



Combating Corruption

Faculty of Law, University of Latvia

Class 13

13 May 2020

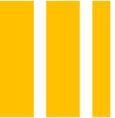
Shawn N. Sullivan

Today's Agenda

- Final Exam or Research Paper.
- Discussion of Midterm.
- Money Laundering Topics.
 - Review of Basics
 - U.S. Money Laundering Statutes
 - Bank Secrecy Act

Final Exam

- To be made available online on 22 May 2020.
- Answers to be returned to me by 27 May 2020.
- Topics on final exam.
 - Comprehensive.
- Types of questions.
 - Probably more multiple choice and true/false.
 - Discussion answers are very good, but time to grade is much greater.



Midterm Exam Comments

- Mostly very good.
 - As always, read the question carefully to understand exactly what is being asked.
 - Discussion questions: Instructions asked for 2-3 paragraph answers.
 - Some exceeded this (not a real problem).
 - Some were one sentence (too short).
 - FCPA clarification.
 - Who is subject to FCPA?
 - Not every contact with the U.S. subjects a foreign national to FCPA.
 - See next slide.
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From Class 8 Slides

Who is subject to the FCPA?



“Issuers” & Related Persons

“Issuers” and their officers, directors, employees, agents, and shareholders.

An “issuer” is a company:

- That is listed on a national securities exchange in the United States (either stock or American Depository Receipts); or
- Whose stock trades in the over-the-counter market in the United States and is required to file SEC reports.

“Domestic Concerns”

Any individual who is a citizen, national, or resident of the United States;

AND

Any corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or sole proprietorship that is organized under the laws of the United States or its states, territories, possessions, or commonwealths or that has its principal place of business in the United States;

AND

Officers, directors, employees, agents, or stockholders acting on behalf of a domestic concern, including foreign nationals or companies.

Foreign persons who commit acts while in the U.S.

Foreign persons and foreign non-issuer entities that, either directly or through an agent, engage in any act in furtherance of a corrupt payment (or an offer, promise, or authorization to pay) while in the territory of the United States.

Also, officers, directors, employees, agents, or stockholders acting on behalf of such persons or entities may be subject to the FCPA's anti-bribery prohibitions.

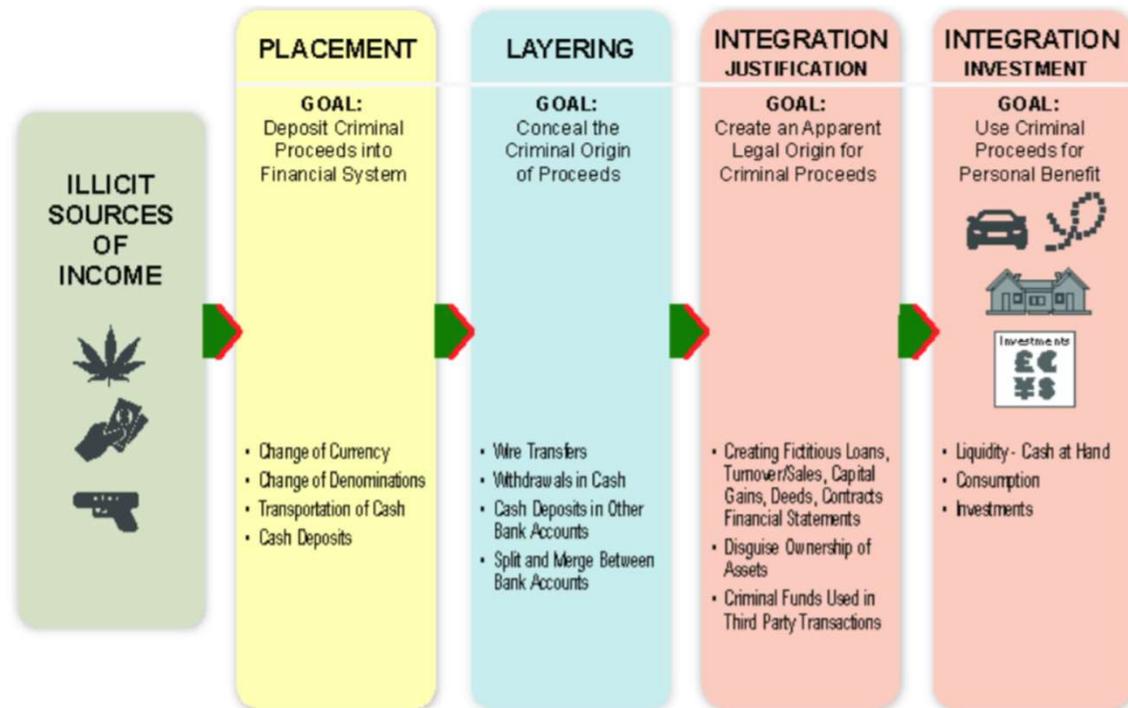
Foreign nationals who conspire to violate the FCPA

Some U.S. courts have held that even non-U.S. entities and individuals who are not agents or officers of domestic concerns and not physically present in the U.S. can be convicted of conspiring to violate the FCPA anti-bribery provision if the foreign person has conspired with persons who are subject to the FCPA. See, e.g., *United States v. Firtash*, 392 F. Supp. 3d 872 (N.D. Ill. 2019). Other courts have held that such a person cannot be convicted for conspiracy to violate the FCPA unless that person is an agent, employee, officer, director, or shareholder of an American issuer or domestic concern. *United States v. Hoskins*, 902 F.3d 69 (2d Cir. 2018).

Review: What Is Money Laundering?

- The FATF defines money laundering as “the processing of [...] criminal proceeds to disguise their illegal origin” in order to legitimize the ill-gotten gains of crime.

The Process of Money Laundering



Graphic: OECD



U.S. Anti-Money Laundering Statutes

(a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity—

- (A)(i) with the intent to promote the carrying on of specified unlawful activity; or
- (ii) with intent to engage in conduct constituting a violation of section 7201 or 7206 of the Internal Revenue Code of 1986; or
- (B) knowing that the transaction is designed in whole or in part—
 - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
 - (ii) to avoid a transaction reporting requirement under State or Federal law,



18 U.S. Code
§ 1956. Laundering of
monetary instruments

Domestic Money Laundering

(2) Whoever transports, transmits, or transfers, or attempts to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States—

- (A) with the intent to promote the carrying on of specified unlawful activity; or
- (B) knowing that the monetary instrument or funds involved in the transportation, transmission, or transfer represent the proceeds of some form of unlawful activity and knowing that such transportation, transmission, or transfer is designed in whole or in part—
 - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of specified unlawful activity; or
 - (ii) to avoid a transaction reporting requirement under State or Federal law,

● 18 U.S. Code
§ 1956. Laundering of
monetary instruments
(continued)

International Money Laundering

(3) Whoever, with the intent—

(A) to promote the carrying on of specified unlawful activity;

(B) to conceal or disguise the nature, location, source, ownership, or control of property believed to be the proceeds of specified unlawful activity; or

(C) to avoid a transaction reporting requirement under State or Federal law,

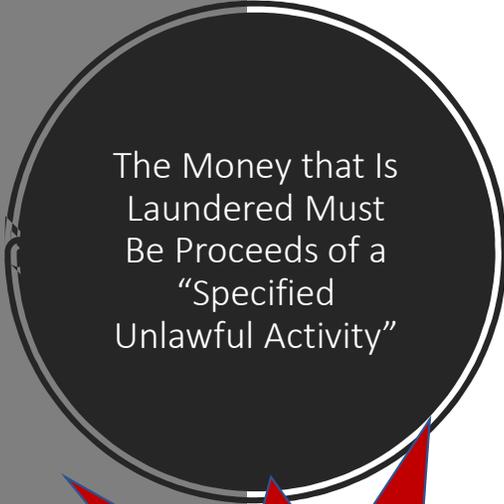
conducts or attempts to conduct a financial transaction involving property represented to be the proceeds of specified unlawful activity, or property used to conduct or facilitate specified unlawful activity, shall be fined under this title or imprisoned for not more than 20 years, or both. For purposes of this paragraph and paragraph (2), the term “represented” means any representation made by a law enforcement officer or by another person at the direction of, or with the approval of, a Federal official authorized to investigate or prosecute violations of this section.



18 U.S. Code
§ 1956.Laundering of
monetary instruments
(continued)

Undercover “Sting” Money Laundering: The proceeds in § 1956(a)(3) cases are not actually derived from a real crime; they are undercover funds supplied by the Government.





The Money that Is
Laundered Must
Be Proceeds of a
“Specified
Unlawful Activity”



Specifically
includes
proceeds of
corruption

(7) the term “specified unlawful activity” means—

(A) any act or activity constituting an offense listed in section 1961(1) of this title except an act which is indictable under subchapter II of chapter 53 of title 31;

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act);

(ii) murder, kidnapping, robbery, extortion, destruction of property by means of explosive or fire, or a crime of violence (as defined in section 16);

(iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank (as defined in paragraph 7 of section 1(b) of the International Banking Act of 1978));¹

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving—

(I) an item controlled on the United States Munitions List established under section 38 of the Arms Export Control Act (22 U.S.C. 2778); or

(II) an item controlled under regulations under the Export Administration Regulations (15 C.F.R. Parts 730–774);

(2) JURISDICTION OVER FOREIGN PERSONS.—For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if service of process upon the foreign person is made under the Federal Rules of Civil Procedure or the laws of the country in which the foreign person is found, and—

(A) the foreign person commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(B) the foreign person converts, to his or her own use, property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(C) the foreign person is a financial institution that maintains a bank account at a financial institution in the United States.



18 U.S. Code
§ 1956.Laundering of
monetary instruments
(continued)



Jurisdiction Over Foreign Persons

Violations of § 1956 have a maximum potential twenty year prison sentence and a \$500,000 fine or twice the amount involved in the transaction, whichever is greater.

There is also a civil penalty provision in § 1956(b) which may be pursued as a civil cause of action. Under this provision, persons who engage in violations of subsections 1956(a)(1), (a)(2) or (a)(3) are liable to the United States for a civil penalty of not more than the greater of \$10,000 or the value of the funds involved in the transaction.

 18 U.S. Code
§ 1956.Laundering of
monetary instruments
(continued)

Punishment for Violations of Statute



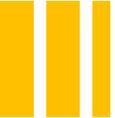
§1957. Engaging in monetary transactions in property derived from specified unlawful activity

- Applies when the defendant knowingly conducts a monetary transaction in criminally derived property in an amount greater than \$10,000, which is in fact proceeds of a specified unlawful activity.
 - Section 1957(f)(1) defines a monetary transaction as a "deposit, withdrawal, transfer, or exchange, in or affecting interstate or foreign commerce, of funds or a monetary instrument . . . by, through, or to a financial institution (as defined in section 1956 of this title), including any transaction that would be a financial transaction under section 1956(c)(4)(B)"
 - Section 1957 carries a maximum penalty of ten years in prison and maximum fine of \$250,000 or twice the value of the transaction.
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Bank Secrecy Act, 31 USC §§ 5311– 5332

- Establishes program, recordkeeping and reporting requirements for national banks, federal savings associations, federal branches and agencies of foreign banks.
 - Amended to incorporate the provisions of the USA PATRIOT Act which requires every bank to adopt a customer identification program as part of its BSA compliance program.
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Bank Secrecy Act (BSA)

The BSA requires financial institutions to:

- Keep records of cash purchases of negotiable instruments.
 - File reports of cash transactions exceeding \$10,000 (daily aggregate amount).
 - Report suspicious activity that might signify:
 - Money laundering.
 - Tax evasion.
 - Other criminal activities.
-

USA PATRIOT Act of 2001 (PATRIOT Act)

The PATRIOT Act amended the BSA and requires:

- Government-institution information sharing and voluntary information sharing among financial institutions.
- A program for verification of customer identity.
- Enhanced due diligence programs.
- AML programs across the financial services industry.

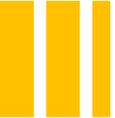
Office of Foreign Assets Control



The US Treasury's Office of Foreign Assets Control (OFAC)'s regulations prohibit all US persons from engaging in transactions with certain specified persons and countries.

Specifically, [BANK] must:

- Block accounts and other assets of "**Specially Designated Nationals**" (SDNs) and "**Blocked Persons.**"
- Prohibit unlicensed trade and financial transactions with specified countries.
- Block or reject prohibited transactions with SDNs and Blocked Persons.



Office of Foreign Assets Control (cont'd)

Examples of transactions that are subject to blocking or rejection include:

- Cash deposits.
 - Personal, official, and traveler's checks.
 - Drafts.
 - Loans.
 - Obligations.
 - Letters of credit.
 - Credit cards.
 - Bills of sale.
 - Wire transfers.
 - Investments.
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BSA Compliance Requirements for Banks

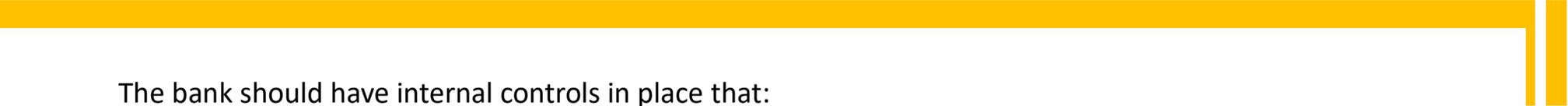


Compliance Requirements for Banks: Overview

The BSA requires covered banking institutions to institute a compliance program. The program must include, at a minimum:

- Internal controls to ensure ongoing compliance.
 - Procedures for independent testing.
 - Designated persons responsible for coordinating and monitoring the compliance program.
 - Training.
 - A Customer Identification Program (CIP).
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Internal Controls Requirement



The bank should have internal controls in place that:

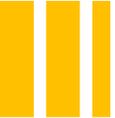
- Identify banking operations that are vulnerable to abuse, provide for periodic updates to the bank's risk profile, and provide for a BSA/AML compliance program tailored to manage risks.
- Inform the board of directors and senior management of compliance initiatives, identified compliance deficiencies, corrective action taken, and any SARs filed.
- Identify a person responsible for BSA/AML compliance.
- Provide for program continuity despite changes in management or employee composition or structure.
- Meet all regulatory recordkeeping and reporting requirements and provide for timely updates in response to changes in regulations.

Internal Controls Requirement (cont'd)

- Implement risk-based customer due diligence policies, procedures, and processes.
- Identify reportable transactions and accurately file all required reports.
- Provide for dual controls and the segregation of duties if possible (for example, employees responsible for completing reporting forms generally should not also be responsible for the decision to file the reports or grant the exemptions).
- Provide sufficient controls and systems for filing CTRs and CTR exemptions.
- Provide sufficient controls and monitoring systems for timely detection and reporting of suspicious activity.

Internal Controls Requirement (cont'd)

- Provide for adequate supervision of employees that handle currency transactions, complete reports, grant exemptions, or monitor for suspicious activity.
- Incorporate BSA compliance into the job descriptions and performance evaluations of bank personnel, as appropriate.
- Train employees to be aware of their responsibilities under the BSA regulations and internal policy guidelines.



Designated Persons Requirement

- The bank's board of directors must designate a senior official (BSA compliance officer) responsible for BSA compliance.
 - The board is responsible for ensuring that the BSA compliance officer has sufficient authority to administer an effective BSA/AML compliance program.
 - The BSA compliance officer should be fully knowledgeable of the BSA and all related regulations. The officer should also understand the bank's products, services, customers, entities, and geographic locations, and the potential money laundering and terrorist financing risks associated with those activities.
 - Other individuals in each office, department, or regional headquarters should be given responsibility for day-to-day compliance.
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Customer Identification Program (CIP)



The bank must have a written CIP that allows it to form a reasonable belief that it knows the true identity of each customer.

The CIP must implement reasonable procedures to:

- Verify the identity of any person seeking to open an account.
- Maintain records of the information used to verify the person's identity.
- Determine whether the person appears on any government-provided lists of known or suspected terrorists or terrorist organizations.

Customer Identification Program (CIP) (cont'd)

At a minimum, the bank must obtain the following identifying information from each customer before opening an account:

- Name.
- Date of birth for individuals.
- Address.
- Identification number.

Based on its risk assessment, [BANK] may require additional identifying information for certain customers or product lines.

Customer Identification Program (CIP) (cont'd)

The bank may rely on another bank's CIP procedures if these conditions are met:

- Reliance on the other bank's CIP is reasonable under the circumstances.
- The other bank is required to maintain a BSA/AML program and is regulated by a federal banking agency.
- The other bank enters into a contract with [BANK] requiring it to certify annually that:
 - It has implemented its AML program.
 - It will perform the specified requirements of [BANK]'s CIP.

Enhanced Due Diligence Procedures



For certain high-risk customers, the bank should consider obtaining additional client information, including:

- Purpose of the account.
- Source of funds and wealth.
- Individuals with ownership or control over the account, such as beneficial owners, signatories, or guarantors.
- Occupation or type of business.
- Financial statements.

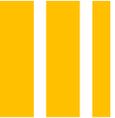


Enhanced Due Diligence Procedures (cont'd)

- Bank references.
 - Domicile (where the business is organized).
 - Proximity of the customer's residence, place of employment, or place of business to the bank.
 - Description of the customer's primary trade area and whether international transactions are expected to be routine.
 - Description of the business operations, the anticipated volume of currency and total sales, and a list of major customers and suppliers.
 - Explanations for changes in account activity.
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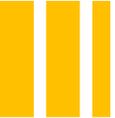
Recordkeeping Requirements

- The bank must maintain specific records related to its BSA and AML requirements.
- Records must generally be kept for five years.
- The bank must keep records of every **funds transfer of \$3,000 or more** that it originates, receives, or acts as an intermediary for.
- The bank must keep records of every **cash sale of between \$3,000 and \$10,000** of:
 - Checks.
 - Drafts.
 - Cashier's checks.
 - Money orders.
 - Traveler's checks.



Recordkeeping Requirements (cont'd)

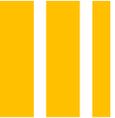
- The information required to be collected and retained depends on the bank's role in the funds transfer.
 - If the bank acts as an originator's bank, for example, it must collect and retain the:
 - Name and address of the originator.
 - Amount of the payment order.
 - Date of the payment order.
 - Any payment instructions.
 - Identity of the beneficiary's institution.
 - If available, the beneficiary's name and address, account number, and any other specific identifier.
-



Reporting Requirements

The bank must file various reports under the BSA, including:

- Currency Transaction Reports (*IRS Form 4789*).
 - Reports of International Transportation of Currency or Monetary Instruments (*US Customs Form 4790*).
 - Foreign Bank and Financial Accounts Reports (*Treasury Department Form 90-22.1*).
 - Suspicious Activity Reports (*Treasury Department Form 90-22.47; OCC Form 8010-9, 8010-1*).
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Currency Transaction Reports

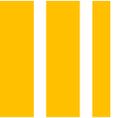
The bank must file a currency transaction report each time any of the following transactions **of more than \$10,000** occurs:

- Deposit.
 - Withdrawal.
 - Currency exchange.
 - Other payment or transfer.
-

Reports of International Transportation of Currency or Monetary Instruments

The bank must file a Report of International Transportation of Currency or Monetary Instruments (CMIR) each time it physically **transports, mails, or ships** any of the following into or out of the US that, in the aggregate, exceed \$10,000:

- Currency.
- Traveler's checks.
- Other monetary instruments.



Foreign Bank and Financial Accounts Reports

The bank must file a Foreign Bank and Financial Accounts Report (FBAR) if it holds in the aggregate at any point in the calendar year more than a **\$10,000 interest in one or more bank, securities, or other financial accounts** in a foreign country.

Suspicious Activity Reports (SARs)

The bank must file reports of suspicious transactions that may possibly be involved in a legal or regulatory violation.

The report is filed with the Financial Crimes Enforcement Network (FinCEN) and must include:

- The **person or entity** involved in the transaction.
- The **amount of money** involved in the transaction.
- The **nature** of the suspicious activity.
- The **date or date range** of the suspicious activity.

Mandatory SARs Filings

- Transactions of **\$5,000 or more** involving potential BSA violations or money laundering if the bank suspects or has reason to suspect that the transaction either:
 - Involves funds from illegal activities.
 - Is designed to evade BSA requirements.
 - Has no business or apparent lawful purpose or is not the type of transaction the customer would be expected to engage in.
 - Involves the use of the bank to facilitate criminal activity.
- Known or suspected criminal violations involving **at least \$5,000** when a suspect is identifiable or **at least \$25,000** if there is no identifiable suspect.
- Known or suspected violations involving insider abuse in any amount.

Voluntary SARs Filings

Even if reporting is not required, the bank may file a report of any suspicious transaction it believes is relevant to the possible violation of any law or regulation.

OFAC Compliance Program Requirements

OFAC rules do not require any specific compliance program requirements. However, an effective OFAC program should:

- Implement and maintain **written policies and procedures** for screening transactions and new customers.
- Have a **compliance officer** to monitor compliance and oversee blocked funds.
- Conduct OFAC **risk assessments** for various products and departments.
- Maintain **guidelines and internal controls** to ensure the periodic screening of all existing customer accounts.



OFAC Compliance Program Requirements (cont'd)

- Implement and maintain procedures for obtaining and maintaining **up-to-date OFAC lists**.
 - Ensure methods are in place for conveying **timely OFAC updates**.
 - Establish procedures for **handling and reporting prohibited OFAC transactions**.
 - Issue **guidance for SAR filings** on OFAC matches.
 - Conduct an **annual internal review or audit** of the OFAC processes in each affected department.
 - Conduct **training** for all appropriate employees.
-



End

