

## **Banking and Commercial Law Update**

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### **Money-center banks are not the only ones who must be concerned with BSA compliance**

Effective February 27, 2015 the Financial Crimes Enforcement Network (“FinCEN”) announced that it was assessing a \$1.5 million civil penalty against First National Community Bank based in Pennsylvania (“First National”). The penalty stemmed from First National’s admission that it had violated the Bank Secrecy Act (“BSA”) as a result of its failure to detect and report certain suspicious financial transactions. The \$1.5 million penalty imposed by FinCEN was on top of a \$500,000 penalty assessed by the Comptroller of the Currency. Additionally, the Comptroller required that First National undertake certain specific remedial actions because of the BSA violations and to make future violations less likely.

The background of the First National case are similar to those encountered by community banks on a daily basis. First National’s, a state-court judge, plead guilty to conspiring to impede the IRS in its collection of federal income taxes that were due as a result of profits generated by a secret business venture engaged in by the judge. The judge directed funds from a business activity that he secretly owned, to an account in the name of an entity that the judge had established to purchase a condominium. Over four years the judge concealed approximately \$2.6 million. Ultimately the judge received a sentence of 210 months of imprisonment.

Among the facts that were developed in the course of the ensuing FinCEN investigation, was the fact that the judge served on First National’s board of directors. Additionally, the judge controlled accounts maintained at First National that were used to process the funds that he diverted from his illegal scheme. Although First National received a law enforcement subpoena for records of activity in the judge’s accounts, it did not file any Suspicious Activity Reports until after the judge entered a guilty plea, and only then at the request of an OCC examiner.

In support of its decision to assess the civil money penalties, FinCEN listed numerous instances where First National failed to detect or adequately report suspicious transactions made by the judge. FinCEN described the suspect transactions as “red flags” that First National should have detected, investigated, and reported. FinCEN summarized its findings with the following statement:

“The criminal case affected the lives of thousands . . . Banks have a duty to spot suspicious activity and to report it. Law enforcement relies on this valuable information. First National’s failure to file timely suspicious activity reports may have deprived law

enforcement of information valuable for tracking millions of dollars in related corrupt funds.”

The penalties assessed demonstrates that the government is paying strict attention to what it views as the likelihood that the failure of financial institutions to fully comply with their responsibilities under the BSA plays a significant role in facilitating money laundering. The penalties assessed against First National are consistent with penalties that have been assessed against other banks and businesses who were involved in handling money on a regular basis.

Within a few weeks after the First National penalty was announced, we were once again reminded of the government’s lack of tolerance with banks that do not adhere their duties under the BSA. The Federal Reserve Board announced a \$200 million civil money penalty against a German bank that maintains a US branch. The penalty resulted from BSA violations and violations of other anti-money laundering laws. When the fine assessed by the Fed was added to fines issued by other federal and state agencies, the total amount of fines assessed against the German bank was \$1.71 billion.

If there had been any doubt about the government’s intention of strictly enforcing compliance with the BSA, whether the bank is a large, multinational institution, or a small community bank, there should be none any longer.