

2018 Mid-Year Anti-Money Laundering Review and Outlook

July 19, 2018

In the first half of 2018, financial regulators around the world imposed more than \$1.7 billion in fines related to anti-money laundering (“AML”) compliance failures, nearly matching 2017’s annual total of \$2 billion.¹ More than \$1 billion of that \$1.7 billion originated from enforcement actions by U.S. regulators and prosecutors.

To assist financial institutions in understanding the evolving AML priorities of law enforcement and financial regulators, the Debevoise Banking Team has compiled the 2018 Mid-Year Anti-Money Laundering Review and Outlook, summarizing 21 AML enforcement actions initiated or concluded in the first half of 2018. Three key AML enforcement trends emerge:

- **Personal Liability:** Regulators continue their efforts to hold compliance officers, senior executives and board members personally liable for compliance failures.
- **Focus on Obstruction:** U.S. prosecutors and regulators are focusing on misrepresentations and obstruction by financial institution managers during routine AML exams.
- **Agency Coordination:** Agencies are working together to avoid the disproportionate penalties that can result when different agencies with overlapping jurisdictions each levy their own penalties for the same or similar AML violations.

We also provide you with an overview of proposed changes to U.S. AML regulations currently pending before Congress, including several proposals that would address what the Financial Action Task Force (“FATF”) has called a serious deficiency in the U.S. incorporation process.

We hope that you find the 2018 Mid-Year 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.

¹ See Debevoise *In Depth*, 2017 Anti-Money Laundering Year in Review and 2018 Outlook, Debevoise & Plimpton LLP (Feb. 2018), available [here](#).

Table of Contents

Enforcement Actions and Related Developments, by Agency	2
Department of Justice	2
Office of the Comptroller of the Currency	9
Federal Reserve Board	10
U.S. Securities and Exchange Commission and FINRA	11
New York State Department of Financial Services	12
Financial Crimes Enforcement Network	13
International	14
Proposed Changes to U.S. AML Regulations	18
Summary Chart of 2018 AML Enforcement Actions	21
Contributors	22

Enforcement Actions and Related Developments, by Agency

Department of Justice

Rabobank, N.A.

Conspiracy to defraud and obstruct a regulator's AML exam; forfeiture of \$369 million.

On February 7, 2018, Rabobank, N.A. ("Rabobank") pled guilty to criminally conspiring to defraud the Office of the Comptroller of the Currency ("OCC") and to obstruct the OCC's examination of the bank's AML processes.²

According to Rabobank's plea agreement with the United States Department of Justice ("DOJ"), several bank executives sought to hide and minimize deficiencies in the bank's AML program in an effort to deceive the OCC and avoid regulatory sanctions.³ As part of its settlement, Rabobank agreed to forfeit \$368,701,259.

² Press Release, U.S. Dept. of Justice, Rabobank, N.A. Pleads Guilty, Agrees to Pay Over \$360 Million [hereinafter *Rabobank Press Release*] (Feb. 7, 2018), available [here](#).

³ *U.S. v. Rabobank National Association*, Plea Agreement, (S.D. Ca. Feb. 5, 2018) [hereinafter *Rabobank Plea Agreement*], available [here](#).

According to the DOJ, the criminal conspiracy charge to which Rabobank pled guilty is based on the following conduct:⁴

- Three unnamed Rabobank executives allegedly agreed to obstruct the OCC's 2012 examination of the bank and responded to the OCC's initial report of examination with false and misleading information.
- The bank "demoted or terminated" two employees who questioned the adequacy of the bank's BSA/AML program.
- Bank executives made false and misleading statements to the OCC regarding the existence of a report by an outside consultant concerning the ineffectiveness of the bank's BSA/AML program.

The outside consultant's report

On April 16, 2018, the OCC filed a civil case against Rabobank's former Chief Compliance Officer, Laura Akahoshi ("Akahoshi"), alleging that she and other bank executives had concealed a report written by the consulting firm Crowe Horwath (the "Crowe Report").⁵

According to the OCC, the Crowe Report detailed a litany of AML deficiencies at Rabobank, including backlogs of suspicious-activity filings and other failures.⁶ The OCC was allegedly told of the Crowe Report by a "whistleblower" bank executive who the bank had placed on forced leave of absence.⁷ Emails highlighted by both the DOJ and the OCC indicate that when OCC examiners asked for the "assessment report" that Crowe Horwath was engaged to perform in January 2013, Akahoshi consulted with other bank executives and replied to the OCC the bank did not have such a report—apparently relying on the premise that the company had not yet accepted a final version of the report.⁸ When the OCC persisted that it would accept any version of the Crowe Report which the bank might have—even a preliminary copy—the Rabobank executives again consulted and Akahoshi told the regulator that Crowe had given a

⁴ Rabobank Press Release, *supra* note 2, at 3.

⁵ *In the Matter of Laura Akahoshi, former Chief Compliance Officer, Notice of Charges for Order of Prohibition and Assessment of a Civil Money Penalty* (OCC, April 16, 2018) [hereinafter Akahoshi Notice of Charges], available [here](#). See also Jesse Hamilton and Tom Schoenberg, "CEO of Bank That Hid Drug Cash Faces U.S. Criminal Probe," BLOOMBERG (May 10, 2018), available [here](#).

⁶ Akahoshi Notice of Charges, *supra* note 5, at 4-11.

⁷ *Id.* at 7.

⁸ *Id.* at 7-8.

PowerPoint presentation to Rabobank officials but hadn't provided a physical document.⁹

The OCC then called a senior bank executive and told him the examiners were already aware that the bank had a copy of the report.¹⁰ Akahoshi eventually sent the Crowe Report to the OCC.¹¹

In its enforcement action against Akahoshi, the OCC assessed the former chief compliance officer with a \$50,000 civil money penalty and imposed an industry employment ban.¹²

The underlying AML deficiencies

According to the government, Rabobank allegedly failed to investigate alerts on high-risk accounts that also had been subject to prior investigation, allowing investigators to close out alerts without further review, whether or not the new activity was different from the activity that was previously investigated.¹³

The bank also allegedly maintained a "Security CMIR Mitigation Policy" whereby the bank would refrain from investigating and filing SARs on cash withdrawals from accounts at branches near the Mexican border if customers had explained that they were withdrawing the cash in the United States because they did not wish to physically transport the cash across the border from Mexico, which would have required the filing of CMIRs (Reports of International Transportation of Currency or Monetary Instruments).¹⁴ According to the plea agreement, the resulting cash withdrawals from the U.S. accounts were both excessive and structured, and should have resulted in SAR filings.¹⁵

These deficiencies allegedly allowed hundreds of millions of dollars in suspicious cash deposits in Rabobank's branches in California along the Mexican border without appropriate investigation and reporting.

⁹ *Id.* at 8-9.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² *Id.* at 14.

¹³ Rabobank Plea Agreement, *supra* note 3, at 7.

¹⁴ *Id.* at 8.

¹⁵ *Id.*

Key takeaways

Under federal law, it is a crime to:

- Corruptly obstruct or attempt to obstruct any examination of a financial institution by an agency of the United States;¹⁶ or
- Knowingly and willfully make a materially false statement or representation in a matter within the jurisdiction of the executive branch of the federal government.¹⁷

These and other provisions of law afford the government opportunities to criminally prosecute both companies and individuals for their conduct during the course of a routine regulatory exam.

Prosecutors pursue obstruction or similar “cover up” charges primarily for three reasons: (1) to protect the integrity of a government process; (2) to provide a deterrent; and (3) in most white collar cases, the “cover up” is regarded as being both more serious and easier to prove than the underlying violations of law.¹⁸

For regulators, criminal obstruction charges brought by the DOJ against a financial institution can offset a regulator’s failure to uncover the underlying violations sooner and can deter similar conduct during future exams at other financial institutions.

U.S. Bancorp and U.S. Bank N.A.

Capped number of alerts based on resources and concealed practice from OCC; \$613 million in penalties.

On February 15, 2018, the DOJ, the OCC, the Board of Governors of the Federal Reserve System (“FRB”) and the Financial Crimes Enforcement Network (“FinCEN”) announced \$613 million in penalties against U.S. Bancorp and its subsidiary, U.S. Bank N.A. (“USB”), for violations of the Bank Secrecy Act (“BSA”).¹⁹

¹⁶ 18 U.S.C. § 1517.

¹⁷ 18 U.S.C. § 1001. Notably, this crime is commonly charged in criminal cases involving false statements to federal agents, but was cited by the OCC in its civil case against Rabobank’s former Chief Compliance Officer Laura Akahoshi in connection with her alleged false statements to the OCC. Rabobank Notice of Charges, *supra* note 5, at 10.

¹⁸ Notably, Rabobank was only required to plead guilty to criminally conspiring to defraud the OCC and to obstruct the OCC’s examination, and not a violation of the Bank Secrecy Act, and it is unclear whether the DOJ would have brought a criminal case against the bank in the absence of the fraud and obstruction allegations.

¹⁹ Press Release, U.S. Dept. of Justice, Manhattan U.S. Attorney Announces Criminal Charges Against U.S. Bancorp For Violations Of The Bank Secrecy Act (Feb. 15, 2018) [hereinafter USB DOJ Press Release], available [here](#).

According to USB's deferred prosecution agreement ("DPA") with the DOJ, USB willfully failed to establish, implement and maintain an adequate BSA/AML compliance program from at least 2009 through 2014.²⁰ Among other things, USB capped the number of alerts generated by its transaction monitoring systems depending on staffing levels and resources, rather than setting thresholds for such alerts that corresponded to a transaction's level of risk.²¹ Moreover, when USB's below-threshold testing indicated that their current alert thresholds were likely too high, they eliminated that testing altogether.²² As a result, USB allegedly failed to detect and investigate large numbers of suspicious transactions.²³

In announcing its case, the DOJ stressed the fact that USB had deliberately concealed from its primary regulator, the OCC, USB's practice of capping surveillance alerts based on insufficient staffing.²⁴ However, unlike the Rabobank case announced just five days earlier,²⁵ the DOJ did not allege criminal obstruction or fraud against USB.

According to the DPA, from 2011 to 2013, USB also willfully failed to report in a timely manner the suspicious banking activities of Scott Tucker, a longtime USB customer, despite being on notice that Tucker had been using USB to launder proceeds from an illegal and fraudulent payday lending scheme using a series of sham bank accounts opened under the name of companies nominally owned by various Native American tribes.²⁶ Tucker allegedly spent large sums of money from these tribal company accounts on personal items, including tens of millions of dollars on a vacation home in Aspen and on a professional Ferrari racing team.²⁷ Ultimately, USB only filed a suspicious activity report ("SAR") on Tucker after it received a subpoena from federal prosecutors in 2013.²⁸ In 2017, Tucker was convicted in the United States District Court for the Southern District of New York of various offenses arising from the scheme.

USB also failed to monitor Western Union transactions involving noncustomers of the bank that took place at bank branches. When bank employees flagged specific noncustomer transactions as raising AML-related concerns, the transactions went uninvestigated.²⁹

²⁰ U.S. Bancorp Deferred Prosecution Agreement (Feb. 12, 2018) [hereinafter USB DPA], available [here](#).

²¹ USB DPA, Exhibit C: Statement of Facts, *supra* note 20, at 5-12.

²² USB DPA, Exhibit C: Statement of Facts, *supra* note 20, at 9.

²³ *Id.*

²⁴ See USB DOJ Press Release, *supra* note 19.

²⁵ Rabobank Press Release, *supra* note 2.

²⁶ USB DPA, Exhibit C: Statement of Facts, *supra* note 20, at 15-29.

²⁷ USB Press Release, *supra* note 27.

²⁸ DPA, Exhibit C: Statement of Facts, *supra* note 20, at 28.

²⁹ *Id.* at 12-14.

The \$613 million in total penalties levied against USB in this matter included a \$453 million civil forfeiture to the DOJ, a \$75 million civil money penalty assessed by the OCC,³⁰ and a \$15 million penalty imposed by the Federal Reserve.³¹ FinCEN's agreement with the bank included further admissions by the bank that it filed more than 5,000 incomplete and inaccurate currency transaction reports and required the bank to pay a \$185 million civil money penalty, \$115 million of which was deemed satisfied by the DOJ forfeiture.³²

DOJ Announces a Policy to End "Piling On"

On May 9, 2018, DOJ Deputy Attorney General Rod Rosenstein announced a policy to improve coordination among prosecutors and regulators so companies aren't excessively penalized in white collar cases.³³

The purpose of the policy, which applies to AML enforcement actions as well as other government investigations, is to "discourage disproportionate enforcement of laws by multiple authorities."³⁴ While it is unclear whether any particular case triggered the formation of the new policy, Mr. Rosenstein stated in his announcement that "we have heard concerns about 'piling on' from our own Department personnel."³⁵

There are four features of the new policy:³⁶

- First, the policy affirms an existing rule that the DOJ should not employ the threat of criminal prosecution solely to persuade a company to pay a larger settlement in a civil case.
- Second, the policy addresses situations in which DOJ attorneys in different units or offices seek to resolve a corporate case based on the same misconduct. The new policy directs these attorneys to coordinate with one another and achieve an overall equitable result. The coordination may include crediting financial penalties and

³⁰ Press Release, OCC, OCC Assesses \$75 Million Civil Money Penalty Against U.S. Bank National Association (Feb. 15, 2018), available [here](#).

³¹ Press Release, Federal Reserve Board, Federal Reserve Board fines US Bancorp \$15 million and orders it to improve risk management and oversight(Feb. 15, 2018), available [here](#).

³² Press Release, FinCEN, FinCEN Penalizes U.S. Bank National Association for Violations of Anti-Money Laundering Laws (Feb. 15, 2018), available [here](#).

³³ See Henry Cutter, "DOJ Targets 'Duplicative Penalties' Through Increased Coordination," WALL STREET JOURNAL, (May 9, 2017), available [here](#).

³⁴ *Id.*; see also DOJ, Remarks as Prepared for Delivery by Deputy Attorney General Rod Rosenstein to the New York City Bar White Collar Crime Institute (May 9, 2018), available [here](#).

³⁵ *Id.*; Mr. Rosenstein explained, "In football, the term 'piling on' refers to a player jumping on a pile of other players after the opponent is already tackled."

³⁶ *Id.*

forfeitures to the government offices and agencies involved in a case to avoid a disproportionate punishment to the company.

- Third, the policy encourages DOJ attorneys to coordinate with other federal, state, local, and foreign enforcement authorities seeking to resolve a case with a company for the same misconduct.
- Finally, the new policy sets forth some factors that DOJ attorneys may include in determining whether multiple penalties serve the interests of justice in a particular case, including: (1) the egregiousness of the wrongdoing; (2) statutory mandates regarding penalties; (3) the risk of delay in finalizing a resolution; and (4) the adequacy and timeliness of a company's disclosures and cooperation with the DOJ.

Other Federal Regulators Follow Suit

On June 12, 2018, the OCC, the Federal Deposit Insurance Corporation and the FRB issued an updated policy statement on coordination among the federal banking agencies during formal enforcement actions.³⁷ The interagency policy statement provides that:

- When one of the federal banking agencies expects to take a formal enforcement action, it will notify the other federal banking agencies that have an interest in that action.
- Notification should be provided at the earlier of (a) the federal banking agency's written notification to the financial institution that it is considering an enforcement action against it, or (b) when the appropriate responsible federal banking agency official or group of officials determines that formal enforcement action is expected to be taken.
- If two or more federal banking agencies consider bringing complementary actions, those federal banking agencies should coordinate the preparation, processing, presentation, potential penalties, service, and follow-up of the enforcement actions.

We expect that financial institutions will welcome the opportunity to resolve multiple investigations by different prosecutors and regulators, particularly when the matters are based on similar facts, an enforcement action in at least one of the investigations appears likely, and a disproportionate penalty can be avoided.

³⁷ Policy Statement on Interagency Notification of Formal Enforcement Actions, Federal Register, Vol. 83, No. 113 (June 12, 2018), available [here](#).

Continued Focus on Individual Liability

In announcing the “anti-piling on” policy, Deputy Attorney General Rosenstein also emphasized the DOJ’s current focus on prosecuting individuals. Noting that corporate settlements do not necessarily deter individual wrongdoers, Mr. Rosenstein stated, “Our goal in every case should be to make the next violation less likely to occur by punishing individual wrongdoers.”³⁸

Office of the Comptroller of the Currency³⁹

Merchants Bank of California

Failed to correct known BSA violations and made false statements; executives and directors assessed \$311,000 in penalties.

Between February and April 2018, the OCC announced the assessment of civil money penalties totaling \$311,000 against six current and former senior executives and board members of Merchants Bank of California (“Merchants”) for violations of the BSA and various other regulations.

Previously, in February 2017, FinCEN and the OCC had announced \$8 million in penalties against Merchants for willful violations of the BSA, including its failure to (1) establish and implement an adequate AML program, (2) conduct required due diligence on its foreign correspondent accounts and (3) detect and report suspicious activity.⁴⁰ No individuals were charged, though FinCEN specifically noted that its settlement with a financial institution does not preclude separate enforcement actions against individuals.⁴¹

The OCC’s 2018 actions were notable for the number and seniority of the executives who were targeted (see Table 1). The agency alleged a wide variety of misconduct, including participating in and causing AML violations, failing to correct those violations, making false statements to the OCC, interfering with the BSA Officer’s authority to close accounts based on BSA/sanctions risk,⁴² and making false book entries.

³⁸ *Id.*

³⁹ In addition to the AML enforcement actions listed here, the OCC brought AML enforcement actions against U.S. Bank and Rabobank, as detailed above.

⁴⁰ Press Release, FinCEN, FinCEN Penalizes California Bank for Egregious Violations of Anti-Money Laundering Laws (Feb. 27, 2017), available [here](#).

⁴¹ *Id.*

⁴² *In the Matter of Susan Cavano, Chief Banking Officer and former Chief Operating Officer, Assessment of Civil Money Penalty at 3, No. 2018-20 (Mar. 7, 2018), available [here](#).*

Table 1: Merchants' executives targeted in 2018 OCC actions:

Name	Position	Monetary Penalty	Other Measures	Enforcement Document
Daniel Roberts	Former Chairman of the Board, President, and CEO	\$175,000	Removal; industry employment bar	Link
Rodrigo Garza	EVP and Director	\$70,000	Removal; industry employment bar	Link
Jane Chu	Former EVP and CFO	\$35,000	None	Link
Philip Scott	Chairman of the Board of Directors	\$20,000	Industry employment bar	Link
Susan Cavano	Chief Banking Officer and former Chief Operating Officer	\$5,000	None	Link
Janice Hall	Former Director	\$5,000	None	Link
Theodore Roberts	Director	\$1,000	None	Link

Federal Reserve Board

Mega International Commercial Bank Co., Ltd.

“Significant deficiencies” in risk management and AML compliance programs; \$29 million penalty.

On January 17, 2018, the FRB announced a \$29 million penalty against the U.S. operations of Mega International Commercial Bank Co., Ltd., of Taipei, Taiwan (“Mega Bank”), for AML violations and required the firm to improve its AML oversight and controls.⁴³

According to the consent order entered into by Mega Bank, the FRB and the Illinois Department of Financial Services and Professional Regulation, examinations at several Mega Bank branches in 2016 had turned up “significant deficiencies” in their risk management and AML compliance programs.⁴⁴

That year, the New York State Department of Financial Services (“DFS”) fined Mega Bank \$180 million penalty and installed an independent monitor for violating New York’s anti-money laundering laws.⁴⁵ The DFS’s enforcement action came shortly after

⁴³ Press Release, Federal Reserve Board of Governors, Federal Reserve Board announces \$29 million penalty against U.S. operations of Mega International Commercial Bank Co., Ltd. (Jan. 17, 2018), available [here](#).

⁴⁴ *In the Matter of Mega International Commercial Bank Co., Ltd., et al., Cease and Desist Order, Federal Reserve Board of Governors* (Jan. 17, 2018), available [here](#).

⁴⁵ Press Release, New York State DFS, DFS Fines Mega Bank \$180 Million For Violating Anti-Money Laundering Laws (Aug. 19, 2016), available [here](#).

the publication of the “Panama Papers” and focused on transactions involving Mega Bank and shell companies formed with the assistance of the Mossack Fonseca law firm in Panama.

Industrial and Commercial Bank of China Ltd.

Deficiencies in risk management and AML compliance programs; cease and desist order.

On March 12, 2014, the FRB issued a cease and desist order against Industrial and Commercial Bank of China Ltd. (“ICBC”) and its New York branch, citing significant deficiencies in the branch’s risk management and AML compliance programs. While imposing no monetary penalty, the FRB required the bank and the branch to submit for approval a revised AML compliance program and to hire a third party to conduct a review of the branch’s U.S. dollar clearing activity.⁴⁶

As discussed further below, on May 16, 2018, the Securities and Exchange Commission (“SEC”) and Financial Industry Regulatory Authority (“FINRA”) announced separate AML enforcement actions against the Industrial and Commercial Bank of China Financial Services, a wholly owned subsidiary of ICBC.

U.S. Securities and Exchange Commission and FINRA

Aegis Capital Corporation

Failed to file SARs reporting possible market manipulation of low-priced securities; \$1.3 million in penalties for broker-dealer; \$60,000 in total penalties for CEO and a former compliance officer.

On March 28, 2018, the SEC and FINRA announced a total of \$1.3 million in fines against a New York-based brokerage firm, Aegis Capital Corporation (“Aegis”), for its failure to file SARs on numerous transactions that showed signs of market manipulation of low-priced securities.⁴⁷ Under the SEC order, Aegis was required to pay a \$750,000 penalty and retain a compliance expert.⁴⁸ FINRA’s settlement with Aegis included an additional \$550,000 penalty.⁴⁹

In a separate settled order, Aegis’ CEO Robert Eide was found to have caused the firm’s violations and its former AML compliance officer, Kevin McKenna, was found to have aided and abetted the violations.⁵⁰ Without admitting or denying the SEC’s findings, Eide and McKenna agreed to pay penalties of \$40,000 and \$20,000, respectively.

⁴⁶ *In the Matter of Industrial and Commercial Bank of China Ltd., et al., Cease and Desist Order, Federal Reserve Board of Governors* (Mar. 12, 2018), available [here](#).

⁴⁷ Press Release, SEC, Broker-Dealer Admits It Failed to File SARs (Mar. 28, 2018), available [here](#).

⁴⁸ *In the Matter of Aegis Capital Corporation, Cease and Desist Order, SEC* (Mar. 28, 2018) [hereinafter Aegis SEC Order], available [here](#).

⁴⁹ Letter of Acceptance, Waiver and Consent No. 20130387509, FINRA (Mar. 28, 2018), available [here](#).

⁵⁰ *In the Matter of Kevin McKenna and Robert Eide, Cease and Desist Order, SEC* (Mar. 28, 2018), available [here](#).

McKenna also agreed to a prohibition from serving in a compliance or AML capacity in the securities industry.⁵¹

In a litigated order, the SEC alleged that another former Aegis AML compliance officer, Eugene Terracciano, failed to file SARs on behalf of Aegis.⁵²

Industrial and Commercial Bank of China Financial Services LLC and Chardan Capital Markets LLC

Failed to file SARs on suspicious sale of 12.5 billion penny stock shares; \$8.2 million in total penalties for broker-dealers and a \$15,000 penalty for an AML compliance officer.

On May 16, 2018, the SEC and FINRA announced a total of \$7,175,000 in fines against Industrial and Commercial Bank of China Financial Services (“ICBCFS”) for failing to report suspicious sales of billions of penny stock shares that ICBCFS cleared on behalf of introducing broker-dealer Chardan Capital Markets, LLC (“Chardan”).⁵³ Pursuant to separate orders, Chardan agreed to pay a \$1 million penalty, and Chardan’s AML officer, Jerard Basmagy, agreed to pay \$15,000.⁵⁴

According to the SEC, from October 2013 to June 2014, Chardan liquidated more than 12.5 billion penny stock shares for seven of its customers and ICBCFS cleared the transactions. Chardan allegedly failed to file any SARs even though the transactions raised red flags, including similar trading patterns and sales in issuers who lacked revenues and products. ICBCFS similarly failed to file any SARs for the transactions despite ultimately prohibiting trading in penny stocks by some of the seven customers.⁵⁵

New York State Department of Financial Services

Western Union

State enforcement action mirrors federal action of a year earlier; \$60 million penalty.

On January 4, 2018, Western Union agreed to pay a \$60 million fine as part of a consent order with the DFS for violation of New York’s AML regulations.⁵⁶ The DFS’s investigation found that between 2004 and 2012, Western Union willfully failed to

⁵¹ SEC Order at 14.

⁵² *In the Matter of Eugene Terracciano, Cease and Desist Order, SEC (Mar. 28, 2018), available [here](#).*

⁵³ Press Release, SEC, SEC Charges Brokerage Firms and AML Officer with Anti-Money Laundering Violations (May 16, 2018), available [here](#); Press Release, FINRA, FINRA Fines ICBCFS \$5.3 Million for Anti-Money Laundering Compliance Deficiencies and Other Violations (May 16, 2018), available [here](#).

⁵⁴ *Id.*

⁵⁵ *In the Matter of Industrial and Commercial Bank of China Financial Services, Cease and Desist Order, SEC (May 16, 2018), available [here](#).*

⁵⁶ Press Release, N.Y. State Dept. of Financial Services, DFS Fines Western Union \$60 Million for Violations of New York’s Anti-Money Laundering Laws and for Ignoring Suspicious Transactions to Locations in China (Jan. 4, 2018), available [here](#).

implement and maintain an effective anti-money laundering program to deter, detect, and report on suspected criminal fraud, money laundering, and illegal structuring schemes.⁵⁷

The DFS's findings largely mirrored those made a year earlier, in January 2017, by the DOJ and federal regulators in a landmark \$586 million settlement with Western Union.⁵⁸ The DFS made numerous references to the federal case in its order and faulted Western Union for failing to disclose to the DFS information that the company had uncovered and disclosed to federal authorities in the years leading up to the 2017 federal settlement: "No such disclosure was made; instead, the Company provided to the Department only non-specific reports that merely cited the pendency of federal investigations identified in the Company's public filings with the U.S. Securities and Exchange Commission."⁵⁹

Key takeaways

Meaningful disclosures to a regulator require facts upon which the regulator can draw its own conclusions.

While federal regulators and prosecutors have recently vowed to prioritize coordination during formal enforcement actions, it cannot be assumed that this coordination extends to state agencies such as DFS or even that state regulators will proactively reach out to federal agencies for more information if the target of a pending federal action informs them of that action.

Financial Crimes Enforcement Network⁶⁰

ABLV Bank

High-risk shell company activity; Section 311 action taken.

On February 13, 2018, FinCEN issued a finding and notice of proposed rulemaking pursuant to Section 311 of the USA PATRIOT Act, seeking to prohibit the opening or maintaining of a correspondent account in the United States for, or on behalf of, ABLV Bank of Latvia ("ABLV").⁶¹

⁵⁷ *Id.*

⁵⁸ See *U.S. v. The Western Union Co.*, Deferred Prosecution Agreement, 1:17-cr-00011-CCC (M.D. Pa. Jan. 19, 2017), available [here](#).

⁵⁹ *In the Matter of Western Union Financial Services, Inc.*, Consent Order, DFS, at 17-18 (Jan. 4, 2018), available [here](#).

⁶⁰ In addition to the AML enforcement activity listed here, FinCEN brought an AML enforcement action against U.S. Bank, as detailed above.

⁶¹ Press Release, FinCEN, FinCEN Names ABLV Bank of Latvia an Institution of Primary Money Laundering Concern and Proposes Section 311 Special Measure (Feb. 13, 2018), available [here](#).

Section 311 actions alert the U.S. financial sector to foreign institutions that are a “primary money-laundering concern,” effectively cutting them off from the U.S. financial sector and the U.S. dollar globally. In this case, ABLV did not maintain correspondent accounts directly with U.S. banks, but instead accessed the U.S. financial system through nested U.S. dollar correspondent relationships with other foreign financial institutions. Those foreign financial institutions, in turn, held direct U.S. correspondent accounts.⁶²

According to FinCEN, ABLV actively solicited high-risk shell company activity and funneled billions of dollars in public corruption and other illegal proceeds through shell company accounts registered in offshore secrecy jurisdictions.⁶³ The illicit transactions included some linked to North Korea’s weapons program and to corruption involving Russia and Ukraine.

FinCEN Provides FAQs on Its New CDD Rule

On April 3, 2018, FinCEN issued frequently asked questions (“FAQs”) regarding its new customer due diligence requirements (“CDD Rule”) that became effective on May 11, 2018.⁶⁴

The CDD Rule requires covered financial institutions to (1) establish procedures to identify and verify the identity of the beneficial owners of legal entity customers that open new accounts unless an exception applies and (2) ensure their AML compliance programs include appropriate risk-based procedures for ongoing CDD efforts, including developing customer risk profiles and periodically updating the beneficial ownership information of existing customers.

For a discussion of FinCEN’s FAQs, see our Client Update [here](#).

International

Commonwealth Bank of Australia

AML failures in connection with rollout of new technology; \$700 million penalty.

On June 4, 2018, Australian Transaction Reports and Analysis Centre (“AUSTRAC”)⁶⁵ announced a settlement with Commonwealth Bank of Australia (“CBA”) resolving a

⁶² Notice of Proposed Rule Making, FinCEN (Feb. 13, 2018), available [here](#).

⁶³ *Id.* Notably, FinCEN did not identify the offshore secrecy jurisdictions where the shell companies were registered.

⁶⁴ FinCEN, Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions, FIN-2018-G001 (Apr. 3, 2018), available [here](#).

previously announced AML enforcement action against CBA relating to breaches of Australia's AML and counter-terrorism financing laws.⁶⁶ Pursuant to the settlement, CBA agreed to pay \$700 million, the largest corporate civil penalty in Australian history.

AUSTRAC initiated proceedings against CBA in August 2017, alleging over 53,700 contraventions of the AML/CTF Act.⁶⁷ The failures alleged by AUSTRAC pertained to CBA's 2012 rollout of Intelligent Deposit Machines ("IDMs"), a type of ATM that accepts deposits of cash and checks, which are automatically counted and credited instantly to the designated recipient's account. The IDM allegedly permitted the deposit of up to \$20,000 per transaction, with no limit on the number of transactions per day. AUSTRAC also alleged that the IDM facilitated anonymous cash deposits. While deposits could only be made into CBA accounts, a bank card from any financial institution could be used to initiate a deposit—and if the card was not issued by CBA, the cardholder's details were not known to CBA.

In settling the case, CBA agreed that it failed to carry out an appropriate risk assessment of the IDM, implement appropriate controls over their use, file transaction threshold reports,⁶⁸ monitor transactions in over 700,000 accounts, and report suspicious transactions.⁶⁹

Standard Chartered Bank

Breach of AML rules and terrorism financing safeguards; \$4.9 million penalty.

On March 19, 2018, the Monetary Authority of Singapore ("MAS") announced that it imposed penalties totaling S\$6.4 million (\$4.9 million) on the Singapore branch of Standard Chartered Bank ("SCBC") and Standard Chartered Trust (Singapore) Limited ("SCTS") for breaching money laundering rules and terrorism financing safeguards.⁷⁰

According to the MAS, the breaches occurred when trust accounts of SCBS' customers were transferred from Standard Chartered Trust (Guernsey) to SCTS in December 2015 and January 2016.⁷¹ According to media reports, the MAS and Guernsey's Financial Services Commission had been investigating Standard Chartered's movement of some

⁶⁵ AUSTRAC is Australia's financial intelligence agency with regulatory responsibility for anti-money laundering and counter-terrorism financing.

⁶⁶ Press Release, AUSTRAC, AUSTRAC and CBA agree \$700m penalty (June 4, 2018), available [here](#).

⁶⁷ Press Release, AUSTRAC, AUSTRAC seeks civil penalty orders against CBA (Aug. 3, 2017), available [here](#).

⁶⁸ For cash transactions of \$10,000 or more through the IDM.

⁶⁹ Statement of Agreed Facts and Admissions, AUSTRAC (June 4, 2018), available [here](#).

⁷⁰ Press Release, Monetary Authority of Singapore, MAS Imposes Penalties on Standard Chartered Bank and Standard Chartered Trust for AML/CFT Breaches (Mar. 19, 2018), available [here](#).

⁷¹ *Id.*

assets, mainly of Indonesian clients in late 2015, just before the Channel Island adopted new global rules on exchanging tax information.⁷²

Other AML actions

Other non-U.S. AML enforcement actions during the first half of 2018 include:

- **PKB Privatbank SA Lugano.** On February 1, 2018, the Swiss Financial Market Supervisory Authority (“FINMA”) ordered PKB to disgorge CHF1.3 million (\$1.4 million) and appointed an external auditor. The agency did so after concluding that the bank had violated AML regulations by failing to carry out adequate background checks into business relationships and transactions linked with the corruption scandal involving Brazilian oil company Petrobras and Brazilian construction group Odebrecht.⁷³
- **Gazprombank (Switzerland) Ltd.** Also on February 1, FINMA banned Gazprombank from accepting new private clients and appointed an external auditor after an investigation triggered by the publication of the Panama Papers found that the Swiss subsidiary of the Russian state-owned bank was in violation of AML due diligence requirements.⁷⁴
- **China Construction Bank.** On February 2, 2018, the South African Reserve Bank fined China Construction Bank (“CCB”) R75 million (\$6 million) for non-compliance with the country’s financial intelligence act based on weaknesses in the CCB’s control measures.⁷⁵
- **Meridian Trade Bank.** On May 25, 2018, Latvia’s Financial and Capital Market Commission announced that it had fined Meridian Trade Bank approximately EUR 456,000 (\$533,000) after inspections at the bank last year uncovered deficiencies in AML controls.⁷⁶
- **Canara Bank.** On June 6, 2018, the U.K.’s Financial Conduct Authority (“FCA”) announced that it had fined the U.K. division of India’s Canara Bank £896,100 (\$1.2

⁷² Singapore fines Standard Chartered entities \$4.9 million for money laundering breaches, REUTERS, Mar. 19, 2018, available [here](#).

⁷³ Press Release, FINMA, Money laundering prevention: FINMA concludes proceedings against PKB (Feb.1, 2018), available [here](#).

⁷⁴ Press Release, FINMA, FINMA concludes Panama Papers proceedings against Gazprombank Switzerland (Feb.1, 2018), available [here](#).

⁷⁵ Press Release, South African Reserve Bank, SARB imposes administrative sanctions on China Construction Bank(Feb.2, 2018), available [here](#).

⁷⁶ Press Release, Financial and Capital Market Commission, FCMC imposes a fine and legal obligations on AS “Meridian Trade Bank” (May 25, 2018), available [here](#).

million) and blocked it from accepting new deposits for approximately five months for systemic AML failures that affected almost all levels of its business and governance structure, including senior management.⁷⁷ According to the FCA, the bank had seconded staff from its head office in India to fill senior management positions in the UK who did not properly understand British legal and regulatory AML requirements.⁷⁸

The EU's Adoption of the Fifth Anti-Money Laundering Directive

On April 19, 2018, the European Parliament adopted the European Commission's proposal for the Fifth Anti-Money Laundering Directive ("AMLD5") to prevent terrorist financing and money laundering through the European Union's ("EU") financial system. First proposed in July 2016 in the wake of terrorist attacks and the publication of the Panama Papers, AMLD5's measures have the following goals:⁷⁹

- increasing transparency of company and trust ownership to prevent money laundering and terrorist financing via opaque structures;
- improving the work of Financial Intelligence Units with better access to information through centralized bank account registers;
- tackling terrorist financing risks linked to anonymous use of virtual currencies and of pre-paid instruments;
- ensuring adequate safeguards for financial flows from high-risk third countries.

The full text of AMLD5 may be accessed [here](#), a summary of key provisions [here](#).

EU member states will have up to 18 months to transpose the new rules in their national legislation.

⁷⁷ Press Release, Financial Conduct Authority, FCA fines and imposes a restriction on Canara Bank for anti-money laundering systems failings (June 6, 2018), available [here](#).

⁷⁸ Final Notice (Canara Bank), Financial Conduct Authority, at 2 (June 6, 2018), available [here](#).

⁷⁹ Statement by First Vice-President Timmermans, Vice-President Dombrovskis and Commissioner Jourová on the adoption by the European Parliament of the 5th Anti-Money Laundering Directive, European Commission (April 19, 2018), available [here](#).

Proposed Changes to U.S. AML Regulations

In January 2018, the U.S. Senate Banking Committee held hearings devoted to modernizing the BSA/AML regime, with congressional leaders expressing bipartisan support to making long overdue changes.⁸⁰

Various legislative proposals introduced in this session of Congress address different aspects of AML regulations, many of which could have a favorable impact on financial institutions, law enforcement and regulators alike. As noted in the following chart, only two proposals have advanced thus far. Both were passed by the Senate in June and now require action in the House of Representatives.

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.	Link
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.	Link
Corporate Transparency Act of 2017 (S. 1717)	Introduced in Senate Aug 2, 2017	Companion bill to HR 3089.	Link
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.	Link
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	Link

⁸⁰ U.S. Senate Comm. on Banking, Housing, and Urban Affairs (Senate Banking Comm.), Hearing Testimony, Combating Money Laundering and Other Forms of Illicit Finance: Opportunities to Reform and Strengthen BSA Enforcement (Jan. 9, 2018), available [here](#); and Senate Banking Comm., Hearing Testimony, Administration Perspectives on Reforming and Strengthening BSA Enforcement (Jan. 17, 2018), available [here](#). See Statement of Senator Mike Crapo, Committee on Banking, Housing, and Urban Affairs (January 17, 2018), available [here](#).

Title	Status	Key Provisions	Details and Tracking
		its operations and activities related to suspicious activity reporting.	
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.	Link
Cooperate with LE Agencies and Watch Act of 2018 (S. 3045)	Introduced in Senate Jun 11, 2018	Companion bill to HR 5783.	Link
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.	Link

Beneficial Ownership

Several bills listed above pertain to the collection of beneficial ownership information from persons who form corporations and limited liability companies, addressing what the Financial Action Task Force ("FATF") has identified as a serious deficiency in the process by which such entities are incorporated in the United States. As we have written recently in *The International Comparative Legal Guide to Anti-Money Laundering 2018*, the lack of incorporation transparency in the U.S. remains a significant risk for financial institutions globally.⁸¹

Thus far, the U.S. solution has been limited to imposing new customer due diligence ("CDD") requirements on financial institutions.⁸² Current legislative proposals would address the issue at the time of corporate formation, a process controlled by the government.

The Counter Terrorism and Illicit Finance Act (H.R. 6068) contains a number of AML regime improvements sought by the industry. Notably, an early draft of the bill contained a key provision on the collection of beneficial ownership information at the

⁸¹ Matthew L. Biben, Debevoise & Plimpton, *Beneficial Ownership Transparency: A Critical Element of AML Compliance*, in THE INTERNATIONAL COMPARATIVE LEGAL GUIDE TO ANTI-MONEY LAUNDERING 2018, at 14 (Global Legal Group Ltd, London ed., 2018).

⁸² For a discussion of the CDD rule and FinCEN's recently issued FAQs, see our Debevoise Client Update [here](#).

time of corporate formation. However, that provision was dropped at the time the bill was formally introduced in June 2018, leading some industry and law enforcement groups to immediately withdraw their support.⁸³

⁸³ Gary Kalman, *House AML bill is a missed opportunity*, American Banker (June 13, 2018), available [here](#).

Summary Chart of 2018 AML Enforcement Actions

Entity	Date	AML Issue	Agency	Monetary Penalty	Other Measures
Western Union	Jan 4, 2018	AML program, MSB agent oversight, SARs	DFS	\$60 million	Lookback
Mega International Commercial Bank	Jan 17, 2018	AML program	FRB, Illinois Dept. of Financial and Professional Reg.	\$29 million	Lookback
PKB Privatbank SA Lugano	Feb 1, 2018	Due diligence	Swiss FINMA	\$1.4 million	External Auditor
Gazprombank	Feb 1, 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	Feb 5, 2018	AML program	South Africa	\$6 million	None
Rabobank NA	Feb 7, 2018	Obstruction, conspiracy, AML program, SARs	DOJ	\$360 million	None
U.S. Bank NA	Feb 15, 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	Mar 12, 2018	AML program, SARs, governance and oversight	FRB	None	Lookback
Standard Chartered Bank	Mar 19, 2018	Due diligence, SARs	Monetary Authority of Singapore	\$4.9 million	None
Aegis Capital Corporation	Mar 28, 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	May 16, 2018	AML program, personal liability, SARs	SEC, FINRA	\$7,175,000	Independent compliance consultant, Lookback
Laura Akahoshi (Chief Compliance Officer, Rabobank NA)	May 17, 2018	Personal liability; false statements	OCC	\$50,000	Employment bar
Meridian Trade Bank	May 25, 2018	AML program	Financial and Capital Market Commission (Latvia)	\$533,000	None
Commonwealth Bank of Australia (CBA)	Jun 4, 2018	AML/CTF program, risk assessment, transaction monitoring, STRs	AUSTRAC	\$700 million	None
Canara Bank	Jun 6, 2018	AML program, governance	FCA	\$1.2 million	None

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