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Understanding Changes in the MSB Regulatory Landscape to Ensure Compliance

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Agenda

- **What are MSBs?**
- **What is FinCEN proposing for MSBs?**
- **Is stored value an MSB or bank activity?**
- **Key issues facing MSBs?**
- **Key issues facing banks servicing MSBs?**
- **Evolving ML/TF and other financial crime challenges for MSBs?**
- **What is expected of MSBs?**
- **Case studies**

The Basics

- **Federal versus state regulation**
 - Registration versus license
- **Bank Secrecy Act requirements**
 - Does it apply
 - Bank versus MSB requirements
 - AML program requirement
- **Federal criminal statutes**
- **OFAC**
- **Asset forfeiture**

WHAT IS AN MSB?

**Is the answer as clear as we
think?**

FinCEN'S Definition

- **Thresholds**
 - **Check Casher**
 - **Currency Dealer or Exchanger**
 - **Issuer/Seller/Redeemer**
 - **Checks**
 - **Travelers checks**
 - **Money orders**
 - **Similar instruments**
 - **Stored Value**
- **No thresholds**
 - **Money Transmitters**
 - **US Postal Service**

Money Transmitters

- **Person**
 - Whether or not licensed or so required
 - Engages as a business in accepting currency or funds denominated in currency
 - Transmits the currency or funds or value of currency or funds
 - By any means
 - through a financial agency or institution, a Federal Reserve Bank or other facility of a Federal Reserve Bank, the Federal Reserve Board of Governors or both or an electronic funds transfer network
 - And any other person engaged as a business in the transfer of funds.
- **Facts and circumstances test**
- **Excludes persons engaged in business of money transmission as integral to execution and settlement of the transactions.**
- **Business or agency engaged in activity determined by regulation to be similar to, related to, or a substitute for the activities**
- **Money transmitting business vs. money services business**

What About? Where Do They Fit?

- **MSB agent**
- **US bank – federal or state charter**
- **Foreign bank**
- **Bill payment system**
- **Prepaid card program manager**
- **ATM owner**
- **Payment processor**

FinCEN Guidance on MSBs

- **Foreign Exchange (dealer, risk management, consultant)**
- **Stored value**
- **Merchants reloading prepaid cards**
- **ATMs**
- **Armored Cars**
- **Bill Pay**
- **Payment Processors**
- **Check cashing where proceeds used to repay customers' obligations**
- **Loan acceleration products**

To Be ... Or Not To Be An MSB

- **Grocery store**
- **Convenience store**
- **Travel agent**
- **Hotel**
- **Taxi driver**
- **Prostitution ring**
- **Church**
- **Doctor**
- **Digital currency**
- **Other?**

FinCEN's MSB Proposal

- **Goal of review**
 - Efficient and effective regulation
 - Improve ability to safeguard US financial system
- **More clearly delineate scope of entities**
 - More predictable
 - More straightforward
- **Original rulemaking begun 1999**
- **Proposal published May 12, 2009**
- **Comment period closed September 9, 2009.**
- **Various areas of law enforcement encouraged to participate**

FinCEN's MSB Proposal

- **Foreign located MSBs with US presence**
- **Updated definitions**
 - Past guidance
 - Current business operations
 - Evolving technologies
 - Merging lines of business
- **Combine all stored value**
- **Solicit comment on stored value rewrite**

We Interrupt This Program...

- **The Credit Card Accountability, Responsibility and Disclosure Act**
- **Signed into law on May 22, 2009**
- **Section 503 required Treasury (FinCEN) to issue final stored value regulations within 270 days**
- **February 22 has passed**

FinCEN's MSB Proposal

- **Revised definition**
 - Remove “doing business”
 - Add “engaged in activities”
 - Activity and context – not status
 - **Dollar threshold - separate rulemaking**
 - More information for law enforcement?
 - Greater burden for consumer?
 - **Foreign MSBs**
 - Activity in US - physical presence not necessary
 - Focus - internet operations
 - Compliance with BSA recordkeeping and reporting?
 - Enforce CMPs?
 - Expand definition of “foreign financial institution”?

FinCEN's MSB Proposal

- **Dealer in foreign exchange**
 - Impact of “foreign” limitation
 - Mediums of exchange?
 - General application of recordkeeping requirements?
- **Issuer/seller/redeemer of travelers checks, or money orders**
 - Eliminates redeemer
 - Aggregate amount of checks sold

FinCEN's MSB Proposal

- **Check casher**
 - **Accept checks in return for currency...**
 - **Monetary and “other instruments”**
 - **Stored value treated as cash equivalent**
 - **Redemption of monetary value**
 - **Facts and circumstances**
 - **Excludes as low risk**
 - **Seller of closed loop stored value purchased with a check, monetary instrument or similar instrument**
 - **Redeemer of own checks**
 - **Holder of checks as collateral for repayment of loan**
 - **Others? Government checks?**
 - **SAR requirement?**
 - **Other exceptions or limitations?**
 - **Impact on businesses?**
 - **Impact on law enforcement?**

FinCEN's MSB Proposal

- **Money transmitter**
 - **Person who provides money transmission services**
 - **Money transmission service**
 - **Acceptance of currency funds or other value that *substitutes* for currency from one person and the transmission of such *to another location or person* by any means**
 - **Stored value and other currency equivalents that are funding sources**
 - **Retains facts and circumstances test**
 - **Exemptions including**
 - **Provider of delivery, communications or network access infrastructure**
 - **Payment processors provide ancillary payment services**
 - **Clearance and settlement system or intermediary between two BSA regulated entities**
 - **Closed loop stored value card provider**
 - **Physically transfer delivery, communication and networking access services used by a money transmitter.**
- **Should intermediaries be removed from MT definition?**

FinCEN's Request for Comments

- **Need to define “funds”?**
- **Aggregation of MSB services for threshold purposes**
- **Stored Value**
- **Foreign MSBs**
- **Thresholds**

FinCEN's Stored Value Proposal

- **Stored value definition**
 - Technologically neutral and consistent with actual use within the economy
 - Neutral as to the type of entity providing/issuing.
- **Define “stored value” better**
 - Use current regulatory and Uniform Money Services Act's definitions?
 - Focus on electronic monetary value generally accepted as medium of exchange, whether or not redeemable for currency or funds?
- **Treat stored value as form of money transmission?**
 - Impact on needs of industry, law enforcement and regulators?

FinCEN's Stored Value Proposal

- **Are distinctions between open and closed loop systems still meaningful?**
- **Should open loop and closed loop be regulated differently and if so, how?**
- **Should only certain uses or types of value transfers involving stored value be considered money transmission?**
- **Which stored value participants - issuers, sellers, redeemers - should be regulated and why?**
- **Threshold for any of these groups and if so, what thresholds?**

FinCEN's Stored Value Proposal

- **Different regulatory requirements for different stored value product ?**
 - In bearer form
 - Anonymous versus identifiable account holder?
- **Regulate memory chip products differently from magnetic strip products?**
- **Consider other issues or questions in light of actual ML/TF risks?**

What Does The Credit CARD Act Require For SVCs?

- **Treasury Secretary must consult with Secretary of Homeland Security**
- **Directed to implement Bank Secrecy Act**
 - **Address sale, issuance, redemption, and international transport of stored value, including stored value cards**
 - **May include CMIR for international transport**
- **Take into consideration current and future needs and methodologies for transmitting and storing value in electronic form**
- **Regulations final by Feb 22, 2010**

Issues Facing MSBs

- **Emerging technologies**
- **Multiple services to generate increased fee income**
- **Changing business models –on-going customer relationship**
- **Economic realities**
 - **Lower margins/Lower volume**
- **Agents**
- **Changing laws/regulatory expectations/best practices**
- **Aggressive Law Enforcement**
 - **Operating without license even if licensed**
 - **Asset seizures/forfeitures**
- **Southwest Border Alliance**

MSB Issues Facing Banks

- **Emerging technologies**
- **Is the entity an MSB?**
- **Is it properly licensed and registered?**
- **Is its AML compliance program adequate/implemented/effective?**
- **Is the revenue worth the risk?**
- **Regulatory pressure**
- **How much compliance is enough?**

Evolving MSB Expectations and Standards

- **Laws and regulations**
- **Sigue (Jan 2008)**
- **e-gold (July/Nov 2008)**
- **MoneyGram (FTC) (Oct 2009)**
- **Western Union (AZ et al) (Feb 2010)**
- **MSB Examination Manual (Dec 2008)**
- **FATF Risk Based Guidance for MSBs (July 2009)**

Federal Criminal Statutes

- Money Laundering: 18 U.S.C. Sections 1956 and 1957
 - Illegal to conduct or attempt to *conduct any financial transaction* involving the proceeds of any Specified Unlawful Activity (“SUA”)
 - Illegal to *transport, transfer or transmit* (or attempt to do so) a *monetary instrument or funds* into or out of the United States knowing the instruments or funds involved are proceeds of any SUA
 - Illegal to conduct or attempt to conduct a financial transaction with *funds represented to be proceeds* of any SUA (“sting offense”)
 - 200+ predicate offenses (SUA)

Federal Criminal Statutes

- 18 U.S.C. Section 1960
 - Money transmitting business illegal if
 - **Unlicensed** where it needs to be licensed
 - **Unregistered** if registration as MSB required
 - **Transmission** involving funds known to defendant to have been
 - Derived from criminal offense
 - Intended to be used to promote or support unlawful activity
 - Fines and/or imprisonment of up to 5 years
 - Money Transmitting Business = Transferring funds on behalf of public by any and all means including but not limited to transfers within US or to locations abroad by wire, check, draft, facsimile or courier

Federal Criminal Statutes

- **Terrorist Financing**
 - **18 U.S.C. Section 2339A**
 - Providing material support to terrorist
 - **18 U.S.C. Section 2339B**
 - Providing material support or resources to designated terrorists or terrorist organizations.
 - **18 U.S.C. Section 2339C**
 - Collecting or providing funds to be used to carry out a terrorist act

Office of Foreign Assets Control

- U.S. Department of the Treasury
- Administers many programs under multiple statutes and regulations
 - General applicability
 - Specific focus
- Foreign policy and national security objectives
- Depending on program, applies to all US persons
 - All US residents
 - All US citizens abroad
 - Not limited to natural persons
- List of Specifically Designated Nationals and Blocked Persons
- New Enforcement Guidelines
- Growing number of MSB penalties
- Real time checking

Other Laws

- **Unfair and deceptive practices**
- **State laws**
 - **Money transmitter**
 - Colorado style proposal
 - Other
- **Asset Seizure and Forfeiture**
 - Federal
 - State
- **Other laws (?)**

Asset Forfeiture

- **Civil**
 - *in rem* (against the property) action
 - Property is defendant
 - No criminal charge against owner is necessary
- **Criminal**
 - *in personam* (against the person) action
 - Indictment for defendant and property used or derived from crime
 - If money laundering - ancillary hearing for third parties to assert their interest in property order
- **Administrative forfeiture (19 U.S.C. § 1607)**
 - *in rem* action permits federal seizing agency to forfeit the property without judicial involvement.
 - Does not exceed \$500,000 in value

Sigue (1/08)

- **Sting operation**
- **Deferred Prosecution Agreement**
 - **\$15 million forfeiture**
 - **\$9.7 MM invested in compliance before 12/31/08**
 - **\$12 million concurrent fine paid to FinCEN**
- **Effective, risk-based BSA/AML compliance program required**
- **Interdiction system to block remitters/recipients**

Sigue

- **Principals are responsible for Agents' action**
- **Detection is not enough - must prevent money laundering**
- **New definition of customer for money transmitters**
- **Blocking transactions of “troublesome” customers**
- **Real time OFAC screening of transactions**

Sigue

- **Agent training and compliance program reviews**
- **Agent due diligence**
 - **Independent review**
 - **Credit and criminal background checks of agents and 10% control parties**
- **Agent Monitoring**
 - **More than structuring**
 - **Must prevent money laundering**
 - **Enhanced identification of senders >\$2000 per day**
 - **Enhanced due diligence of parties to aggregate transactions >\$25,000/12 months**
 - **Enhanced identification of beneficiaries through Mexico agents >\$950/day**
- **Agent termination**

e-gold

- **Plea Agreement – 18 USC 1960 violation**
- **Asset Forfeiture**
- **Lack of criminal intent**
- **Court returned forfeited funds for compliance**
- **Ordered to register, obtain licenses**
- **Customer identification required (CIP)**
 - Procedures for verification
 - Outside vendor
- **Anti-money laundering program**
 - Consultant
 - Website warning/disclaimer
- **OFAC compliance – (in)voluntary disclosure**

MoneyGram

- **“The FTC works for the consumer to prevent fraudulent, deceptive, and unfair business practices in the marketplace and to provide information to help consumers spot, stop, and avoid them”**
- **Money transfers increasingly payment method of choice for telemarketing scams preying on U.S. consumers**
 - **Quick access to untraceable nonreversible funds internationally**
 - **Lotteries, sweepstakes, overpayments, mystery shoppers**

Money Gram Specifics

- **180,000 agents/190 countries**
- **Allegedly did not adhere to its own extensive KYA program – failed to**
 - **Conduct adequate background checks of prospective agents**
 - **Adequately train and monitor agents**
 - **Investigate, suspend, or terminate suspicious agents**
 - **Adopt other reasonable measures to prevent fraud-induced money transfers**
- **79+% of all transfers of \$1000 or more from US to Canada over four-month period in 2007 using Money Gram were fraud-induced**
- **Between 1/2004 and 12/2008, average individual consumer fraud loss approximately \$2132.51**

Money Gram Specifics

- 2006 - 1458 Canadian agents received \$100,464,671 from US.
- **No fraud complaints about 1199 (82.2%)**
 - Average money transfer approximately \$440
- **5 or more fraud complaints about 151 (10%)**
 - \$83,371,776 from the United States
 - 96% of the total fraud complaints.
 - Average money transfer approximately \$1705.
 - **82.9% of money transfers sent by U.S.**
- 2008 - 1243 Canadian agents received \$118,041,862.45 in transfers of \$1000 or more US
- **No fraud complaints about 1001 (80.5%)**
- **5 or more fraud complaints about 131 (10.5%)**
 - \$93,728,340.58 from US
 - 95.4% of total fraud complaints
 - 79.4% of money transfers sent by U.S.

Federal Trade Commission v. MoneyGram

- **Allegations**
 - Multiple complaints - **agents complicit, or directly involved**, in Canadian telemarketing fraud
 - **Agents allowed to continue** operating without investigation, monitoring, audit, suspension, or termination
 - **Management and executives aware but failed** to take timely, appropriate, and effective remedial action
 - **Actively discouraged employees** from devoting time or resources to the investigation and prevention of fraud-induced money transfers

Federal Trade Commission v. MoneyGram

- **Settlement**
 - **Agent due diligence – background checks**
 - **Agent monitoring**
 - **Agent education and training**
 - **Agent discipline and termination**
 - **Consumer warnings**
 - **Consumer complaints**
 - **\$18 million “consumer redress”**

Western Union Settlement

- **\$94 million settlement with AZ Attorney General**
 - \$50 million to fund new Southwest Border Alliance projects
 - \$21 million reimbursement for AZ AG
 - \$24 million for compliance improvements
- **Specified compliance improvements**
- **Court approved monitor**
- **Information sharing with states**

Southwest Border Alliance

- **Informal group of law enforcement groups in the Southwest Border States.**
- **Provide expertise and executive services for distribution of the \$50 million plus contributions from “possibly other entities”.**
- **Members – AGs from AZ, TX, CA and NM, AZ Departments of Public Safety and Financial Institutions, and Phoenix Police Department.**
- **Develop AML Strategy and solicit grant applications for cases and initiatives with highest potential for furthering Strategy.**
- **Recommend how to distribute the funds to**
 - **Enhance and better coordinate investigations and prosecutions of money laundering in SWBA and “other areas affected by money laundering in the” SWBA**
 - **Enhance coordination of the four states’ AML efforts**
 - **Fund related training, info sharing and related expenses in four States and Mexico**
- **Priority given to proposals with potential to further Strategy and involve**
 - **Multi-state and international money laundering mechanisms**
 - **Movement of money to smuggling organizations with a record of violence**
 - **Movement of weapons from US into Mexico or the use of such weapons in Mexico**
 - **Multi-state information or data sharing or analysis**
 - **Training/coordination of conferences relating to money laundering/related activities**
- **\$7 million+ allocated to fund law enforcement initiatives in each of Alliance states.**
- **Maximize sharing and exchange of data acquired.**
- **Transaction data analysis using experienced analysts working with the Monitor’s staff**

Court Approved Monitor

- **\$6+ million budget – Hire a team**
- **29 to 41 months**
- **Submit:**
 - **Implementation Plan**
 - **6-month progress reports**
 - **Final evaluation in a Final Report**
- **Directors, officers, employees, agents, and consultants directed to cooperate**
 - **Noncooperation factor for “evaluation”**
 - **Direct communications**
 - **No penalty**
 - **Kept confidential**
- **Access to proprietary information**
- **Permitted to share information**

Monitor Agreement

- **Purpose of Monitor**
 - Ongoing evaluation of WU's SW Border Area AML Program
 - Ensure Program adheres to
 - Principles of FATF Risk-Based Approach to Combating Money Laundering and Terrorist Financing
 - Legal obligations
 - Agreement
 - Monitor Engagement Letter
- **Independence and discretion**
 - Carry out the Engagement
 - Confirm WU's implementation of Recommendations
 - Confirm WU's Program is reasonably designed and executed to detect and prevent money laundering in the Southwest Border Area

Monitor Agreement

- **Recognized WU has large and complex BSA/AML compliance program**
 - Spans all location including SW Border Area
- **Independent consultant report prior to agreement**
 - Made recommendations to enhance AML program
- **Agreed to maintain existing program and implement new measures recommended by monitor**

Implementation Plan

- **Written Implementation Plan within 180 days**
 - **Monitor's evaluation**
 - **Methodology, transaction data and other information relied on**
 - **Basis for evaluation**
 - **Recommendations reasonably designed to implement or improve Program.**
- **Conclusions and non-exclusive list of Recommendations based on**
 - **Review of documents deemed necessary, including all policies and procedures relating to Program, Report, and documents and materials cited in Report**
 - **Meetings with and interviews of WU employees, officers, and directors, and other relevant persons, including State representatives, as deemed necessary**
 - **On-site observation of WU's risk assessment and management systems**
 - **Analyses of transaction data**
 - **Studies of long-term and short-term border-wide trends, changes, and comparisons based on the transaction data**
 - **Testing of Program**
 - **Consideration of any written submissions from State or from WU**

Risk Assessment

- **Comprehensive risk assessment - foundation of risk-based compliance program**
- **Reliance on FATF RBA Guidance.**
- **Provide Risk Assessment for the SWBA within 30 days**
- **Identify most susceptible to money laundering activities :**
 - **geographic areas**
 - **Agents**
 - **consumers**
 - **transactions**
 - **products, services**
 - **points of consumer interaction (including agent locations)**
 - **any transaction data on which any portion of Risk Assessment is based.**
- **Compare transaction data relating to locations at different parts of SWBA**
 - **Identify similarities and differences**
 - **Examine changes over time to better identify potential money laundering patterns that span the area or move from one part of it to another in response to changing circumstances**
- **Updated as necessary throughout Engagement**
 - **At the request of Monitor, to address changes in these risks.**
 - **Identify any transaction data upon which any portion of e Risk Assessment is based**
 - **Show changes, trend lines, and specific examples**
- **Monitor's evaluation conducted on a regular basis**

Monitor's Evaluation of Risk Assessment

- Regularly monitor and compare transaction data for entire SWBA to track changes and predict further or future changes.
- Take into account whether WU considered
 - nature, scale, and complexity of its business;
 - the initial and ongoing due diligence or monitoring conducted on its Agents;
 - its distribution channels;
 - its consumer, product, and activity profile;
 - the capabilities of its electronic monitoring systems;
 - the volume and size of transactions
- Test WU's comparisons of transaction data relating to locations in different parts of SWBA
 - Evaluate and assess the Risk Assessment's identification of similarities and differences
 - Confirm changes over time that may be related to potential money laundering patterns.
- Evaluate whether WU has reasonably incorporated in Risk Assessment risk categories identified in FATF RBA Guidance and Monitor Engagement Letter.
- Evaluate WU's policies and procedures for updating Risk Assessment
 - Strength of connection between process for updating Risk Assessment and transaction data
 - Degree to which Risk Assessment reflects larger trends and activities across entire SWBA - not limited to smaller geographical subsets
- Work with WU's risk assessment personnel to establish **organic and flexible approach** to regular risk assessment
 - **firmly founded on transaction data** relating to the entire SWBA
 - **highly responsive** to changes in risk circumstances

Monitor's Evaluation of Program

- **Must give regard to**
 - Principles enunciated in FATF RBA Guidelines and provisions of Monitor Engagement Letter,
 - Risk Assessment for SWBA as reflected in WU's and Monitor's analysis of transaction data,
- **Consider WU's preparation to implement Recommendations**
- **Consider whether Program:**
 - Provides for adequate oversight and controls of Agents, consumers, transactions, products, services, and geographic areas more vulnerable to abuse by money launderers and other criminals;
 - Provides for regular review of risk assessment and risk management processes;
 - Designates adequate personnel responsible for managing an effective risk-based AML compliance program;
 - Ensures adequate controls in place before new product/service offered;
 - Contains channels for informing senior management of compliance initiatives, compliance deficiencies, corrective actions, and filing of suspicious activity reports;
 - Provides for program continuity despite changes in corporate structure or personnel;

Monitor's Evaluation of Program

- **Consider whether Program**
 - **Meets all applicable regulatory record keeping and reporting requirements and provides channels for informing personnel of changes in legal requirements;**
 - **Implements risk-based policies, procedures, and processes as appropriate;**
 - **Provides for adequate supervision of WU personnel who handle transactions, complete reports, grant exemptions, monitor for suspicious activity, or participate in other ways in Program;**
 - **Provides for periodic internal evaluations of whether WU personnel are adhering to written AML policies, procedures, and processes;**
 - **Incorporates AML compliance into job descriptions and performance evaluations of appropriate personnel;**
 - **Provides for appropriate initial and refresher training to be given to appropriate personnel;**
 - **Provides for appropriate initial and refresher training for Agents to be given at appropriate intervals;**
 - **Provides for on-site and AML compliance reviews and mystery shopping of Agents when appropriate,**
 - **Ensures AML compliance personnel are involved in all final decisions regarding disciplinary actions taken against Agents if such action includes probation, suspension, or termination.**

Evaluating Program Integrity

- **Based on principles enunciated in the FATF RBA Guidance, other appropriate industry standards, the Report, and Monitor Engagement Letter.**
- **Initial evaluation considers**
 - **Preparation to implement measures**
 - **Whether WU**
 - **Designates an individual or individuals at executive level with responsibility for Program**
 - **Provides such individual(s) with appropriate reporting lines within the corporate structure and sufficient access to Board of Directors and senior management**
 - **Allots adequate resources and authority to such individual(s) to ensure compliance with WU's legal obligations, Agreement, and Monitor Engagement Letter;**
 - **Whether senior management makes reasonable efforts to create culture of compliance encouraging personnel at all levels to adhere to AML policies, procedures, and processes**
 - **Whether WU employs sufficient number of AML compliance personnel, including personnel with direct oversight of Agents and personnel assigned to analysis functions - particularly transaction data analysis.**

Monitor's Possible Recommendations

- **Sufficient security to facilitate on-site review of all agents**
- **More measures to verify the identity of customers**
- **Automated monitoring tools that incorporate additional risk factors**
- **Final agent approval process assigned to risk management- independent from sales and marketing functions.**
- **Credit and criminal background checks on controlling persons of agent applicants (10% or more ownership) aggregating interests of other persons controlled by that person or an officer, partner, or agent of that person, or by a spouse, parent, or child of that person.**
- **Risk-ranking agents in the SBWA - subject highest risk (5%) to greater scrutiny of day to day operations.**
- **Prohibit controlling person of terminated agent from being controlling person at any Western Union Agent for at least three years.**
- **Annual criminal checks for Arizona authorized delegates and removal of those convicted of or pleading guilty to a felony charge within the last seven years or any felony charge involving money laundering or terrorist financing related activities at any time.**
- **Controlling employee sign-ons to its money transmittal system**
- **Providing specific enhanced controls for higher risk agent locations.**

Western Union

- **Open access to information on risk involved in credit card, stored value, and phone transactions**
- **Evaluate product/service risk of new or innovative Western Union products or services in Southwest Border Area,**
 - **products or services that may inherently favor a degree of anonymity**
 - **can readily cross international borders,**
 - **Examples: online money transmittals, stored value cards or other devices, money orders, and money transmittals by mobile phone**

FATF Risk Based MSB Guidance

- **Support development of common understanding**
- **Outline high-level principles involved**
- **Indicate good public and private sector practice in design and implementation of effective risk-based approach.**
- **Not mandatory**
- **Properly applied - not necessarily reduced burden but more cost effective use of resources**
- **Transfer of money or value and money and currency changing**
- **Diverse group of organizations**

FATF ON MSB RISK

- **Risk based approach**
 - **Dynamic**
 - **Able to evolve to match changed threat**
 - **Flexible**
- **Risk management process**
 - **Recognize existence of risk(s),**
 - **Undertake assessment of risk(s)**
 - **Develop strategies to manage and mitigate identified risk**
- **Risk analysis not static- must be kept up to date**
- **Strategies to manage and mitigate - typically aimed at preventing activity from occurring through mixture of**
 - **Deterrence (e.g. appropriate CDD measures)**
 - **Detection (e.g. monitoring and suspicious transaction reporting)**
 - **Record-keeping to facilitate investigations**

FATF On Risk Mitigation

- **Proportionate procedures based on assessed risk.**
- **No universally accepted methodologies**
- **Involves identifying and categorizing ML risks and establishing reasonable controls based on identified risk**
- **Effective risk based approach allows exercise of reasonable business judgment with respect to customers**
- **Application of reasoned and well-articulated risk-based approach**
 - **Justifies determinations with regard to managing potential ML/TF risks**
 - **Allows exercise of reasonable business judgment with respect to customers.**

FATF Recognizing Reality

- **Criminals will continue to attempt to move illicit funds through financial sector undetected**
 - Will, from time to time, succeed
 - Regardless of strength and effectiveness of AML/CFT controls
- **Reasonably designed and effectively implemented RBA - provides appropriate and effective control structure to manage identifiable ML/TF risks.**
- **Must recognize any reasonably applied controls, including controls implemented as result of reasonably implemented RBA will not identify and detect all instances of money laundering or terrorist financing.**
 - Regulators, law enforcement and judicial authorities must take into account and give due consideration to a MSB's well-reasoned RBA
- **Law enforcement or judicial authorities - take necessary action, including penalties or other appropriate enforcement/regulatory remedies when MSBs do not effectively mitigate risks due to failure to implement**
 - Adequate RBA
 - risk-based program that was not adequate in design, regulators,.

FATF on RBA to Counter ML/TF at National Level

- **Key elements for success:**
 - **Access to reliable and actionable information about threats by MSB and Regulator**
 - **Emphasis on cooperative arrangements among policy makers, law enforcement, regulators, and private sector**
 - **Recognition that risk-based approach will not eradicate all elements of risk**
 - **Atmosphere in which MSBs not afraid of regulatory sanctions if they act responsibly and implement adequate internal systems and controls**
 - **Regulators' supervisory staff - well-trained in risk-based approach, both as applied by supervisors and by MSB**
 - **Requirements and supervisory oversight at the national level - consistent among similar industries**

FATF Challenges

- **Resources and expertise**
 - Information on risks, at country and institutional levels
 - Develop procedures and systems
 - Train personnel.
- **Exercise of sound and well-trained judgment when implementing**
- **Greater diversity in practice - innovations and improved compliance may cause**
 - Uncertainty regarding expectations,
 - Difficulty in applying uniform regulatory treatment,
 - Lack of understanding by customers regarding information required to perform a transaction
- **Building expertise within MSBs**
- **Benefit from information sharing by competent authorities.**
- **Provision of good practice guidance**
- **Greater supervisory emphasis on effective decision making process.**

Potential Benefits and Challenges

- **Benefits**
 - Better management of risks and cost-benefits.
 - Focus on real and identified threats.
 - Flexibility to adapt to risks that change over time.
- **Potential Challenges:**
 - Identifying appropriate information to conduct a sound risk analysis.
 - Addressing short term transitional costs.
 - Greater need for more expert staff capable of making sound judgments.
 - Regulatory response to potential diversity of practice.

Certainties

- **Requirements to freeze assets of identified individuals or entities are independent of any risk assessment.**
- **Requirement to freeze is absolute and cannot be impacted by a risk-based process.**
- **Identification of potential suspicious transactions can be advanced by a risk-based approach**
- **Reporting of suspicious transactions once identified - not risk-based.**

FATF On Supervisors

- **Assessing money laundering and terrorist financing risks requires judgment**
 - Not an exact science
- **Supervisors**
 - Compare risk factors and procedures used by peer MSBs
 - Focus - determine whether or not MSB's AML/CFT compliance and risk management program is adequate to:
 - Meet the minimum regulatory requirements,
 - Appropriately and effectively mitigate the risks

FATF Risk Assessment

- **Identify products, services, geographic locations and points of customer interaction most susceptible to ML/TF activities.**
- **Factors to consider:**
 - **nature, scale and complexity of operations, including geographical diversity**
 - **initial and ongoing due diligence or monitoring conducted on' agent locations**
 - **customer, product, and activity profile**
 - **nature of business relationship (*i.e.* occasional vs. ongoing relationship).**
 - **distribution channels used.**
 - **electronic systems or platform used for data transmission.**
 - **transaction monitoring being performed.**
 - **volume and size of transactions.**
 - **extent to which the business is dealing directly with customers or is dealing through**
 - **intermediaries, third parties or in a non-face-to-face setting.**
- **Collect and share information**

FinCEN/IRS MSB Examination Manual

- **December 2008**
- **Risk Assessment**
- **AML program review**
- **BSA recordkeeping and reporting**
- **Suspicious activity monitoring**
- **Transaction testing**
- **Agent procedures**
- **Best practices?**

FFIEC BSA/AML Examination Manual

- **Due out in April?**
- **What will be new?**
- **Anything new on MSBs?**
- **New products and services**
 - **Stored value/prepaid**
 - **Bill payment**

Other Developments

- **New federal legislation**
 - Federal regulator?
 - MSB certifications?
- **More 1960 cases**
- **More new state laws**

Questions for Due Diligence

- **Does the entity require a license?**
- **Is it appropriately licensed?**
- **Is it an MSB under the BSA?**
- **How does the MSB registration requirement apply?**
- **What BSA reporting requirements apply?**
- **What BSA recordkeeping requirements apply?**
- **How does the AML program requirement apply?**
- **Does it operate an agent network and if so, how does it supervise the agents?**
- **Is there an OFAC compliance program?**

Law Enforcement in Action

- **Becoming engaged?**
 - Informants
 - SARs – SAR review teams
 - Investigations into other matters – with a trail
- **Organizing the effort**
 - Surveillance
 - Data base analysis
 - Investigation – trash runs, subpoenas
 - Corroboration

Law Enforcement Engaged

- **Establishing Probable Cause**
 - **Collecting the evidence**
 - **Setting the sting**
 - **Search warrant**
- **Indictment and Seizure**
- **Prosecution**
- **Sentencing**

Industry Perspective

- Documentation
- Transparency
- Cooperation

Protecting the Organization

- Know the red flags
- Good KYC/KYA
- Robust Monitoring
- Establish relationships with law enforcement
- Good response and the team
 - Lawyer – attorney client privilege
 - Internal Investigation
 - Forensics
 - Public relations

NEW YORK TIMES

March 20, 2009, 5:26 pm **High Value, Low Weight. Perfect for Laundering Money.**

By JENNIFER 8. LEE

- **Diamonds are a criminal's best friend, or so argue federal investigators. The Treasury Department's auktion of 605 diamonds on Friday was part of a larger series of auctions of items seized as part of investigations.**
- **New York's diamond district, as one of the centers of the industry, has been involved in a number of criminal investigations. In August 2003, a 76-year-old New York diamond jeweler, Yehuda Abraham, was indicted on charges of conspiring to operate an unlicensed money remittance system that would be used in the purchase of a shoulder-fired missile.**
- **These diamonds were from a case where Roman Nektalov, a diamond district dealer, was arrested in 2003 and later convicted as part of a Colombian drug investigation called Operation Meltdown. His son, Eduard Nektalov, was also indicted, but he was assassinated on a busy New York Street before he went to trial.**
- **In the money-laundering scheme that was the target of Operation Meltdown, drug traffickers and money brokers exchanged cash for gold and diamonds that were smuggled to Colombia by couriers or in cargo, Once there, goods were sold for Colombian pesos, which were then delivered to the narcotics dealers.**

Iced

The shooting on a crowded street of a diamond dealer under indictment for money laundering brought unwelcome light into hidden city worlds—and learning who he was only deepened the mystery.

By [Craig Horowitz](#)

Published May 21, 2005



- **CARRYING THE CASKET AT EDUARD NEKTALOV'S FUNERAL IN MAY. (PHOTO CREDIT: KIRK CONDYLES)**
- On a pleasant evening near the end of May, Eduard Nektalov closed his jewelry store in the heart of the diamond district and told an employee he was going to an appointment before heading home. Nektalov, who owned the store with his father, Roman, then started walking toward the Rockefeller Center Garage, two blocks away, where he kept his \$300,000 black Bentley.
- As Nektalov neared 48th Street, a long-haired man in a baseball cap, a black shirt, and black jeans walked up behind him, pulled a .45 out of the waistband of his pants, and shot the jeweler once in the back of the head. Nektalov collapsed instantly. As he lay facedown on the sidewalk, the shooter stood over him and calmly pumped two more bullets into his back. Purposefully, without panic, the gunman tucked away the weapon, did an about-face, and began to walk south on Sixth.

PRESS RELEASES

- **NINE MEMBERS OF THE KUMAR "HAWALA" HEADQUARTERED IN JACKSON HEIGHTS CHARGED WITH OPERATING AN UNLICENSED MONEY TRANSMITTING BUSINESS THAT SENT \$32 MILLION ABROAD , MAY 21, 2003**
- **SIX MEN ARRESTED, CHARGED WITH ILLEGALLY TRANSMITTING \$70 MILLION TO PAKISTAN, June 17, 2003**
- **ILLEGAL MONEY REMITTER DRAWS 21 MONTHS IN JAIL, September 9, 2005**
- **BANK OF AMERICA SETTLES MONEY LAUNDERING PROBE, SEPTEMBER 27, 2006**
- **27 INDIVIDUALS CHARGED IN CONTINUED PROBE OF DRUG MONEY-LAUNDERING IN MONEY REMITTER INDUSTRY, February 7, 2007**
- **FIVE CHARGED IN CONSPIRACY TO ILLEGALLY REMIT MORE THEN \$22 MILLION TO BRAZIL, July, 2, 2008**
- **PAKISTANI NATIONAL PLEADS GUILTY TO CONSPIRACY TO OPERATE AN UNLICENSED MONEY REMITTING BUSINESS, FEBRUARY 5, 2009**
- **TUSTIN MAN ACCUSED OF AL-QAEDA, TALIBAN TIES, February 20, 2009**
- **NYC CONSULTANT CHARGED WITH HELPING TO SEND MONEY TO IRAN, January 7, 2010**

EL POLLO RICO RESTAURANT OWNER **SENTENCED IN SCHEME TO LAUNDER MONEY** **AND HARBOR ILLEGAL ALIENS**

Forfeits \$7.2 Million in Cash, Properties, Vehicles and Other Assets

- **Greenbelt, Maryland - U.S. District Judge Roger W. Titus sentenced Francisco C. Solano, age 57, of Germantown, Maryland, co-owner of El Pollo Rico Restaurant located at 2541 Ennalls Avenue, Wheaton, Maryland, today to 36 months in prison followed by 3 years of supervised release for conspiracy to harbor aliens, conspiracy to commit money laundering and structuring bank transactions to evade reporting requirements in connection with the operation of the restaurant.**
- **from January 1999 to July 2007, Francisco Solano concealed illegal aliens in residences and businesses he and his wife owned and rented in Wheaton and Kensington, Maryland. Francisco Solano paid the aliens in cash and accepted rent payments in cash only. Francisco Solano did not prepare Employment Eligibility Verification Forms for those employees, which establish the eligibility of an individual to be employed in the United States legally**
- **Francisco laundered the proceeds from the illegal employment of aliens. Francisco and others deposited nearly \$7 million from the operation of the restaurant into the El Pollo Rico business account from 2002 to 2007. Funds from those deposits were used to pay for numerous personal assets, including property, jewelry, collectible coins, cars and investment accounts.**

EL POLLO RICO RESTAURANT OWNER SENTENCED IN SCHEME TO LAUNDER MONEY AND HARBOR ILLEGAL ALIENS

Forfeits \$7.2 Million in Cash, Properties, Vehicles and Other Assets

- Francisco laundered the proceeds from the illegal employment of aliens. Francisco and others deposited nearly **\$7 million** from the operation of the restaurant.
- Transfers were made from the business account to other business and personal accounts in the names of Francisco and other co-conspirators. Funds from those deposits were used to pay for numerous personal assets, including property, jewelry, collectible coins, cars and investment accounts.
- Transfers of monies were made from the his personal and business accounts into the El Pollo Rico business account to promote the business operations he used to harbor aliens.
- Finally, between 2002 and 2006, he structured deposits into the El Pollo Rico business account in ***amounts less than \$10,000 to avoid triggering bank reporting requirements*** that could reveal criminal conduct.
- Over the course of any 12 month period between January 2, 2002 and September 29, 2006, ***he structured and caused to be structured amounts in excess of \$100,000.***
- ***They forfeited \$1,572,218 in cash and \$7.2 million from 13 bank, securities account, seven properties, three vehicles, collectible coins and jewelry.***

Microstructuring,

Reported by the Wall Street Journal, 2005



Luis Saavedra

- Saavedra plead guilty in 2007 in NY to money laundering
- He and a partner are believed to have used family, friends, and hired hands to open 380 bank accounts in 6 states
 - Saavedra routinely made deposits of \$500 to \$1500 in each account – *microstructuring*
- Sent ATM cards to Columbian drug cartel to access the cash
- Number of ATMs in Colombia more than doubled between 1995 and 2000, rising from 2,238 to 5,520, according to the Banking Association of Colombia

- **Manhattan U.S. Attorney Announces Extradition of Leader of International Money Laundering Organization**

- David Murcia Guzman indicted for laundering narcotic proceeds through Colombian marketing giant D.M.G. Group
- Over the years DMG sold prepaid cards to customer in Latin America
- In exchange for its debit cards, DMG received a large quantity of cash in the form of Columbian pesos
- By 2008, DMG had over 400,000 customers with prepaid cards
- DMG used the Colombian Black Market Peso Exchange (BMPE) to laundered their Columbian pesos into U.S. dollars.
- The U.S. dollars thru use of a Columbian BMPE broker who had wired \$2.2 million in the “Blackstone Account” held in Merrill Lynch.
- In addition, DMG also hid narcotic proceeds by investing in real estate and limited liability companies in the United States.



*Dixon Found Guilty On 1 Of 4 Charges
Mayor Found Guilty Of Misappropriation Count, Not Guilty On Theft Charges
on November 19, 2009*

- **BALTIMORE** -- A jury convicted Baltimore Mayor Sheila Dixon on one count of fraudulent misappropriation by a fiduciary regarding gift cards she used personally that were intended for the needy. The jury found her not guilty on two theft charges that alleged she stole the gift cards.
- Baltimore Mayor Sheila Dixon will resign next month, part of a plea deal reached Wednesday that brings a years-long corruption investigation to a close and ends the tenure of the city's first female mayor.



Asset Forfeiture & Money Laundering Section of DOJ

- THEY HAVE FORFEITED MORE THEN \$1 BILLION DOLLARS EACH YEAR
- IN FY 2008, \$434 MILLION IN ACQUIRED FORFEITURE FUNDS WERE APPLIED TO MORE THAN 35, 00 CRIME VICTIMS

Asset Forfeiture & Money Laundering Section of DOJ

- **You ask how did they do it?**

- Notable Initiatives regarding AFML:

- **NATIONAL SUSPICIOUS ACTIVITY REPORT
(SAR) REVIEW TEAMS**

- AMEX BANK INTERNATIONAL in 2007

- » Forfeited \$55 million and FinCEN assess \$20 million along with Federal Reserve assessing \$20 million in fines

- UNION BANK in 2007

- » Forfeited \$21.6 million and OCC assess \$10 million in fines

ECONOMIC WOES PROMPTING MORE BANKS TO DROP MSB ACCOUNTS

REPORTED BY ML Alert, July 2009

- Cleveland-based National City Bank and San Juan, Puerto Rico-based Banco Popular, said to be withdrawing from MSB business
- PNC Financial Service has maintained “No MSB Accounts” policy for the past five years
- Only two banks service the New York City area for check cashers. They were Banco Popular and Capital One
- That’s 90% of the check cashers in that city.

REMITTANCES TO LATIN AMERICA AND THE CARIBBEAN TO DROP 11% IN 2009, ACCORDING TO IDB

Reported by Inter-American Development Bank, August 2009

- Decline in remittances could impact four million people in Latin America and the Caribbean, nearly one-third in Mexico
- The decline of 11% could amount to \$42.3 billion in 2009
- This year the average amount sent per transfer has fell from \$241 to \$230

Working Groups and Task Forces with Domestic Law Enforcement and Regulators

- During the year, anti-fraud task forces made up of domestic law enforcement agencies and regulators. Examples of these include the:
- **Bank Fraud Working Group:** This national, interagency working group led by the U.S. Department of Justice promotes enhanced communication between the Federal law enforcement and financial institution regulatory communities. The group seeks to improve coordination between law enforcement agencies and regulators in the investigation and prosecution of financial institution fraud.
- **Mortgage Fraud Working Group:** This subgroup of the Bank Fraud Working Group acts as a coordinating body that explores important issues regarding mortgage and subprime lending fraud. Recent issues have included foreclosure rescue scams and identification of large-scale industry insiders and criminal enterprises conducting systemic mortgage fraud.
- **Payments Fraud Working Group:** Made up of regulators and law enforcement agencies, this group seeks to detect and/ or mitigate retail payments risk issues.

Bank Secrecy Act Filings by Type, **Fiscal Years 2007 - 2009**

Type of Form	FY 2007	FY 2008	FY 2009
Currency Transaction Report (all types)	16,219,434	16,082,776	14,909,716
Suspicious Activity Report (for all covered industries)	1,157,468	1,318,984	1,321,848
Report of Foreign Bank and Financial Accounts	320,937	344,967	276,386
Registration of Money Services Business	18,380	21,102	19,234
Designation of Exempt Person ⁵	63,632	53,675	32,117
Report of Cash Payments Over \$10,000 Received in a Trade or Business (Form 8300)	173,027	184,305	180,801
Total⁶	17,952,878	18,005,809	16,740,102

314(A) PROGRAM DATA NOVEMBER 1, 2002 - OCTOBER 28, 2009

- Total requests for information - 1,061
- Number of Federal law enforcement agencies submitting requests - 24
- **Types of requests:**
 - Terrorism/terrorist financing - 320
 - Money laundering - 741
 - Number of subjects of interest identified in requests - 10,157
 - Total subject matches received from financial institutions - 67,476 (66,438 positive and 1,038 inconclusive)

Law Enforcement Uses Data Mining Tools To Search BSA Documents

- Narrative Searches in Currency and Banking Retrieve System
 - Form 4506
 - IRS
 - Tax
 - Levy
 - Lien
 - Treasury Check
 - Tax Refund
 - Tax Preparer
 - Tax Return
 - Safe Deposit Box
 - Pension Fraud
 - Offshore
- <http://www.irs.gov/privacy/article/0,,id=134898,00.html>

Law Enforcement Uses Data Mining Tools To Search BSA Documents

- **Narrative Searches in Currency and Banking Retrieve System**
 - Cayman Island(or other suspected country)
 - Wealth Management
 - Unemployed
 - Digital currency
 - Debit Card
 - Bankruptcy
 - Money Orders
 - Wire
 - Egold
 - Goldmoney
 - Employee
 - Gas station
 - Multiple
 - Retired

<http://www.irs.gov/privacy/article/0,,id=134898,00.html>

Law Enforcement Uses Data Mining Tools To Search BSA Documents

- **Narrative Searches in Currency and Banking Retrieve System**
 - False Identification
 - Material support
 - Baby formula
 - Cigarette Sales
 - Evasion
 - Cashier's chack
 - Trust
 - WIC
 - Food Stamps
 - Cell Phone

<http://www.irs.gov/privacy/article/0,,id=134898,00.html>

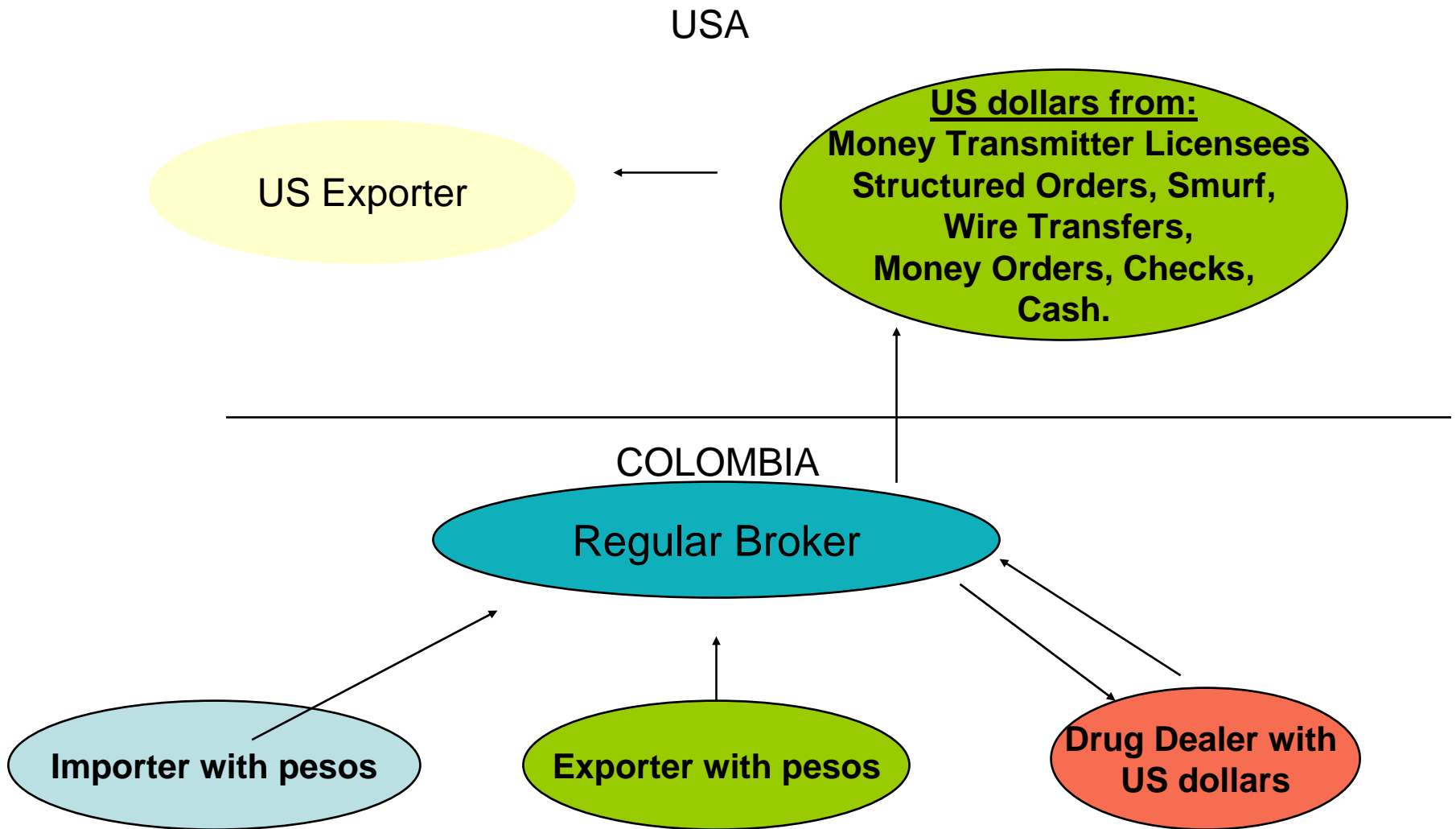
Law Enforcement Uses Data Mining Tools To Search BSA Documents

- **Violation codes Being Used:**
 - Tax, fraud and suspicious
- **Occupation Searches:**
 - Travel Agency
 - Accountant
 - Attorney
 - Student
 - Unemployed
 - Consultant
 - Jewelers
 - Temp agencies
 - Landscape
 - Construction
 - Doctor
 - Dentist
 - Chiropractor

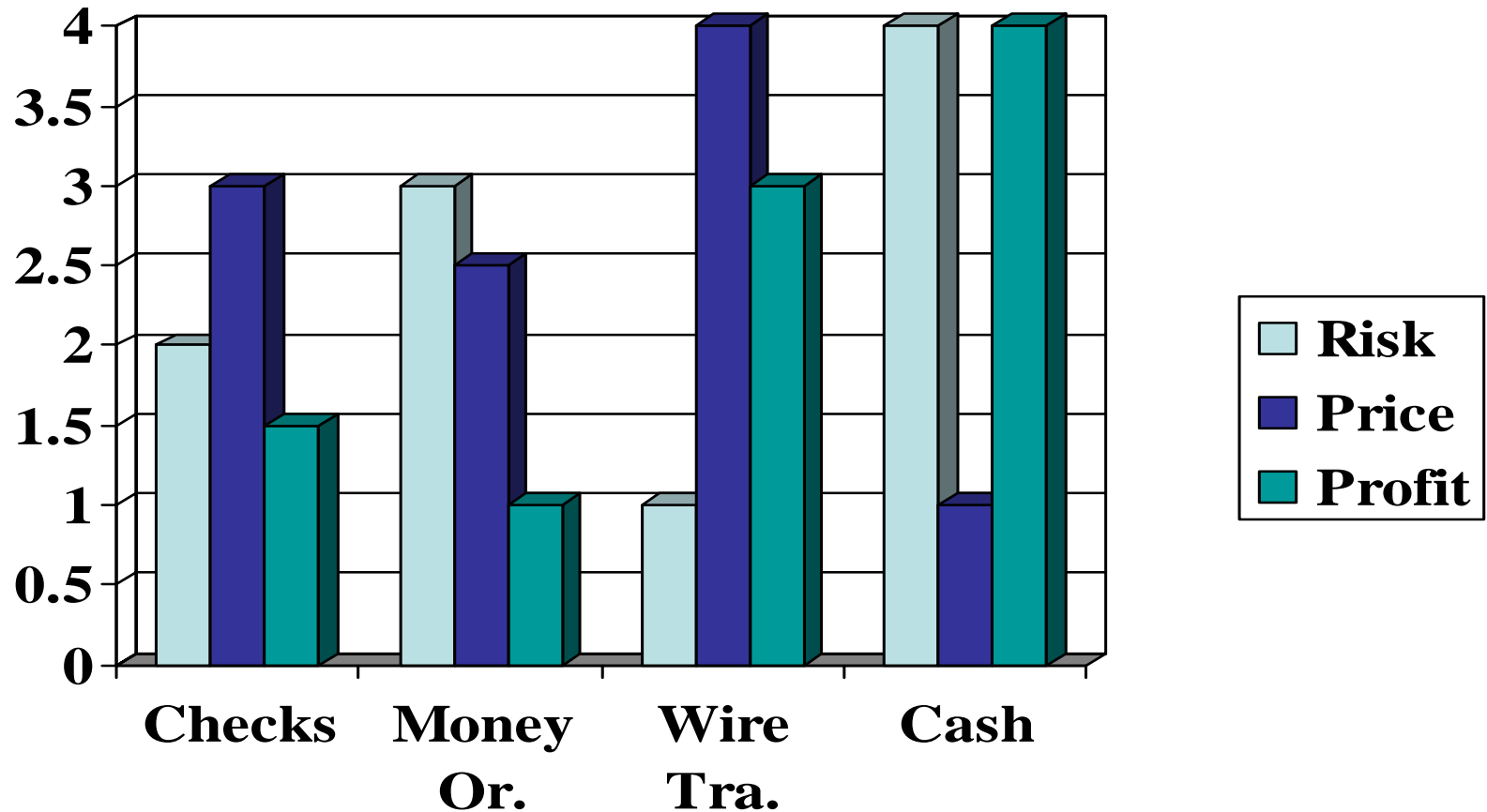


- **Department of the Treasury Financial Crimes Enforcement Network 1 Advisory**
- **FIN-2010-A001**
- **Issued: February 18, 2010**
- **Subject: Advisory to Financial Institutions on Filing Suspicious Activity Reports regarding Trade-Based Money Laundering**
- The Financial Crimes Enforcement Network (FinCEN) is issuing this advisory to inform and assist the financial industry in reporting suspected instances of trade-based money laundering. This advisory contains examples of “red flags” based on activity observed in Suspicious Activity Reports (SARs) that may indicate trade-based money laundering.

Regular Broker



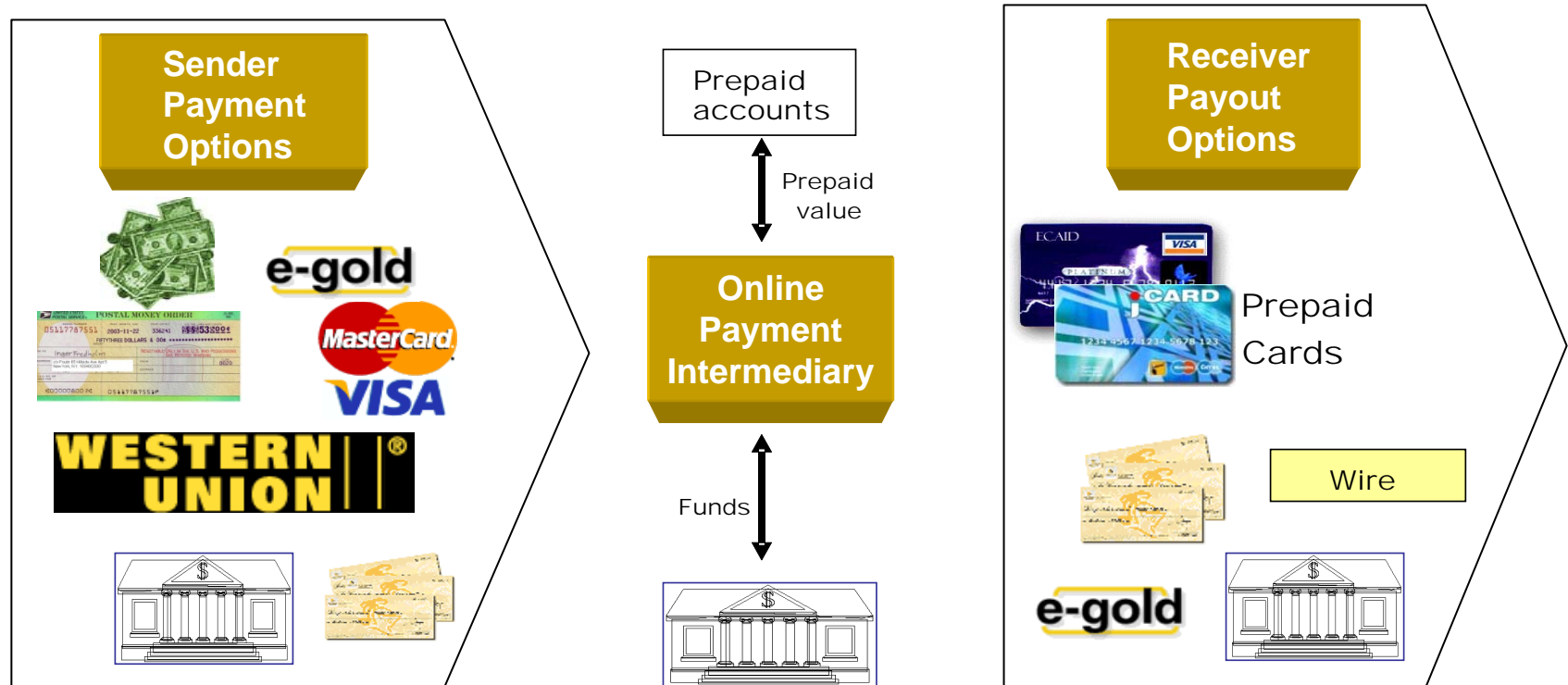
Brokers "Buying" Rates



BROKER BUYING

1= LOW 4= HIGH

All-Purpose Intermediaries



Money trail disappears without customer identification and transaction records

Western Express

- Manhattan DA charged that \$25 million in illicit proceeds was laundered through Western Express from 2002-2005
- Owners plead in 2006 to running unlicensed check cashing and money transfer business
- Western Express:
 - Bought/sold digital currency;
 - Distributed stored value cards;
 - Sold U.S. Taxpayer Identification Numbers; and
 - Rented U.S. addresses for client mail drops
- Clients used stolen credit cards to buy goods which were sold online in exchange for e-Gold which Western Express converted to cash and prepaid cards



EMERGING THREATS

Virtual Gaming Currencies

- Massive Multiplayer Online Role-Playing Game (MMORPG)
 - Entropia PEDs
 - Q coins
 - Linden dollars (Second Life)



Second Life



**Second Life is a 3D online digital world
imagined and created by its residents**

<u>Online Now: 42,515</u>	<u>US\$ Spent Last 24h: \$1,099,757</u>
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DIGITAL CURRENCY

Digital Currencies



Simon Davis



Douglas Jackson



Jim and Pam Fayed



Jim Turk



Andrei Trubitsyn



Gordon Hayes



Bernard von NotHaus



Dr. Habib Dahinden



Arthur Budovsky

Shadowcrew



- International organization of ~4,000 members, bought/sold stolen credit cards and identity documents often using E-Gold or Web Money
- 28 people charged, 21 in the U.S.

Conclusions

- **Agents, Agents, Agents**
- **Continually evolving Risk Assessment**
- **Customer Identification**
- **Effectiveness of BSA/AML compliance programs**
- **More scrutiny than ever before**
 - **Cadre of prosecutors trained in 1960**
 - **Forfeiture opportunities**
 - **\$50 million + fund for SWB area**
- **New technologies/solutions?**
- **More laws**

"TAKE AWAY"

- **Documentation**
- **Transparency**
- **Cooperation with Regulators and Law Enforcement**

Questions?

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