The Cornerstone Report

Safeguarding America Through Financial Investigations

Vol XII: No. 3 • Summer 2015

INSIDE THIS ISSUE

Cornerstone is U.S. Immigration and Customs Enforcement's (ICE's) comprehensive investigative initiative for fighting financial crime.

The Cornerstone Report is a quarterly bulletin highlighting key issues related to ICE Homeland Security Investigations (HSI) financial, narcotics and special operations investigations.

U.S. Immigration and Customs Enforcement

Toll-Free Tip Line: 1-866-DHS-2-ICE

www.ice.gov/cornerstone

Financial Facilitators

Introduction

The most persistent challenges faced when investigating money laundering are the shifting tactics Transnational Criminal Organizations (TCOs) employ to place and move illicit funds through the financial system. As law enforcement and regulatory regimes grow more effective at neutralizing vulnerabilities, criminal organizations increase their level of sophistication and become more daring in seeking other avenues to exploit. Increasingly, U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) special agents are encountering money laundering schemes that employ professionals, generally with ties to the legitimate business world, which either wittingly or unwittingly, provide support and assistance to TCOs. These "facilitators" of money laundering provide an extensive range of services to both legitimate customers and criminals. As such, facilitators exist outside the formal criminal structure of the TCO, but nevertheless play a critical role in the success of money laundering and other illicit activities.

The Cornerstone Report
Volume XII: No. 3
Summer 2015

Financial Facilitators *Continued*

The following article details the continuing and emerging challenges faced by law enforcement targeting money laundering facilitators and highlights case studies of recent investigations that feature how TCOs are employing facilitators in their efforts to earn, move and store illicit proceeds.

Criminal networks and money laundering facilitators: The nexus

The President's Strategy to Combat Transnational Organized Crime emphasizes that a principal objective in the effort to reduce transnational organized crime is to "target [TCO's] infrastructures, depriving them of their enabling means, and preventing the criminal facilitation of terrorist activities" (White House, July 25, 2011).

Beyond empowering TCOs with financial support for ongoing criminal activities, money laundering is a point of connection between traditional TCOs, which seek to profit from their criminal activities, and transnational terrorist organizations that have an ideological or political agenda. A 2003 report by the U.S. Government Accountability Office (GAO), the auditing arm of the U.S. Congress, revealed that many terrorist organizations employ "alternative financing mechanisms" to "earn, move and store" their illicit proceeds across borders and around the world. In some cases, criminal organizations and terrorist organizations have been known to employ the same strategies for placing, layering and integrating proceeds into the flow of legitimate commerce (GAO, November 2003). Facilitators rest at the nexus of these dense webs of illicit relationships.

Identifying a broad range of licit-illicit relationships, the President's Strategy notes that many facilitating entities serve as "convergence points" shared by different TCOs to launder illicit proceeds. These TCOs also "abuse some of the same financial intermediaries and front companies in regions where government or law enforcement corruption is prevalent, with officials receiving either revenues from the criminal businesses or ownership stakes in the legitimate appearing commercial entity."

To better understand the breadth of facilitation, the Middle East and North African Financial Action Task Force (FATF) offers a useful classification in a report on "Designated Non-Financial Businesses and Professions (DNFBP)" that may be exploited, either wittingly or unwittingly, to facilitate money laundering and terrorist financing (MENA FATF, November 10, 2008). They identify the following DNFBPs as presenting significant risk for exploitation as part of a criminal conspiracy:

- Lawyers and accountants (as well as notaries and other independent legal and accounting professionals)
- Real estate agents
- Dealers in precious stones and metals
- Casinos
- Dealers in automobiles and boats
- Horse races
- Trusts and company service providers

It is likely that in the years to come, this list will need to expand to encompass a wider range of potential businesses and professions that are vulnerable to exploitation by TCOs. By expanding our thinking to include DNFBPs as potential facilitators, we can broaden our understanding of what constitutes criminal conspiracy. Some nations have already begun to do so. The FATF recommends strengthening and extending international Anti-Money Laundering (AML) requirements to DNFBPs. Furthermore, the FATF suggests that DNFBPs should better understand their responsibility to report suspicious transactions and that the business and professional communities should strive to educate DNFBPs about the need to comply with AML guidelines.

Criminal assistance vs. facilitation: A critical distinction

For law enforcement purposes, it is important to distinguish the role of facilitators from that of individuals providing "criminal assistance." Under the heading of "criminal assistance," one might include a cash courier who is recruited to smuggle illicit funds from one country to another for a modest payment. These couriers are basically pawns in the criminal enterprise, commanding no specialized professional expertise or skills. They are largely interchangeable, and easily recruited and replaced, often at a relatively low cost. If a criminal "assistant" (a cash courier in this example) is intercepted by law enforcement while providing assistance to the criminal organization, their weak ties to the TCO will not necessarily cause a serious threat to the organization's overall cohesion. However, the intelligence that can be derived from an "assistant" through various law enforcement means can be invaluable in furthering an investigation. Due diligence should be adhered to when encountering these individuals to ascertain if they are indeed an "assistant" or serve a more integral part of the TCO. Contrarily, a facilitator is much more vital to the criminal enterprise. Since he or she enjoys ties to the legitimate business world, the facilitator can play an essential role in helping a criminal organization place, layer, and integrate funds into the financial system. The facilitator's professional status often provides a veneer of respectability to their activities, making them highly valuable to the criminal enterprise. For this reason, the services of a facilitator has become a more widespread tactic in money laundering; and thereby, of higher value as the target of an investigation.

Facilitator relationships are more subtle, indirect and opaque than traditional criminal relationships. This indirect relationship to, and removal from, the direct operations of a TCO is what makes the incorporation

The Cornerstone Report
Volume XII: No. 3
Summer 2015

Financial Facilitators *Continued*

of facilitators attractive to criminal organizations that want to disguise illicit actions. It also poses challenges for law enforcement and regulators who seek to identify and investigate facilitators' activities.

The dilemma: Challenges in targeting facilitators

The following section discusses areas in which facilitation is presenting new challenges for law enforcement:

Attorney-client privilege: In the U.S. and many other countries, an attorney's communications with his or her client in the course of providing legal services are generally considered confidential. This long-established legal concept affords attorneys a broad degree of discretion in their relationships with clients. However, if an attorney is working in a facilitator relationship, privileged communications with his or her client may be exploited. In other words, attorney-client privilege may be invoked solely as a mechanism to prevent the discovery of criminal activities in which the attorney may or may not be complicit.

Beneficial ownership: "Beneficial ownership" describes a business relationship in which one party holds ownership but the company or asset is nominally under the control of another party. As with many other practices that are exploited by money launderers, beneficial ownership is a recognized and legitimate legal strategy in many instances e.g., a parent or guardian who controls assets in trust on behalf of minor children, or an individual seeking to protect assets from potential litigation. However, like many other legitimate practices, beneficial owner relationships are vulnerable to exploitation. A clever facilitator might deploy this tactic to disguise the true owner's relationship to criminal assets, making it difficult for investigators and regulators to penetrate and analyze. Moreover, it is conceivable that the beneficial ownership "relationship" might be established so that the party of nominal ownership is unknowingly a party to disguising criminal activity.

Complexity of financial instruments: Another significant challenge to AML investigators and regulators is the sheer complexity of many of today's advanced financial systems and mechanisms. Even experts can struggle to keep up with some of the more sophisticated and exotic financial vehicles that have developed in today's markets. One remarkable lesson of the 2008 financial crisis was that, in many leading financial institutions, banking professionals didn't fully grasp how the financial mechanisms worked i.e., as derivatives, credit default swaps and collateralized debt obligations—or their implications as a part of the larger financial system. One concern is that this creates a "complexity gap" that will be a challenge for law enforcement investigators or regulators, should these vehicles be exploited for money laundering purposes.

Unconventional facilitation avenues: As AML regimes have grown more effective at detecting and preventing money laundering in the banking system and other traditional financial avenues, criminal organizations are growing equally creative in exploiting unconventional avenues for money laundering and illicit finance. Of particular interest are retail and cash businesses, nonprofit organizations and other entities that may receive lesser scrutiny from law enforcement and regulators. In some cases, this may entail taking advantage of economies where legal and regulatory checks are lacking. One study has revealed how churches and private educational institutions in Nigeria have been exploited by criminal organizations seeking to conceal and transfer illicit proceeds (Kingston 2011). As AML regimes continue to strengthen, a process of "capital flight" of illicit assets through these unconventional avenues is anticipated.

Case Studies

The following case studies are helpful in showing how money laundering is growing more complex and sophisticated as criminal elements employ professionals and legitimate business entities in money laundering conspiracies. All cases are derived from HSI investigative reports and observations from HSI special agents in the field.

The Cornerstone Report
Volume XII: No. 3
Summer 2015

Follow the Money Trails to Combat Crime *Continued*

Case 1: Houston corporate identity theft

The following case was referred to HSI by the City of London Police:

The scheme: Beginning February 2005 through July 2006, a pair of lawyers in Houston, Texas, were hired as part of a larger investment fraud conspiracy to establish the infrastructure used in the promotion and sale of fraudulent stock to victim-investors located in the United Kingdom (U.K.). These attorneys conspired to steal the identities of dormant, publicly-traded companies. They subsequently used the stolen corporate identities to create fraudulent, empty-shell companies that had the appearance of being publicly traded. The attorneys and their co-conspirators subsequently sold the fraudulent empty-shell company stock to victim-investors for millions of dollars in profit. The loss to the victims exceeded $126 million.

The results: The scheme generated no less than $126 million in fraudulent proceeds. In May 2012, both attorneys were convicted in U.S. federal court for their roles in the scheme. In August, one of the attorneys was sentenced to 18 months in federal prison and ordered to pay $800,000 in restitution. The second attorney was sentenced to 12 months in federal prison and ordered to pay her portion of the $800,000 in restitution. If not for the victim-investors contacting the City of London Police and the interagency cooperation between law enforcement in Spain, the U.K., and the U.S., this scheme may have continued. Additional individuals in Florida, New York, and the U.K. were convicted in relation to this conspiracy. One of the leaders of the organization received a sentence of 25 years in prison following a jury trial.

Lessons learned/Vulnerabilities and red flags: This is a classic example of a "facilitator" relationship. One of the most important lessons learned as the result of this investigation is that regulators should not assume business transactions details are valid without conducting proper vetting and due diligence. In the Houston scheme, there were several unrecognized flags that could have alerted regulators and investors to the fraudulent nature of the scheme. For instance, the Houston attorneys would forge the signatures of the defunct company's board members to affect their takeover of the company. State, federal and independent regulators received paperwork submitted by the attorneys requesting certain actions be taken (name change, board minutes, etc.). The regulators would accept the paperwork as valid without verifying that the signatures were genuine and without determining if the requested transaction was unusual or made practical business sense. As a result of this investigation, the Secretaries of State for both Nevada and Delaware, the Security and Exchange Commission (SEC) and Financial Industry Regulation Authority (FINRA) changed their processes and procedures related to company formations, instituting independent and higher levels of scrutiny with regard to due diligence. These are salutary developments; however, regulators, auditors, corporate officers, investors and others should be keenly aware of the need for thorough due diligence.

Case 2: El Paso attorney launders money for the Cartel

The scheme: An El Paso attorney conspired with multiple Mexican nationals, including the ex-wife of a former Mexican President, to launder approximately $600 million in drug proceeds for the Millennial/Valencia Cartel. The attorney, who was a philanthropist and former Carnegie Mellon Trustee, utilized his legal experience to generate false legal settlements for millions of dollars and created Limited Liability Companies (LLCs) in Nevada to launder the proceeds. The attorney also utilized lawyers in the Turks and Caicos Islands to aid him in creating additional false international LLCs and bank accounts to launder the drug proceeds. The attorney and willing associates furthered the conspiracy by hiring an independent cell of Mexican Nationals to exchange the bulk U.S. cash smuggled into Mexico for Pesos via Casa De Cambios.

The results: In September 2007, state and local officers conducting freeway interdiction outside of Atlanta, Georgia stopped a vehicle heading to El Paso, Texas, being driven by a former associate of the attorney. The vehicle contained over one million dollars in drug proceeds. HSI Atlanta special agents responded to assist with the interdiction and interviewed the driver. The driver admitted he was a money courier for the organization and was delivering the illicit funds to his co-conspirator, the attorney in El Paso. HSI special agents also learned from the driver that the organization used coded language to conceal identities of three cells associated with the cartel. The coded language included references to Girl Scout cookies and to alleged legitimate businesses. HSI special agents made arrangements for the money courier to deliver the money to the attorney in El Paso where he was subsequently arrested. The attorney admitted his role in the money laundering conspiracy and stated the drug money was destined for the cartel in Colima, Mexico. The attorney agreed to cooperate with HSI special agents in furtherance of the investigation. HSI special agents later learned that the attorney had continued his unlawful activity and again attempted to launder money for the cartel. The attorney was also allegedly involved in a separate and independent scheme to defraud the Mexican government, the Mitsubishi Corporation and FGG Enterprises.

The Cornerstone Report
Volume XII: No. 3
Summer 2015

Financial Facilitators *Continued*

Case 2: El Paso attorney launders money for the Cartel Continued

On Nov. 2, 2012, the attorney and main suspect of the investigation was arrested pursuant to an indictment for conspiracy to launder approximately $600 million dollars in drug proceeds.

On Oct. 28th, 2013, the El Paso attorney was convicted by a federal jury in the Western District of Texas for conspiracy to launder monetary instruments. Shortly thereafter, he was sentenced to 20 years in federal prison for additional money laundering charges and wire fraud stemming from the case linked to Mexico's state-owned electric utility-the Comision Federal de Electricidad.

Lessons Learned/Vulnerabilities and red flags: The utilization of attorneys to commit money laundering and other criminal activity represents a unique challenge to law enforcement. The Department of Justice has a strict policy and oversight when it comes to the investigation of an attorney, which can make normal investigative steps such as search warrants, subpoenas and wire taps exponentially more difficult to obtain. Attorney-client privilege can also cause additional roadblocks when attempting to conduct surveillance or intercept communications. A potential issue that may arise is the familiarity among attorneys practicing in the same district. In this investigation, the convicted El Paso attorney worked at a law firm that previously employed several attorneys that became Assistant United States Attorneys (AUSAs) and defense attorneys. He was also involved in many philanthropic activities and charities. The charities and schools were unaware that they were receiving "illicit" funds from this attorney. Lastly an overlooked source of information in these investigations is the State Bar Association. These associations receive complaints and information state wide and may have information that will reveal a pattern of abuse by a particular lawyer which may warrant an investigation.

Conclusion: Strategies for targeting facilitators

These challenges do not suggest that facilitators are "untouchable." In fact, one key vulnerability in pursuing many facilitators is that they typically have a position and reputation to uphold within the legitimate business world. They are not formally part of a criminal enterprise. In some instances, facilitators are unaware of the true nature of the proceeds with which they are working.

This means that if law enforcement can identify facilitators and target them in an investigation, they may be more amenable to working with law enforcement, simply because as public service business professionals, they "have something to lose," whether that be reputation, professional standing or even their livelihood. The threat of exposure, combined with the potential for prosecution and forfeiture of ill-gotten assets, can serve as a powerful incentive for would-be professionals to weigh the risk and /or cooperate with law enforcement before considering involvement as a facilitator in a criminal conspiracy. A 2012 article by Melvin R. J. Soudijn argues that facilitators might be most effectively targeted through a process of "removing excuses":

> *"In the canon of situational crime prevention, this technique is mentioned separately as a way to engage the moral conscience of potential perpetrators. By calling up feelings of shame and guilt, one can steer people back to the straight and narrow using minor, not too far-reaching adjustments. In addition, moral thresholds are emphasized to remind potential facilitators of their responsibilities."* (Soudjin, 2012)

While the "removing excuses" approach has been employed to address minor criminal activity and public nuisances, Soudjin suggests that the technique has implications for targeting facilitators in money laundering conspiracies.

Those who do take the plunge, however, may opt to cooperate with law enforcement, if and when they become the target of an investigation. In fact, the ability to tie facilitators to criminal activities has a potential cascade effect for investigators, these "weak links" can open up opportunities to strike at TCOs financial activities more effectively, causing serious disruption to the criminal enterprise.

Notably, the FATF calls for a "risk-based approach" to combat money laundering facilitation among DNFBPs, with the goal of ensuring the appropriate allocation of resources, "so that the higher risks receive the greatest care:"

> *"An efficient risk-based approach must include identifying and classifying [money laundering/terrorist financing] risks and establishing reasonable monitoring systems according to the risks identified. The implementation of the risk-based approach requires DNFBPs to have a good understanding of the risks and to be able to reach the right judgment. Trying to apply the risk-based approach without sufficient experience could lead to wrong judgments. For example, DNFBPs might overestimate the risks, which might lead to the waste of resources, or underestimate these risks, which would result in weaknesses."* (2008)

These recommendations recognize that effective AML regimes are based upon cooperation and mutual understanding between the law enforcement/regulatory community and the business/professional community. Law enforcement and regulatory agencies can nurture constructive cooperation and understanding by providing regular communication regarding new typologies and emerging threats in money laundering. These measures will allow DNFBPs and the larger business community to be better positioned to recognize unusual and suspicious transactions.