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FinCEN record-setting AML penalty against UBS was years in the making

By Alexander Owens, CW Guest Columnist

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FinCEN levied a \$125 million penalty against UBS Financial Services (UBSFS), a broker-dealer and futures commission merchant, due to a series of long-standing compliance failures. The [total penalty was a joint effort](#) of federal regulators, including FINRA (\$20 million), the Securities and Exchange Commission (\$20 million), and the Commodity Futures Trading Commission (\$8 million).

The UBSFS case is a cautionary tale in the price of recidivism and heel-dragging in anti-money laundering compliance.

In 2018, UBSFS entered into a consent order with [FinCEN and paid a \\$14.5 million penalty](#) for a variety of AML failures. At that time, UBSFS represented to the Treasury that it would rectify shortcomings in its transaction monitoring system for foreign currency wires by mid-2019.

Its legacy system was, to put it charitably, unsophisticated. Transactions were screened infrequently (at best, quarterly) and relied on a jerry-rigged Excel report generation process that was prone to errors, short on data, and unbefitting a global powerhouse like UBSFS. Faults in the system had existed for over a decade (since 2004).

A fish rots from the head down: Managerial culpability and a deficient transaction monitoring system

Despite the significant shortcomings in the legacy system, UBSFS did not timely follow through on rectification, only implementing a modern automated monitoring system in 2021. Worse still, senior executives and UBS AG's Head Office knew, within weeks of the 2018 consent order, UBSFS would not meet the mid-2019 rectification timeline, a fact that was not relayed to the government.

The new system finally launched in 2021 and filled in certain gaps in the legacy system, including by adding new risk data fields like high-risk geographies, dormant account activity, round-dollar transactions, and deviation in customers' actual-vs-expected behaviors.

In other words, by 2021, UBSFS was putting into place controls that have long been considered bread-and-butter features by peer financial institutions and regulators alike.

Even then, the new system remained defective until well into 2023. For example, an internal review indicated that UBSFS was not properly routing data feeds into the automated monitoring system, so over 5 percent of foreign currency wires still went unmonitored by the new system. Ultimately, UBSFS allowed over \$10.5 billion in wires to be processed without sufficient monitoring.

Customer due diligence failures: The customer doesn't always come first

FinCEN also found that UBSFS failed to properly perform appropriate customer due diligence ("CDD"), another perennial compliance hotspot. Specifically, UBSFS failed to maintain updated customer profiles in numerous cases by not properly considering:

- (a) the source of the client's wealth;
- (b) negative news;
- (c) politically exposed person (PEP) status; and
- (d) account restrictions and continuous monitoring of customers (e.g., failing to implement special restrictions noted at account opening).

The consent order provided examples of numerous customers who should have been flagged during CDD and dealt with accordingly (e.g., those with ties to Russia and Latin America).



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The examples are as striking in nature as they are in the sheer variety of CDD failures at hand.

In one colorful case, a Russian oligarch, reportedly one of the wealthiest individuals in the world, was featured in news stories linking him to Vladimir Putin, a money laundering operation, and Iranian digital assets. He was permitted to maintain multiple accounts with UBSFS without appropriate inquiry into and assessment of the press coverage. And despite placing third-party wire restrictions on the account, UBSFS permitted the customer to effectuate millions of dollars in transfers which apparently violated the restrictions.

FinCEN's narrative suggests that UBSFS was willing to turn a blind eye to the oligarch's questionable background given the sheet amount of business he could bring in.

While FinCEN flagged various root causes of the transaction monitoring failures, there was no similar postmortem for the CDD failures. That is unsurprising, because transaction monitoring system failures generally involve discrete structural faults—inadequate workflows, insufficient data capture, and so forth—while the origins of CDD failures are more elusive.

Subtext suggests that the cause of the CDD problems may have been multifactorial: Front office capture, undue deference to findings by UBSFS affiliates regarding customers' risk profiles, and a tendency to favor expediency over compliance.

Broker-dealers are not new targets, but FinCEN is turning up the heat

Before this year's penalties against Canaccord Genuity ([\\$80 million fine in March](#)) and UBSFS, broker-dealers rarely found themselves in FinCEN's crosshairs. Cases were few and far between. Before this year, FinCEN had obtained a total of approximately \$37 million in recoveries against broker-dealers. FinCEN has levied \$205 million (gross) in such penalties year-to-date.

These enforcement actions suggest that despite this administration's deregulatory push, FinCEN will wield its powers aggressively in cases of marked noncompliance, and not just against banks, casinos, and other classic BSA targets.

The UBSFS case presented a case begging for regulatory intervention: A major broker-dealer using a transaction monitoring system that would have looked outdated decades ago; a prior consent order; and special treatment for a Russian oligarch and other questionable clients.

While the UBSFC penalty may ring alarm bells for broker-dealers in particular, every financial institution should take seriously FinCEN's focus on recidivism—the recurring theme of both the consent order and FinCEN's attendant press release.

That focus matters even more now that AML enforcement is set to be supercharged by [FinCEN's new whistleblower program](#). A prior penalty makes a whistleblower tip far more likely.

First, where a prior penalty produced no real change, insiders stop believing that the problem can be fixed internally. Second, insiders have good reason to believe the government will act on their tip, because FinCEN has shown it will come back even harder the second time.

With federal whistleblower programs in the financial industry expanding at a dizzying pace, employees at a wide range of financial institutions now have more reasons than ever to speak up. That means new tools—and less informational asymmetry—for federal regulators and more exposure for corporate recidivists.

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