

<sup>60</sup> New York Department of Financial Services, Consent Order with Standard Chartered Bank at 1 (Nov. 21, 2018), available [here](#).

<sup>61</sup> *Id.* at 2.

<sup>62</sup> *Id.* at 3.

<sup>63</sup> Money laundering violations net US\$890,000 in penalties, Asia Times (Aug. 3, 2018).

and SAR reporting failures. Individuals at these financial institutions were also fined a total of 520,000 yuan.

#### **Shanghai Commercial Bank Limited (HKMA)**

##### ***Hong Kong regulator penalizes SCOM for deficient transaction monitoring and CDD; HKD5,000,000 penalty***

On August 17, 2018, the Hong Kong Monetary Authority (“HKMA”) ordered Shanghai Commercial Bank Limited (“SCOM”) to pay a HKD5,000,000 (~\$639,000) penalty for violating AML/CTF law by failing to establish and maintain effective procedures for continuously monitoring business relationships.<sup>64</sup> Specifically, SCOM did not examine the background and purposes of certain high-risk customers’ transactions, which were identified as complex, unusually large in amount or of an unusual pattern and having no apparent economic or lawful purpose, and did not set out its findings in writing. SCOM also did not carry out CDD measures for transactions involving preexisting customers when a transaction took place with regard to each of the customers that (i) were, by virtue of the amount or nature of the transaction, unusual or suspicious, or (ii) were not consistent with SCOM’s knowledge of the customer or the customer’s business or risk profile, or with its knowledge of the source of the customer’s funds. Even though these transactions were flagged by management information systems and the compliance department, SCOM did not properly follow up with written investigations.

HKMA also ordered SCOM to submit a report prepared by an independent external adviser assessing whether the remedial measures implemented by SCOM are sufficient to address the bank’s violations and the effectiveness of their implementation. In taking this disciplinary action and setting the fine, HKMA considered the need to send a clear deterrent message to the industry about the importance of AML compliance, SCOM’s commitment to take extensive remedial measures, and SCOM’s lack of disciplinary record and helpful cooperation.

#### **ING Bank N.V. (Netherlands Public Prosecution Service)**

##### ***Persistent AML violations; €675 million fine and €100 million disgorgement***

On September 4, 2018, ING Bank N.V. (“ING”) announced that it had entered into a settlement agreement with the Dutch Public Prosecution Service following investigations into its client on-boarding processes and the prevention of money laundering and corrupt practices.<sup>65</sup> Under the terms of the agreement, ING agreed to pay a fine of €675 million and €100 million in disgorgement.<sup>66</sup> The investigations,

<sup>64</sup> Press Release, Hong Kong Monetary Authority, The Monetary Authority reprimands and fines Shanghai Commercial Bank Limited for contraventions of the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Aug. 17, 2018), available [here](#).

<sup>65</sup> Netherlands Public Prosecution Service, Settlement Agreement Houston at 1-2 (Sept. 4, 2018), available [here](#).

<sup>66</sup> *Id.* at 2.

which were initiated following revelations in the Panama Papers, allegedly identified serious shortcomings in the execution of policies to prevent financial economic crime at ING from 2010 to 2016. These broader alleged shortcomings included (1) CDD files missing or being incomplete, (2) assignment of incorrect risk classifications, (3) the failure to have the periodic CDD review process in order, (4) failure to exit business relationships in a timely manner, (5) insufficient functioning of the post-transaction monitoring system, (6) classifying clients in the wrong segments, and (7) insufficient availability of qualitative and quantitative human resources.<sup>67</sup>

In determining the fine, Dutch regulators noted that ING had structurally under-invested in meeting its legal obligations over a long period of time due to a “business over compliance” mindset. Though ING was warned by regulators several times during the investigation period, the few internal remediation projects undertaken by the bank did not lead to a sufficient degree of compliance with AML/Counter-Terrorism Financing obligations.<sup>68</sup> The regulator also cited the gravity and duration of ING’s offenses, as well as the fact that it could not be determined how much money had been laundered through ING accounts over the years.

ING cooperated substantially with the investigation, which affected the regulator’s calculation of the bank’s fine and the decision not to prosecute this case in court. Dutch law also required consideration of ING’s ability to pay, which here resulted in a large fine.<sup>69</sup> Finally, Dutch prosecutors cited ING’s remediation plan as good evidence that the bank had taken responsibility for its mistakes.<sup>70</sup>

### **Credit Suisse AG (FINMA)**

#### ***Swiss regulator imposes AML compliance improvements following corruption probes***

On September 17, 2018, FINMA concluded two enforcement actions against Credit Suisse AG (“CS”).<sup>71</sup> In the first action, FINMA identified deficiencies in the bank’s adherence to AML due diligence obligations in relation to suspected corruption involving the International Federation of Association Football, the Brazilian oil corporation Petrobras, and the Venezuelan oil corporation Petróleos de Venezuela, S.A. CS allegedly did not comply with AML requirements by failing to (1) identify its clients, (2) determine the beneficial owners of accounts, (3) categorize business relationships as posing increased risk, (4) perform necessary actions upon increased risk classification,

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<sup>67</sup> Netherlands Public Prosecution Service, Statement of Facts Houston at 9 (Sept. 4, 2018), available [here](#). See also *id.* at 9-13 for additional detail.

<sup>68</sup> Netherlands Public Prosecution Service, Statement of Facts Houston at 17-19 (Sept. 4, 2018), available [here](#).

<sup>69</sup> *Id.* at 20-23.

<sup>70</sup> *Id.* at 22.

<sup>71</sup> Press Release, FINMA, FINMA finds deficiencies in anti-money laundering processes at Credit Suisse (Sept. 17, 2018), available [here](#).

and (5) keep necessary documentation. Additionally, CS allegedly had not implemented a system to allow every department of the bank to see all client relationships with the bank instantly and automatically. FINMA required CS to establish such a “single client view” program by the end of 2019.

The second action relates to a significant business relationship for CS with a politically exposed person (“PEP”). FINMA alleged CS was too slow to identify and treat PEP clients as posing increased risk. Moreover, due diligence and corresponding documentation relating to the business relationship were allegedly incomplete. CS also allegedly failed to meet its heightened due diligence obligations regarding investigation, plausibility checks and documentation regarding the client and certain related high-risk transactions. In particular, FINMA noted that a client relationship manager was rewarded for growing his book of business by evading money-laundering controls.

FINMA appointed an independent third party to ensure CS’s remediation plan is successfully and timely implemented, as well as to review its effectiveness.

#### **Deutsche Bank AG and Jammu & Kashmir Bank Ltd (RBI)**

##### ***Reserve Bank of India imposes fines on two banks related to AML failures***

On November 5, 2018, the Reserve Bank of India (“RBI”) imposed a \$30,000,000 rupee (\$422,149) fine on both Deutsche Bank AG and the Jammu & Kashmir Bank Ltd (“JKB”), a state-owned bank, for non-compliance with certain AML norms, including those related to Income Recognition and Asset Classification and AML CDD norms.<sup>72</sup> RBI noted that the penalty was imposed due to regulatory deficiencies and a failure of both banks to adhere to directions issued by RBI.

#### **BlueOrange Bank (FCMC)**

##### ***Latvian regulator settles with BlueOrange Bank for AML failures***

On December 21, 2018, it was announced that Latvia’s banking regulator, the Financial and Capital Market Commission (“FCMC”), imposed a penalty on BlueOrange Bank (“BOB”) for €1,246,798.<sup>73</sup> The penalty stems from a settlement between FCMC and BOB regarding BOB’s failures to monitor and identify suspicious activity.

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<sup>72</sup> RBI imposes fine of Rs 3 crore each on Deutsche Bank, J&K Bank, The Economic Times (Nov. 14, 2018), available [here](#).

<sup>73</sup> See Latvia fines BlueOrange Bank over anti-money laundering violations, Reuters (Dec. 21, 2018), available [here](#). See also FCMC and JSC “BlueOrange Bank” have entered into an administrative agreement, a fine of 1.2 million euro imposed, Financial and Capital Market Commission (Dec. 21, 2018), available [here](#).



## Proposed Changes to U.S. AML Regulations

While our Mid-Year AML Review noted several proposals introduced in Congress to address different aspects of AML regulations, there has been no movement to report on those proposals. However, there has been one additional proposal targeted at amending the duties of FinCEN. We have listed the pending bills below.

Title	Status	Key Provisions	Details and Tracking
TITLE Act (S. 1454)	Introduced in Senate Jun 28, 2017	The True Incorporation Transparency for Law Enforcement ("TITLE") Act requires states to collect beneficial ownership information from persons who form corporations or limited liability companies.	<a href="#">Link</a>
Corporate Transparency Act of 2017 (H.R. 3089)	Introduced in House Jun 28, 2017	Requires persons who form corporations or limited liability companies in the United States. to disclose beneficial owners to the state of incorporation. Where a state does not have a system to collect that information, FinCEN would be required to collect and maintain the additional information.	<a href="#">Link</a>
Corporate Transparency Act of 2017 (S. 1717)	Introduced in Senate Aug 2, 2017	Companion bill to HR 3089.	<a href="#">Link</a>
AML and CTF Modernization Act (H.R. 4373)	Introduced in House Nov 13, 2017	Increases SAR, CTR, CMIR and Form 8300 dollar filing thresholds; expands Section 314 beyond money laundering and terrorism crimes to include all specified unlawful activity ("SUA"); requires FinCEN to establish a process to issue written administrative rulings in response to inquiries concerning the conformance of specific conduct with the Bank Secrecy Act.	<a href="#">Link</a>
Enhancing Suspicious Activity Reporting Initiative Act (H.R. 5094)	Introduced in House Feb 26, 2018. Passed on Jun 25, 2018. (Senate next)	Directs the Department of Homeland Security (DHS) to: (1) develop a strategy to improve training, outreach, and information sharing for suspicious activity reporting; (2) establish a working group to advise DHS on suspicious activity reporting; and (3) provide a briefing to the congressional homeland security committees on its operations and activities related to suspicious activity reporting.	<a href="#">Link</a>
Cooperate with Law Enforcement (LE) Agencies and Watch Act of 2018 (H.R. 5783)	Introduced in House May 11, 2018. Passed on Jun 25, 2018. (Senate next)	Limits a financial institution's liability for maintaining a customer account in compliance with a written request by a federal or state law enforcement agency. A federal or state agency may not take an adverse supervisory action against a financial institution with respect to maintaining an account consistent with such a request.	<a href="#">Link</a>
Cooperate with LE Agencies and Watch Act of 2018 (S. 3045)	Introduced in Senate Jun 11, 2018	Companion bill to HR 5783.	<a href="#">Link</a>



Title	Status	Key Provisions	Details and Tracking
Counter Terrorism and Illicit Finance Act (H.R. 6068)	Introduced in House Jun 12, 2018	Increases SAR and CTR filing thresholds; permits financial institutions, with some exception, to share SARs with foreign branches, subsidiaries and affiliates; requires FinCEN to establish a process for the issuance of “no-action” letters; requires Treasury to take a more prominent role in coordinating AML/CFT policy and examinations across the Government; provides an 18-month enforcement safe harbor for FinCEN’s new CDD Rule.	<a href="#">Link</a>
FinCEN Improvement Act of 2018 (H.R. 6411)	Introduced in House Jul 17, 2018. Passed on Sept 12, 2018. (Senate next)	Targeted at amending the duties of FinCEN by mandating they (1) work with tribal law enforcement agencies, (2) protect against terrorism regardless of origin, and (3) coordinate internationally on matters involving emerging technology and virtual currency. There was no movement on this bill in the Senate and thus it has not become law.	<a href="#">Link</a>

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## AML Guidance Issuances

### FinCEN Grants Exemptive Relief from the CDD Rule for Certain CD Rollovers and Credit Renewals

On September 7, 2018, the Financial Crimes Enforcement Network (“FinCEN”) issued relief from the requirements of the customer due diligence rule (“CDD Rule”) to identify and verify the identity of beneficial owners of a legal entity customer that:

- roll-overs a certificate of deposit (“CD”);
- renews, modifies or extends the term a loan, commercial line of credit or credit card account; or
- renews a safe deposit box rental.

This relief (available here: [FIN-2018-R003](#)) supersedes temporary relief FinCEN earlier issued and attempts to resolve certain interpretive questions faced by financial institutions implementing the CDD Rule. (We discussed the CDD Rule and related developments in earlier client updates: available [here](#) and [here](#).)

In issuing this relief, FinCEN has attempted to clarify the types of products and the circumstances to which the relief applies. For example, FinCEN defines a loan renewal, modification or extension as a situation in which a financial institution renews, extends, or otherwise modifies the loan “without substantively changing the terms.” With respect to the renewal, modification or extension of a loan, line of credit or credit card

account, FinCEN states that exceptive relief applies only if such actions do not require underwriting review or approval. Where such steps are necessary, the exception does not apply, and the institution must conduct the identification and verification procedures the CDD Rule requires for all “new accounts.”

FinCEN also made clear that the exception covers only rollovers, renewals, modifications or extensions of these types of accounts; it does not apply to the initial opening of such accounts at which point beneficial ownership information must be collected and verified per the requirements of the CDD Rule.

### **FinCEN and Banking Agencies Encourage Innovation in BSA/AML Compliance**

On December 3, 2018 the Treasury Department and federal banking agencies issued a joint statement encouraging banks to consider, evaluate and implement innovative approaches to meeting their Bank Secrecy Act/anti-money laundering (“BSA/AML”) compliance obligations, including through use of emerging technologies. The joint statement suggests a greater willingness among the federal banking agencies to engage proactively with the private sector. This is consistent with recent efforts in Congress to modernize the BSA/AML framework, which has been mostly unchanged for nearly two decades.

## Summary Chart of 2018 AML Enforcement Actions

Entity	Date	AML Issue	Agency	Monetary Penalty	Other Measures
Western Union	4-Jan-2018	AML program, MSB agent oversight, SARs	DFS	\$60 million	Lookback
Mega International Commercial Bank	17-Jan-2018	AML program	FRB, Illinois Dept. of Financial and Professional Reg.	\$29 million	Lookback
PKB Privatbank SA Lugano	1-Feb-2018	Due diligence	Swiss FINMA	\$1.4 million	External Auditor
Gazprombank	1-Feb-2018	Due diligence	Swiss FINMA	None	External Auditor
Six Executives and Directors (Merchants Bank of California)	Feb. through Apr. 2018	Personal liability; other violations	OCC	\$311,000	Employment bars
China Construction Bank	5-Feb-2018	AML program	South Africa	\$6 million	None
Rabobank NA	7-Feb-2018	Obstruction, conspiracy, AML program, SARs	DOJ	\$360 million	None
U.S. Bank NA	15-Feb-2018	AML program, due diligence, transaction monitoring, SARs, OCC disclosure, CTRs	DOJ, FinCEN, OCC, FRB	\$613 million	Lookback
Industrial and Commercial Bank of China Ltd.	12-Mar-2018	AML program; SARs; governance and oversight	FRB	None	Lookback
Standard Chartered Bank	19-Mar-2018	Due diligence, SARs	Monetary Authority of Singapore	\$4.9 million	None
Aegis Capital Corporation	28-Mar-2018	Personal liability, SARs	SEC, FINRA	\$1.3 million	Independent compliance consultant, Employment bar
Industrial and Commercial Bank of China Financial Services LLC and Chardan Capital Markets LLC	16-May-2018	AML program, personal liability, SARs	SEC, FINRA	\$7,175,000	Independent compliance consultant; Lookback
Laura Akahoshi (Chief Compliance Officer, Rabobank NA)	17-May-2018	Personal liability; false statements	OCC	\$50,000	Employment bar

Entity	Date	AML Issue	Agency	Monetary Penalty	Other Measures
Meridian Trade Bank	25-May-2018	AML program	Financial and Capital Market Commission (Latvia)	\$533,000	None
Commonwealth Bank of Australia (CBA)	4-Jun-2018	AML/CTF program, risk assessment, transaction monitoring, STRs	AUSTRAC	\$700 million	None
Canara Bank	6-Jun-2018	AML program, governance	FCA	\$1.2 million	None
United Bank Limited, Karachi, Pakistan and United Bank Limited, New York Branch	2-Jul-2018	Governance, CDD Program, SARs	FRB	N/A	Independent review/assessment
Charles Schwab & Co., Inc.	2-Jul-2018	SARs	SEC	\$2.8 million	Permanent Injunction
Bank of Communications, the Shanghai Pudong Development Bank, Ping An Bank, Galaxy Securities and China Life Insurance	2-Aug-2018	Due diligence	PBOC	6.1 million yuan (\$890,000)	None
Shanghai Commercial Bank Limited	17-Aug-2018	Transaction monitoring	HKMA	HKD5,000,000	Independent review/assessment
ING Bank N.V.	4-Sept-2018	Transaction monitoring	Netherlands Public Prosecution Service	\$899.8 million (€775 million)	None
Dirceu P. Magalhaes	6-Sept-2018	Due diligence	OCC	\$100,000	Prohibited from future participation in any manner in a U.S. financial institution of any kind
Royal Bank of Canada	6-Sept-2018	Due diligence	OCC	\$100,000	Consent order; Barred from industry
Credit Suisse AG (multiple)	17-Sept-2018	Transaction monitoring; fraud and money laundering; forging signatures; concealing losses via fake orders; PEP failures	FINMA	N/A	Remedial steps to improve procedures; Censured; appointment of independent monitor
TD Ameritrade, Inc.	24-Sept-2018	SARs	SEC	\$500,000	None
Mashreqbank PSC and its New York branch	10-Oct-2018	Transaction monitoring	DFS	\$40 million	Independent monitor
AllNations Bank	22-Oct-2018	AML program	FRB; Oklahoma State Banking Department	N/A	Submission of revised BSA/AML compliance program
Capital One, NA	23-Oct-2018	SARs	OCC	\$100 million	None

Entity	Date	AML Issue	Agency	Monetary Penalty	Other Measures
Eastern National Bank, Miami, FL	25-Oct-2018	AML program; SARs; governance	OCC	N/A	Consent Order
MidSouth Bank, NA	25-Oct-2018	AML program	OCC	N/A	None
Deutsche Bank AG	5-Nov-2018	CDD	RBI	₹ 3-crore (\$42,531)	None
Jammu & Kashmir Bank Ltd	5-Nov-2018	CDD	RBI	₹ 3-crore (\$42,531)	None
MoneyGram International Inc.	8-Nov-2018	AML program	DOJ	\$125 million forfeit	None
Société Générale SA and its New York branch	19-Nov-2018	Governance; CDD; transaction monitoring	DFS, FRB	\$95 million	Check-up re: monitor
Standard Chartered Bank	21-Nov-2018	Transaction monitoring	DFS	N/A	Consent Order re facilitating continued progress; independent monitor
UBS Financial Services, Inc.	17-Dec-2018	SARs; resources/staffing; oversight	FinCEN, SEC, FINRA	\$5 million each FinCEN/SEC and \$4.5 million FINRA	Global systems update / "significant investments" to satisfy regulators
BlueOrange Bank	21-Dec-2018	Transaction monitoring	FCMC	€1,246,798 (\$1.4 million)	
Morgan Stanley	26-Dec-2018	Transaction monitoring	FINRA	\$10 million	None

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Please do not hesitate to contact us with any questions.

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