



■ **INDEPTH FEATURE** Reprint February 20

# ANTI-MONEY LAUNDERING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in anti-money laundering.





# UNITED STATES

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### *Respondent*



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Salvatore LaScala is a partner and co-lead of Guidehouse's global investigations and compliance practice. Possessing a broad range of subject matter knowledge and expertise, he applies more than 20 years of hands-on experience to conduct investigations and compliance reviews on behalf of financial institution clients responding to regulatory or law enforcement matters concerning anti-money laundering (AML), Bank Secrecy Act (BSA), USA PATRIOT Act and Office of Foreign Assets Control (OFAC). He leads large teams that regularly perform historical transaction reviews, as well as Know Your Customer (KYC), customer due diligence (CDD) and enhanced due diligence (EDD) file remediation work.

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**Q. To what extent is financial crime growing in frequency and complexity? How would you summarise recent trends in the US?**

**A:** Money laundering and other financial crimes continue to be an area of focus for US state and federal regulators. Last year, the Financial Crimes Enforcement Network (FinCEN) launched a new global investigations division that will target domestic and international finance threats and related crimes, so it appears that FinCEN is continuing to emphasise the importance of companies having strong Bank Secrecy Act (BSA) and anti-money laundering (AML) compliance programmes. The establishment of the new division is also an acknowledgment that money laundering continues to be a complex problem, often involving multiple jurisdictions. This division's mandate to increase collaboration with foreign regulators on joint investigations will likely lead to more joint examinations and enforcement activity. In 2019, we also saw the Office of Foreign Assets Control (OFAC) increase the number of enforcement actions, as well as the overall

dollar value of settlements compared to prior years.

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**Q. Could you outline some of the key legal and regulatory developments in the US affecting AML efforts?**

**A:** In 2019, FinCEN published updated guidance on virtual currencies, and we saw two enforcement actions against individuals involved in cryptocurrency violations, one resulting in a two-year prison sentence and another resulting in a civil penalty from FinCEN. We also saw the first enforcement action against a virtual currency trader for violations of the BSA. In July last year, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency and FinCEN issued the 'Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision', which clarified a risk-based approach to examinations, and reinforced and enhanced the effectiveness and efficiency of the BSA/AML regime. It also referenced the expectation that banks do not simply de-risk clients, but

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complete a risk assessment and implement appropriate controls, which is a theme also coming from the Financial Action Task Force (FATF).

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**Q. How would you describe AML monitoring and enforcement activity in the US? What problems may arise for multinational companies as a result of the extraterritorial reach of certain laws, and greater collaboration between national agencies?**

**A:** AML and sanctions enforcement should remain a top priority in the US, and US-based businesses that are active globally. US and foreign regulators are also targeting other industries, not just financial services. For example, in 2019, OFAC enforcement actions included technology service providers, trade products, travel-related services and oil exploration companies. One of the cases included extensive collaboration with the UK's Financial Conduct Authority (FCA). This trend toward multijurisdictional investigations will likely continue, especially given the creation of the new FinCEN global investigations division. Companies should also be looking at their

financial crime compliance programmes and client activity holistically and across jurisdictions, as this is the approach taken by regulators.

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**Q. What steps should companies take to ensure adequate processes, programmes, and policies are in place to support AML?**

**A:** Companies should ensure they have a robust AML and sanctions compliance programme in place, which includes appropriate risk assessments, documented policies and procedures, as well as appointed officers in key roles. Both OFAC and the Wolfsberg Group published guidance last year on an effective sanctions screening programme, and we have seen OFAC's willingness to target industries outside of financial services for AML and sanctions compliance deficiencies. This external guidance helps in understanding best practices, and regulatory expectations. FinCEN also published guidance last year on BSA/AML examinations, and much like the OFAC guidance, noted that companies can take a risk-based approach, provided a company conducts an appropriate risk assessment, and puts in place effective controls that are regularly tested.



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Companies should be reviewing their AML and sanctions programmes annually to assess that appropriate controls and procedures are in place. As part of this annual review, companies should be reviewing technology solutions to ensure they remain current and effective. Procedures and appropriate training, as well as up-to-date documentation and recordkeeping, are all important aspects of an effective programme, including quality-assurance testing.

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**Q. In what ways can companies utilise technology to help manage risks arising from AML?**

**A:** Technology is essential to managing financial crime risk and compliance. Although regulators are publishing guidance indicating companies can take a risk-based approach to AML, they have come to expect that companies that have large numbers of clients or process large numbers of transactions need to use technology to assist with transaction monitoring, client due diligence and screening. The challenge with many technology solutions, however, is the occurrence of false positives and irrelevant



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information. Increasingly, companies are exploring and implementing artificial intelligence (AI), machine learning (ML) and robotic process automation (RPA) to assist with reducing false positives, and to streamline the investigative process. When making these changes to the various compliance systems, it is critical to ensure that the process becomes more effective and efficient. For example, AI/ML can also greatly assist in developing more effective and efficient detection scenarios by enhancing segmentation and developing revised detection scenarios appropriate for those segments. With a better class of alerts to disposition, adding RPA where appropriate can really help expedite dispositioning.

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**Q. What overall advice would you give to organisations in terms of marrying technology with protocols, to enhance the efficiency of their AML capabilities and allow them to detect unusual behaviour and identify red flags?**

**A.** Before deploying a new technology solution, ensure you have good quality data or that the solution is picking up the correct data that will meet operational

needs. Even if it works at the outset, you need to be vigilant that the data points do not change. This is where it is important to have robust data governance standards. Implementation of AML transaction monitoring and other financial crime technology-related compliance systems requires staying close to your subject matter experts (SME). The first step should be leveraging SMEs to conduct a transaction-monitoring coverage assessment to determine whether or to what extent the proposed rules are responsive to all the AML typologies and risk indicators your institution or line of business relates to. After that you will need your SMEs with AML experience to stay involved and make sure that the technology performs as implemented and is designed to meet regulatory expectations. As such, testing is critical and should be conducted with an eye toward 'going live'. For example, you should consider utilising the best investigators in your financial investigations unit to test whether alerts are appropriately capturing the AML



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typology or risks they were designed to flush out.

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**Q. Going forward, do you expect the risks posed by money laundering to increase over time? Do companies need to continually improve their systems in order to deal with current and emerging threats?**

**A:** Companies, particularly in the financial services industry, have invested significantly in putting in place AML programmes with effective controls. However, criminals regularly attempt to circumvent these controls, hence the need to continually improve AML and fraud-related transaction-monitoring systems. New payment systems are also areas that need to be considered as vehicles for money laundering. Last year, the FATF published guidance on virtual currencies and highlighted the money laundering risks associated with virtual currency payment products, and the need for local jurisdictions to regulate. In 2019, FinCEN also issued guidance on how its regulations apply to money transmission involving convertible virtual currencies. Likely the use of virtual currencies, to the

extent some continue to afford anonymity to users, will be an area of concern for regulators, and can be an area of exposure for companies, along with virtual asset service providers. □

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