

Introduction

Good morning, everyone. It is a great honor and privilege to speak to you today. I have spoken at the West Coast Anti-Money Laundering Forum several times before, and it is one of my favorite events. I wish we could be meeting in person but, since that is not yet possible, I am glad that we are at least able to connect virtually.

The Bank Secrecy Act/Anti-Money Laundering regulatory regime stands at a critical inflection point. For some perspective, the BSA Framework is now over 50 years old and, I might add, showing its age. The events of 9/11 and the enactment of the USA Patriot Act occurred 20 years ago. And many of the BSA's implementing regulations were issued years before that.

In the meantime, technology is rapidly changing the way financial services are delivered, creating both compliance challenges and opportunities. Our laws and regulations are struggling to keep up with the pace of change.

Against this backdrop, the Anti-Money Laundering Act of 2020 has been enacted. There isn't much question that the AMLA is the most significant AML legislation in years and the first true AML reform legislation. In addition to the AMLA, there are important regulatory initiatives by FinCEN and the Federal banking agencies that are already underway.

For the first time there is a real opportunity to move the BSA forward in terms of its effectiveness and efficiency – and finally bring it into the 21st Century -- but that will only happen if the public and private sectors can work together on re-inventing the framework that has served us so well for so many years.

Evolution of the BSA

So let's talk about how we got here.

When the BSA was enacted in 1970, the world was a different place. There was no internet and no smartphones, you had a choice of three channels on your television, and most bank accounts were opened in person in branches. For certain, no one had ever heard of a fintech, or could imagine anything like cryptocurrency!

In this environment, the original focus of the BSA was on organized crime and tax evasion. In the 1980s and 1990s, the focus shifted to narcotics trafficking and money laundering.

There were many changes that were made to the BSA framework during its first three decades: these included the first "program rule," issued by the Federal banking agencies in 1987; the creation of FinCEN in the early 1990s and, most importantly, the Suspicious Activity Reporting system.

Prior to 1996, there were no SARs: banks mailed hard copy criminal referral forms to law enforcement and regulators. In addition, there was a check-off box on the Currency Transaction Report form to denote so-called "suspicious" cash transactions.

The SAR system replaced all of that, consolidating suspicious activity reporting into a single form (the SAR) filed in a single location (FinCEN), using automated methods.

The SAR system may seem mundane now, but it was revolutionary in its time, and it truly took AML to another level: for the first time, law enforcement could access a database containing reports of suspicious activity, and use automated tools to review and analyze such activity wherever it occurred.

Without question, the creation of the SAR system was a tremendous achievement. While there were many people that helped make it happen, there is no one that was more responsible than my friend and colleague – and a fellow speaker at this Forum -- Rick Small. At the time, Rick was an attorney at the Federal Reserve Board, and it was Rick, more than anyone, that took the laboring oar and made the SAR system a reality. This should not be forgotten, and we all owe him a debt of gratitude for that.

The Events of 9/11 and Why They Are Important Today

At the end of the 1990s, the BSA was under attack.

In 1998, the Federal banking agencies issued a proposed “Know Your Customer” rule that was roundly criticized. And, since I gave Rick such lavish praise for helping create the SAR system, for better or worse, I have to acknowledge his role with respect to the KYC rule as well.

By today’s standards, there was nothing draconian about the rule. It would have basically required banks to establish and document due diligence procedures, identify their customers, understand normal and expected transactions and sources of funds, monitor transactions, and report suspicious activities – then and now, the basic elements of an AML compliance program that financial institutions conduct every day.

But that’s not the way it was received. The issuance of the rulemaking proposal coincided with the dawn of the internet, and opposition to the proposal quickly grew and spread like wildfire. The proposal accomplished something that is difficult to do in Washington: it succeeded in uniting both ends of the political spectrum, and seemingly everyone in between, all in stark opposition to the proposal. Before too long, there was massive opposition from the banking industry, privacy advocates, States’ rights advocates, libertarians, and practically every media outlet in the country. Other than Senator Levin – who didn’t think it went far enough – it seemed like no one supported the proposal.

Under intense criticism, the FBAs were forced to withdraw the KYC rule. But even that wasn’t enough for the rule’s many critics. As unimaginable as it seemed, then and now, there was a growing consensus for a roll-back of the BSA, and perhaps even its rescission: in 1999, Congressman Ron Paul introduced the “Bank Secrecy Sunset Act,” a bill that would have not only required the immediate termination of the KYC rule, but would have abolished the BSA within one year from the date of enactment. Although it did not pass, that bill had 21 co-sponsors and received robust bipartisan support.

9/11 stopped all of that in its tracks.

It’s hard for me to believe that the 9/11 attacks occurred 20 years ago. For some of you it may seem a distant memory, and for others, it may just be something you read about in school. But, for me, 9/11 will be a day that I will never forget.

I remember what a beautiful day it was, with warm temperatures and not a cloud in the sky. It was my first day back in the office after a vacation, and I couldn’t have been in a better mood. I remember dropping my children off at day care, and wishing my son – who was born on September 11, 1999 – a happy birthday.

My boss at the OCC held a senior staff meeting every Tuesday at 9:00 am, and shortly after the meeting began, she received a call from her husband who told her to turn on the television. When she did, the first plane had already struck the first tower, and the television commentators were speculating on what had happened, whether the pilot had a heart attack or it had been some kind of a horrible accident. When the second plane hit the second tower, we all knew that it had been no accident.

We sat there in stunned silence for several minutes, and a short while later someone came into the room and told us that there had been an attack on the Pentagon. I got up and walked to a conference room that overlooked the Potomac River into Virginia, and I could see the black smoke billowing in the distance.

My wife was also an OCC attorney, and I immediately went to her office and announced that “we are under attack.” Being a good Washington bureaucrat, she assumed that I meant that our agency was being attacked by its critics in Congress or in the media. When I told her about the attacks on the World Trade Center and the Pentagon, she got up, went straight to the parking garage, got in her car, and drove back to Virginia to bring our kids home from the day care. I stayed behind, fully expecting that, in a short period of time, I would see a commercial jet fly into the U.S. Capitol, just a few blocks away from my office. Thanks to the heroic acts of the passengers on Flight 93, that never happened.

When I watched the second plane hit the World Trade Center, I immediately knew our world had changed forever. This was true for everyone, of course, but it was especially true for AML compliance professionals. Literally in a matter of hours, AML became a top-level priority. The BSA was suddenly transformed from being a mere recordkeeping and reporting statute to a matter of national security. For the first time, the BSA was viewed not just as a means of combatting money laundering, but also as a primary weapon in the new “War on Terror.”

In the immediate aftermath of the attacks, banks played a critical role. They worked closely with law enforcement to locate accounts used to finance the attacks, and identify the hijackers. They also worked with regulators to ensure that the financial system continued to function smoothly. For a brief, shining moment, politics did not matter and there were no longer any divisions -- we were all united in defending our

country and helping the victims and their families. I was glad to have played a role in responding to the attacks – how ever small – and I have never been so proud to be an American.

A few weeks after the attacks, the USA Patriot Act was enacted into law, requiring FinCEN and the Federal functional regulators to issue regulations that would build out the AML/CFT framework for years to come: the CIP rule, the foreign correspondent/private banking account rule, 314(a) and 314(b), and many other requirements that we live with every day originated with the Patriot Act.

Never before had our work been more important. After 9/11, no one was calling for a roll back of the BSA.

Post 9/11 to the Present

Over the last 20 years, the BSA has continued to grow and evolve. Following enactment of the Patriot Act, program rule and other requirements were extended to a wide array of industries. In 2005, the FFIEC issued the first BSA/AML Examination Manual, not only making transparent the examination procedures used by all of the FBAs but collecting, under one cover, all of the disparate guidance that was in existence up to that point.

In 2016, FinCEN issued the Customer Due Diligence rule, which included a requirement, for the first time, that banks and other financial institutions identify and verify the identities of beneficial owners of their legal entity customers.

Today the BSA is used to combat a host of financial crimes, e.g., human trafficking, elder abuse, cyberfraud and, most recently, Covid-19 fraud and domestic terrorism.

There is no question that the reports and other information generated by the BSA are of great value to law enforcement, and have facilitated the investigation and prosecution of criminals, criminal organizations, and terrorists who have attempted to use our financial system to conceal or commit their illicit acts.

There is also no question that the BSA has helped bring wrongdoers to justice, and made our world safer. All of us who work in AML or have worked in it have much to be proud of; however, we can, and must, do better.

As valuable as it is, the information about illicit activity that is presently being captured is a small fraction of the total universe. And, as presently constituted, the system is highly inefficient, as evidenced by the huge volumes of false positives generated by transaction monitoring systems that must be investigated and decided.

All of this has caused the costs and burdens of compliance to soar astronomically. The rising compliance costs have had perverse outcomes, such as the widespread de-risking of legitimate businesses.

At the same time, technology is revolutionizing the delivery of financial services, and developing modern tools that could change AML compliance forever – however, those tools have yet to be adopted for widespread use.

Clearly, the BSA regulatory regime is in need of some updating.

The AMLA of 2020 and the Future

On January 1, Congress overrode the President's veto of the National Defense Authorization Act and the AMLA was enacted into law. The AMLA is almost 100 pages long and contains many provisions – there are way too many to mention all of them here – that could have a profound impact on AML compliance in the future.

For example, the AMLA includes provisions that will require:

- establishment of a national registry of beneficial ownership information and revisions to the beneficial ownership requirements of the CDD rule;
- issuance of National AML/CFT Priorities;
- a review of existing SAR requirements;
- enhanced information-sharing, including a pilot program to share SARs with foreign affiliates;
- promotion of technology and innovation, including establishment of a BSAAG Subcommittee;

- a review of existing regulations; and
- mandatory, annual training for examiners.

These and other provisions in the AMLA, many of which will be discussed at this Forum, can help make AML reform a reality.

But there is very little in the AMLA that is self-effectuating and, in the coming months, FinCEN and the other agencies will be rolling out proposals for rules that will implement the statute. Indeed, the process has already begun with the issuance of FinCEN's Advance Notice of Proposed Rulemaking on beneficial ownership.

In order to have a voice in shaping what the future of AML will look like, it is critically important for the financial services industry to stay engaged and participate in this process.

Time and again, experience has shown that when the public and private sector work together, great things are possible – just think back to the response to 9/11 and, more recently, the rapid development and delivery of the Covid vaccines.

I look forward to working with many of you in the room today to help build the AML framework for the next 50 years.