



II Congreso Internacional **PREVENCIÓN DEL LAVADO DE ACTIVOS Y DEL FINANCIAMIENTO DEL TERRORISMO**

19 - 20 - 21 de MAYO 2010 LIMA - PERÚ



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**Riesgos de LA/FT en Remesas del Exterior y
Aspectos a considerar para abrir una cuenta en EU**

por

**David Landsman, Director Ejecutivo de la
Asociación Nacional de Empresas Remesadoras de los EU**



Introduction

Two main topics addressed to Latin American financial institutions (bank and non-bank alike):

1. Paying out remittances (for a US institution), and
2. Maintaining a bank account in the United States to receive payments, execute your orders, and clear checks and other instruments.



Explain the Title:

**Riesgos de LA/FT en Remesas del Exterior y
Aspectos a considerar para abrir una cuenta en EU**

Ultimately, the question we all have to ask ourselves and answer, is: what are the responsibilities of financial institutions, when doing business with other financial institutions. What expectations should government impose? And who is 'government?'

'Government' is us. You and me.



**The theory of ‘facilitation’....‘electricity,’ or
‘contamination,’ or ‘infection?’**

The presumption of guilt.....

Is it fair?

No, but we must live with it and deal with it.



Laundering in Remittances: how pervasive is it?

Answer: in serious houses, doing real remittances, not very prevalent at all.

Luckily, you get a chance to see the beneficiaries, and keep track of them, investigate them further if necessary.

All correspondents are asking (demanding) to see complete sender information together with the orders.

(Also reference the 'Travel Rule.' Info must be preserved and passed on completely through intermediary financial institutions.)



What are the steps we take when we take on a foreign correspondent?

- 1. Verify Beneficial ownership (not so easy to do)**
- 2. Verify licensure (gov't supervision helps).**
- 3. Look at their compliance program.**
- 4. Talk to their compliance people and evaluate them.**



Extraterritorial reach of US Law and Law Enforcement

A new trend the world should be worried about.

FinCEN Request for Comment (Notice of Proposed Rulemaking) on Re-Definition of “MSB” was never enacted.



Web Resources:

FFIEC

[FFIEC Info Base](#)

[FFIEC Online Exam Manual TOC](#) *

FATF

[FATF Risk-Based Approach Guidance for Money Service Businesses - July 2009](#)

[40 Recommendations](#)

[FATF \(Home\)](#)

[9 Special Recommendations](#)

OFAC

[OFAC Compliance for MSBs](#)

Wachovia Prosecution

[Information/General Allegations](#)

[Deferred Prosecution Agreement](#)

[Statement](#)



More Web Resources:

FinCEN

[“MSB.gov”](#) – FinCEN’s ‘Home Page’ for MSBs

[FinCEN-IRS BSA Exam Manual 2008](#)

Interpretive Release 2004-1

[FinCEN’s Links to the main laws and regs](#)

Once you get there:

31 USC 5311 et seq. (the BSA)

18 USC 1956-1961 (the money laundering statutes)

31 CFR 103 (the FinCEN Regs implementing the BSA)

IRS

[IRS's MSB Info Center](#)

COSO Enterprise Risk Management (ERM) Matrix



What Must the FI Do?

- Not clairvoyance, mind reading or perfection;
- *Reasonably* verify the customer knows and is following the law. Means to 'forget' most of this presentation. Whatever policies you set, you must follow.
- Do so at a profit.
- Build systems and procedures that are reasonably designed to prevent, detect and report money laundering.



How would you define 'transparency,' from government's point of view?



Define social goals by our objectives: if our objective is transparency, then we must create conditions where transparency is encouraged, not discouraged.

The Dahabshil example.



Put Your Own BSA House in Order

- Maintain list of (high-risk) MSB customers, constantly
- Have an MSB Procedure / Scoring Method / Checklist; document, implement, review procedures; play to the audit; Board involvement / approval.
- Use existing official checklists; steep yourself in compliance culture; 3rd party / outside reviews.
- Sensitize your front line personnel
- Seek prior comment from your auditors.



Know Your Correspondents' Regulatory Requirements

- Know method and where LMT operates.
- Study state law and regs (ask customer.)
- Study state application and audit procedures
- Contact SBD for info
- If not licensed, look for sufficient legal protection and do extra diligence, or take a pass (Chase / Beacon Hill example)



In General

- Understand the money transfer business
 - Understand the licensee / agent model
 - Understand modes of operation
 - Transaction models
 - Computer and telecom systems
 - Settlement and cash flow issues
 - Understand expected patterns
 - Understand state's supervision
 - Follow up on deviations



Initial Due Diligence

- **Verify ownership, owner's identity, corporate existence, TIN, background check, personal / business financials, FinCEN Registration (see state MT application)**
- **Site visit, review MSB's major relationships**
- **Start a folder / establish control and review**
 - Relationship manager is point of control
 - Relationship manager is subject to oversight and audit



More Initial Due Diligence

- **Get compliance manual, audit report and NMTA certification**
- **Consult others, internally and externally**
- **Scoring method / special risk factors (country, product, agent, adequacy issues, mitigators, net risk)**
- **Pop-quiz and interview the applicant**



Leverage the Transmitter's Existing Audits

- **MSBs must have independent audits anyway, according to Sec 352 of the Patriot Act ('independent usually means 'outside')**
- **Enhance the existing audit with further questions, proofs and outside certification (ACAMS, references)**
- **Renew annually**



Elements to Look for in a BSA Audit

- Scope and standards commensurate with size
- Check auditor qualifications / resume
- Section 352 four points
 - Compliance Officer
 - Training program
 - Written policies beyond the manual
 - Independent audit
- Special risk factors
- Risk scoring
- Actual control being implemented
- Adequacy of systems



More Elements to Look for in a BSA Audit

- CTR, SAR review...
- 'Stress testing' of agents, employees
 - i.e. Running in-house sting operations



Non-BSA Elements to Watch

- OFAC procedures
- General business legal compliance
- Credit risk of the correspondent
- Fraud risk at the customer level....becoming a hot topic.



Best Practices

- Range of adequate solutions
 - ‘Risk-Based Approach
- Compare to others in the industry
- Room for improvement
- Follow up on audit recommendations



The Major Risk of a US Transmitter: The Agent

- Structuring at the agent level
 - Facilitation or initiation of structuring
 - Multiple licensees, extra danger
 - Agent's own non-licensed channels
 - ID Thresholds
- Remember, the agent is a financial institution under the BSA (the agent review)
- Make the agent your customer
- Agent supervision exercised by licensee



Ongoing Due Diligence

(Transaction Monitoring)

- Look at dollar levels once a month (set limits and document them)
- Analyze inflows and outflows
 - Amounts expected, where are they going, do they make sense?
- Periodically review transaction database
- Periodically review agent folders
- Rely on independent reviews?
- Audit at 6 month intervals for the first year, 1 year intervals thereafter
- Appropriate Action on emerging information



- The opposite of 'willful blindness' is 'due diligence'
- Due care is your shield, in the form of documentation and training.
- There is no substitute for judgment.



Have I forgotten anything, gotten anything wrong?

Are there any questions?

Are there any examples of challenges from your job that are relevant to illustrate any of these points?



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Thank you!