

Essay on obstacles and challenges facing a new senior anti-money laundering and c...

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According to Hadley & Harris (2014), the Internal Revenue Service (IRS) issued supplementary final and temporary regulations that can be found in T. D. 9657 under the Foreign Account Tax Compliance Act of 2009, or “ FATCA”, including new regulations that can be found in T. D. 9658. These new rules and regulations have modified the international withholding, as well as the backup withholding and the rules on reporting of information which are applicable beyond the scope of FATCA (Hadley & Harris, 2014).

As a general rule under the FATCA, the American withholding agents are mandated to withhold tax on specific payments to the following: First is the foreign financial institutions that fail to report requested information regarding bank accounts that are being held by U. S. individuals to the IRS (Hadley & Harris, 2014). Secondly, there are certain nonfinancial foreign entities which do not disclose information regarding substantial U. S. owners who are under them. These regulations that were issued on February 20, 2014 have added and amended the FATCA regulations that had been previously issued in January 2013. These new rules also incorporate to the IRS administrative guidelines that were issued for the past year (Hadley & Harris, 2014),

Pursuant to the new FATCA regulations that were issued on 20 February 2014 were created for the purpose of fixing the existing FATCA regulations in order to provide better coordination with the FATCA regulations with regard to the general international withholding, backup withholding and the rules on reporting information, and to facilitate the withholding and reporting procedures currently being used by banking institutions and other paying agents (Hadley & Harris, 2014). At the same time, the new rules will also

prevent the duplicate withholding and information reporting, and to align the FATCA regulations with the newly issued draft IRS Forms W-8, as well as the alignment of the FATCA regulations with the intergovernmental agreements (IGAs) that have been entered by the U. S. Treasury Department with foreign governments (Hadley & Harris, 2014). As a result, some countries like Switzerland had entered an agreement with the U. S. to take a further step to promote full transparency in financial and banking rules by releasing two consultation drafts. The first draft was created for the purpose of preventing money laundering and terrorist financing (Wood, 2013). On the other hand, the second was created in order to enhance due diligence efforts in taxation (Wood, 2013).

Wood (2013) stated that in order to strengthen the efforts to prevent money laundering, the Federal Council offered the revised recommendations of the Financial Action Task Force or the “ FATF”. In the case of other countries such as Switzerland, although its anti-money laundering regulations had been attuned with the new FATF standards, there are new changes that have to be implemented including the introduction of the disclosure obligation for the holders of bearer and registered shares that come from unlisted companies. At the same time, there is also a new requirement to ensure that the identity and risk-based due diligence efforts are enhanced to cover the politically exposed individuals that are located in Switzerland and international organizations. The new rules also require the introduction of a predicate offence or an act that will be tantamount to tax fraud or money laundering. In the new Swiss rules, there is a restriction on cash payments covering real estate and movables to CHF 100, 000 (Wood, 2013). For those

payments that exceed the stated amount, they have to be processed using a financial intermediary that must be subjected to the provisions of the Anti-Money Laundering Act (AMLA). Finally, there is also a demand to increase the efficiency of the reporting system and to make the procedures for financial intermediaries simpler and more straightforward (Wood, 2013). These enhanced due diligence requirements that apply to financial intermediaries will require risk-based assessment that is created for the prevention of the approval of untaxed assets (Wood, 2013).

Thoumi (2011) argued that Anti-Money Laundering (AML) policies and instruments had been deemed to be increasingly necessary as drug trafficking, and other illegal economic activities, since organized crime had grown globally, and have developed strong links with terrorist actions. According to Page (2001), with the present money-laundering that had been accounted for to range from 2 percent and 5 percent of the world's GDP, per IMF report, the pressure on banks and their advisers to combat criminal misuse of the global financial system had accelerated. After the September 11 incident, a substantial escalation on the mission to fight terrorist funding became the biggest challenge to banking institutions across the globe (Ferwerda, 2009). As a result, majority of the financial institutions have to tighten their controls to ensure that their reputation is protected and to build an environment where compliance is an urgent point of interest. The permissive controls within financial institutions shall create a risk to the bank's reputation (Page, 2001).

The Financial Crimes Enforcement Network (FinCEN) had declared on August 8, 2007, the issuance of the final rule implementing a key provision of

Section 312 of the USA PATRIOT Act, clarifying the risk-based procedures that American financial institutions must use to create their enhanced due diligence for the purpose of assessing the risks of some foreign banking relationships (Bank Regulation/Thrift Regulation, 2007). Under Section 312, the rule states that American financial institutions must be able to identify, as part of their due diligence efforts, the owners of the foreign banks if their shares are not publicly traded and to ascertain if the foreign banks provide correspondent accounts to other foreign banks. Hence, this will ensure that they are given access to the U. S. financial system. This will be helpful for the gathering of available information on the foreign banks' anti-money laundering record nature of the foreign supervisory regulations under which the bank is operating (Bank Regulation/Thrift Regulation, 2007).

The 9/11 terrorist attack changed the attitude of banks toward Anti-Money Laundering (AML), seeking viable detection solutions from large to smaller banks. From a simple compliance concern, combating AML act and terrorism became the mission of banks and other financial institutions by integrating process improvements. The improvements on the AML process is a matter of developing and ace investigation program by using the latest tools for detection. For the senior Anti-Money Laundering (AML) and Combating Terrorist Finance officers, some of the obstacles and challenges they have to face include creation of design environments that make the data, distracting misinformation, improved cost efficiency and performance (Bieslski, 2006).

The Head of the AML and CTF department of international banks should make sure that their managers are trained by the Association of Certified Anti-Money Laundering Specialists. At the same time, they also have to train

some of their employees who shall become investigators for potential counterfeiters, terrorist groups, and even some of the bank's own employees who may be involved in these criminal activities. It is the duty of the AML and CTF to implement a tactical approach so that the systems and the programs work together for a larger purpose (Bieslski, 2006).

One illustration is the case of Hong Kong and Shanghai Bank Corporation (HSBC), it has designed a scheme that seek to combine detection information from disparate systems that are located across countries and several lines of business (Bieslski, 2006). HSBC intensified its fraud detection in private banking and fastened the loose ends AML in certain key regions. The main objective of HSBC is not to establish a monolithic system, rather to build a flexible and well-coordinated set of technologies intended to fight false positives (Bieslski, 2006).

At present, many of the banks all over the world have transformed sophisticated systems in terms of deployments in lines of business where they have been operating for the past decades. In case the head of the AML and CTF division works for well-practiced domestic banks, their next challenge is how to make the new cross-border trading business compliant. To be able to meet the compliance standards set forth by the Federal Financial Institutions Examination Council, financial services firms have to be involved in complicated risk assessments to ensure that the program shall be improved over the lapse of time.

Another major challenge is how to train the required employees who will operate the system due to the shortage of qualified personnel. The most important task is how to handle content efficiently since this involves

documentation process by moving data, information and documents around easily to make sure that banks work more proficiently (Biesliski, 2006).

The AML and CTF programs should be in writing which means that they are policy-based with the designation of compliance officers. The policy should also contain an existing employee training feature program, which must be tested for viability and to have an independent audit function (Biesliski, 2006). Other challenges include data quality issues and processes, and how to deal with false positives and false negatives, at the same time. However, there are also several highly effective wares such as behavioral analysis and transaction-monitoring solutions, as well as creating solutions for the Office of Foreign Assets Control or the " OFAC" watch lists, and case monitoring tools (Biesliski, 2006).

These anticipated challenges are most technical related since there is a need for the banks to create direct, simple, affordable and dependable solutions that cover broader aspects of AML agenda as against complicated systems that can still be manipulated by fraudsters who are intelligent enough to elude detection that are being imposed by simple rules engines. Aside from these, the Head of the AML and CTF division must also see to it that there will be eventual incorporation of broader technologies such as customer relationship management and workflow tools that will be able to work together to meet the objectives of the AML and CTF programs (Biesliski, 2006).

However, there are also non-technology challenges such as the level of criminal sophistication that had been achieved as post-effects of the 9/11 incident. These other challenges include wealth management, brokerage

divisions and other possible entangling lines of business that can create avenues for the criminals to travel abroad (Biesliski, 2006). The recent fraudulent schemes are increasing that multi-channeled due to the evolution of sophisticated fraudulent activities. Combating fraud does not only mean complying with the minimum standards, it also requires that the banks correlate the rules engine of their profiling device to match the data of their customers (Biesliski, 2006). In fact, even the most impressive and expensive anti-money laundering programs require that the banks transcend the regulatory requirements since the most essential part is how to execute the programs and policies. Some of the best examples of banks are ABN Amro and Citibank, since they had to concentrate and exert efforts in developing their own investigation units which can follow through a lead to logical conclusions (Biesliski, 2006). The main thrust of every bank is how to improve its workflow and case management, by ensuring that the investigation process had been meticulously studied every minute detail of the transactions involved. Having a clear understanding of what technology will work to be able to prevent genuine honest anomalies that are bound to take place (Biesliski, 2006).

Another challenge is how to establish a systematic, enterprise-level and architect-driven approach for the delivery of services. The approach should be geared towards how to turn services into reusable assets by adding the visibility, governance, and management capabilities of service-oriented architecture (SOA). To ensure a dynamic SOA means the orchestration of composite services that are in demand to further enhance the agility and improved alignment of business processes and Information Technology or IT,

in order to ensure the success of the SOA evolution (Biesliski, 2006).

The recent bank shift in AML oversight forced software vendors to ensure that the proper precautions are taking place in the process of opening bank accounts. The challenge for the Head of AML and CTF divisions is to ensure that the AML systems are compliant with legacy data silos, where signs of criminal activities could be lost in translation among product divisions, disparate compliance operations and incompatible case management systems (Fest, 2007). Hence, data quality is essential in order to spot the connections that may lead to drug money or terrorist financing. The know-your-customer policy makes the banks liable to report suspicious activities as part of their obligatory record keeping (Mandell, 2003). According to Cocheo (2008), the AML examination process revolves around the bank's risk assessment.

In a sense, the bank scripts its own examination, in a manner in which the examiners will use the risk assessment as one of the yardsticks for the purpose of determining how well the bank is discharging its AML compliance duties. The Head of the AML and officers of the CTF officers should be able to speak about the functional parts of the bank on issues which they see in their areas and about the potential risks that their lines of business pose (Cocheo, 2008). These officers must have sufficient knowledge about the functions of their jobs. They should also know the consequences if the policies and programs are not properly carried out. During the course of the process, the senior AML and CTF officers must ought to be included during the product design process in order to eliminate unnecessary risks at the outset (Cocheo, 2008). This can be illustrated in the creation of the bank's "

watch list” of customers rating special monitoring. According to Unger & van Waarden (2009), the bank’s tendency to over report on the ground of the risk-based approach means that they have to estimate the risks of a transaction being suspect of money laundering. This also means that they themselves run the risks of being accused of false reporting, or more generally of being held responsible for whether they did a good job or not (Unger & van Waarden, 2009). Although the AML policies are widely lauded to stop criminal from obscuring the illegal origins of their money, there is yet little evidence that will show that such policy actually works (Sharman, 2008).

Finally, although the AML systems are intended to protect the reputation and operations of these banking institutions, the Head of the AML and CTF divisions will require ongoing vigilance in knowing what information the system gives them, and by tweaking the system to be able to produce better scenarios and improved typologies to become more familiar with their customers (Fest, 2007).

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