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Capital Sources: Regulators raise ante in anti-laundering push

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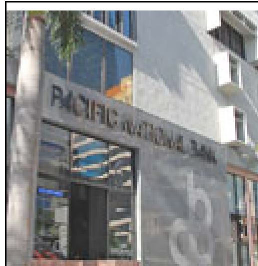

Pacific National Bank
Photo by Jill Kahn

Anti-money laundering enforcement, which typically hits institutional targets, may get more personal.

Federal bank regulators rarely have penalized directors of banks that failed to install adequate programs for the detection and deterrence of money laundering.

But that may be changing, as illustrated by recent fines against Pacific National Bank of Miami and several of its directors for poor compliance with anti-money laundering regulations from 2005 to 2010. Pacific National, three of its current directors and two former directors all agreed to the fines and other terms of consent orders by the U.S. Office of the Comptroller of the Currency (OCC) without admitting or denying any wrongdoing.

"You may see more fines levied directly against directors of institutions," said Dominic Suszek, chief executive officer of BSA Technologies, a Miami-based company that provides banks with consulting, software, training and temporary staffing to combat money laundering. "Several consent orders have come out recently. More are forthcoming."

The Bank Secrecy Act requires banks to set up and sustain an internal program to discourage money launderers who want to use bank accounts to obscure illegal activities or evade taxes. Among other requirements, banks must send suspicious activity reports to alert regulators to possible money laundering. "The whole purpose is to detect unusual or suspicious activity and to report it to law enforcement. That's really the bottom line," Suszek said. "Make sure you have no dirty money coming in and out of your bank; have a program in place to detect it and report it to law enforcement."

In the Pacific National case, the OCC determined that in the 2005-2010 period the bank filed many suspicious activity reports that were incomplete and many others that were late, in some cases 12 months or more after the suspicious activity occurred.

The one-office bank, indirectly owned by the government of Ecuador, primarily serves customers residing in the South American country. Federal law enforcement authorities have classified Ecuador as a "high-intensity area" for drug trafficking and money laundering.

The OCC hit Pacific National with a $7 million civil money penalty in March for failure to comply with anti-money laundering regulations under the federal Bank Secrecy Act.

The OCC also assessed individual fines of $12,500 each against the bank's former chairman, Andres Baquerizo, and former president and chief executive officer Ralph Fernandez, plus fines of $8,500 each against three outside directors who are still on the board: Jose Baloyra, Eduardo Gross and Joaquin Urquiola.

The current president and chief executive officer, Carlos R. Fernandez-Guzman, did not return a phone call for comment.

"I think the message regulators are trying to impart is that the institution as a whole is responsible for the [anti-money laundering] program, but the directors are professionally liable for their involvement in that program," Suszek said.

"Regulators are seeking to hold individuals responsible for the institutions' failures, and the buck stops at the board," said Andres A. Fernandez, a shareholder in the Miami office of the law firm Gunster and co-leader of the firm's banking and financial service practice.

Fernandez said the OCC and the Federal Reserve have been initiating more personal enforcement actions against bank directors in recent years for failure to ensure adequate protection against money laundering schemes.

"We've seen more of them in the past year and a half to two years than we had in prior years," he said.

Regulators go after a bank director for anti-money laundering violations by issuing a so-called "15-day letter," giving a director 15 days "to present his or her case why they shouldn't be held personally responsible for the institution's deficiencies in this area," Fernandez said. Following a director's response, the bank regulatory agency "might take no action, or they might take a private and confidential action, or it could lead to the issuance of a civil money penalty."

Fernandez said bank directors tend to run into regulatory problems related to the Bank Secrecy Act because they have invested too little time and money to comply. "More often than not, it has to do with oversight," he said. "The directors need to show more oversight, more commitment to ensure that the institution corrects whatever deficiencies it may have, and show that the institution has all the resources necessary to comply with these laws. That means hiring more staff, buying new software, upgrading software."

Indeed, for the typical bank, running an anti-money laundering program is a major and mandatory cost of doing business. Big banks, for the most part, are investing adequately in such programs, said Kieran Beer, editor-in-chief of Miami-based Alert Global Media, which publishes information about anti-money laundering regulations around the world. But smaller banks may be more vulnerable to enforcement actions. "It isn't clear to me that smaller banks, where budgets are tight and people are worried about safety and soundness, are doing all they can," he said, or if "all they do may not be enough."

Beer said that while the total number of anti-money laundering enforcement actions has remained fairly stable in the United States in recent years, large fines have become more common. For example, Wachovia National Bank last year paid a $160 million fine to resolve charges by the Department of Justice that it willfully permitted transactions with currency exchange firms in Mexico that laundered proceeds from illegal drug sales. Though it hasn't happened yet, the OCC "still may go after some individuals in the Wachovia case," Beer said. "I think there's a cry for people to be held responsible."

Dennis Nason, who runs a bank staffing agency in Coral Gables, said savings banks may become more vulnerable to anti-money laundering enforcement actions in the near future because their primary regulator, the Office of Thrift Supervision, is set to merge into the OCC, which regulates commercial banks.

"The Office of the Comptroller of the Currency is much more rigorous, much more difficult to deal with," Nason said. The result could be a sharp increase in regulatory compliance costs for savings banks.

"It is a major cost, a real drag on earnings," he said, largely because federal bank regulators are "digging deeper and deeper" in examining the anti-money laundering programs of banks.