

OPINION: AML trouble at Rabobank – did compliance officers act alone? Part 1

Oct 05 2018 [Robert Mazur](#)



As a former U.S. federal agent who did extensive undercover work laundering money with leaders of major criminal organizations and corrupt bank officers, I'm conflicted with both appreciation and concern for the current outcome of the [U.S. investigation of Rabobank, N.A.](#)

On one hand, unlike many prior investigations of banks caught moving drug money, authorities handling the Rabobank investigation have pinned down some individual criminal conduct. That is a step in the right direction. But, on the other hand, the criminal conduct publicly disclosed to date lies strictly with compliance officers who failed to clean up the dirty transactions that, by their nature, could only have happened if the account relationship managers working with the customers were sound asleep during the years that their customers brought hundreds of millions in cash through the doors of Rabobank branches on the US side of the Mexican border.

To weigh my struggle of optimism and trepidation, close look at the history of this ongoing saga is needed.

Potential charges

U.S. authorities are considering possible criminal charges against several senior executives of Rabobank, N.A., a U.S. based subsidiary of the Dutch multinational. To date, one former executive at the bank has admitted guilt to a criminal offense for participating in a scheme that not only led to the bank's processing over \$360 million in illicit funds, but also involved an attempted cover-up to hide the scheme from bank regulators.

The accounts to which this currency was deposited included one of a person known to bank officers to be an accused drug money launderer.

At least \$100 million in suspicious U.S. currency deposits by high-risk clients at branches in towns along the U.S./Mexico border were not reported to authorities, as required by law. After the cash was accepted, the funds were moved through wire transfers, checks and withdrawals.

The story of how this unfolded is still being written, but court filings and other public documents confirm a U.S. prosecution strategy relative to Rabobank that thankfully has played out differently than similar anti-money laundering (AML) investigations of HSBC, Wachovia and many other institutions.

In this case, in addition to the bank paying a hefty fine, some senior executives are paying with their careers, and a continuing investigation is pursuing evidence that reportedly may lead to other individual criminal prosecutions.

Rabobank back in time

Rabobank's problems in the United States began more than a decade ago, when its compliance failures were no secret to the Office of the Comptroller of the Currency (OCC). In 2007, OCC Chief Compliance Officer Laura Akahoshi was one of several examiners that identified Rabobank's compliance irregularities, which led to the bank executing a formal agreement relative to the problem and a \$50,000 civil penalty.

Within weeks of the bank admitting these deficiencies in its anti-laundering obligations under the Bank Secrecy Act (BSA), it hired Akahoshi away from the OCC and installed her as their chief compliance officer for Rabobank, N.A., in Roseville, California.

By 2012, it appeared to senior Rabobank executives that Akahoshi had done such a great job they promoted her to the position of compliance manager of Rabobank International in the Netherlands. Before leaving for the Netherlands, she participated in the selection of her replacement in the United States.

The new U.S. chief compliance officer of Rabobank, N.A. quickly identified serious deficiencies in the bank's BSA/AML program

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and shared her findings with the bank's management. Her concerns were aired with bank executives at about the same time as the OCC began an on-site examination of the bank's BSA/AML compliance program, which ultimately led to the OCC's claims that the bank's program was ineffective.

In reaction to the OCC's initial findings, the bank engaged an outside audit firm to provide an independent written assessment of its compliance program. That outside audit confirmed the findings of Akahoshi's replacement. Senior executives then had Akahoshi return to Rabobank, N.A. in California to assist in the bank's response to the OCC examination.

An 'elaborate cover-up'

According to the OCC, Akahoshi and other senior bank management staff, knowing that the findings of Akahoshi's replacement and the outside audit firm accurately concluded that the bank violated the law as a result of its ineffective BSA/AML compliance program, conspired in an elaborate cover-up. Akahoshi and other bank executives sent correspondence to the OCC in an attempt to mislead them. This correspondence omitted the findings of the audit firm or the executives' knowledge that Akahoshi's replacement had found the bank's compliance program to be in violation of the law.

While the bank was under OCC examination, Akahoshi's replacement continued to elevate concerns within Rabobank about the BSA/AML program to bank management.

Bank executives, knowing that the bank had violated the law, put Akahoshi's replacement on paid administrative leave in an effort to keep her knowledge from OCC examiners. At the same time, they had Akahoshi assume in an acting capacity her replacement's position as Rabobank's U.S. chief compliance officer.

At this stage, Akahoshi's replacement decided to become a whistleblower and contacted OCC examiners. She gave them a copy of the report issued by the outside audit firm.

OCC examiners then made repeated requests to Akahoshi and other bank executives requesting the outside audit firm's report.

According to the OCC, Akahoshi conspired with others, including the AML monitoring and investigations manager and the bank's general counsel, in an effort to conceal the bank's violations and the existence of the audit firm's report.

The OCC corroborated much of the coverup when they and other authorities obtained copies of email communications by Akahoshi and other Rabobank executives.

Enforcement action kicks off

The OCC made the first formal public filings against Rabobank, N.A. concerning these issues in December 2013, when it issued a consent order that identified deficiencies in the bank's overall BSA/AML compliance. That was followed by a written agreement between the Federal Reserve and Rabobank's operations in the Netherlands and New York branch, confirming that its New York branch also needed to take steps to remedy BSA/AML deficiencies.

While bank examiners sifted through evidence concerning Rabobank activities in the United States, criminal aspects of the events at Rabobank were evaluated by prosecutors with the Department of Justice (DOJ) and investigators for both the Department of Homeland Security and the Internal Revenue Service.

In December of 2017, criminal charges were filed against George Martin, a vice president and anti-money laundering investigations manager at Rabobank, N.A. He was charged with aiding and abetting in violations of the [Bank Secrecy Act](#).

Martin admitted in court proceedings that he, Akahoshi and other senior executives at the bank suppressed investigations into suspicious transactions conducted at the bank. With the knowledge of his superiors at Rabobank, N.A., he implemented policies and procedures that precluded and suppressed investigations of suspicious transactions by the bank's financial intelligence unit (FIU).

Avoiding investigation

These suspicious transactions by high-risk customers were identified by the bank's electronic monitoring software program called Global Vision Patriot Officer (GVPO).

In his deferred prosecution agreement Martin admitted that, to avoid investigating suspicious transactions, he and others at the bank maintained a "Verified Activity List" (VAL), which included account holders that were Mexican businesses, resident aliens, and U.S. account holders. Those accounts on the VAL were exempted from further BSA/AML scrutiny and FIU investigations because they had allegedly been vetted and presumed to be unsuspecting. This was done knowing it would result in failures by the FIU to adequately investigate transactions.

Even with this suppression of FIU investigations, Martin and other officers established daily and monthly GVPO alert review milestones for FIU monitoring personnel relative to other accounts that he and other officers knew would be impossible for the FIU personnel to meet, if they conducted adequate investigations of suspicious transactions.

Hordes of cash transactions structured in amounts under \$10,000 to avoid the need to file Currency Transaction Reports (CTRs) were conducted and not reported to law enforcement in Suspicious Activity Reports (SARs). This took place even when the bank's internal automated system alerted that the account holder involved in many of these transactions was a suspected trafficker.

U.S. authorities allege in court documents that senior executives of the bank created an AML program that could do nothing but fail. They had two investigators and three analysts to monitor and manage thousands of monthly alerts. Three people were tasked with reviewing about 2,300 alerts per month, and two others were tasked with conducting more than 100 investigations per month.

Despite the known risks, the bank pursued cash-intense Mexican customers they knew were likely bringing cash from drug

trafficking to the bank. In one instance they let a known drug money launderer keep an account open for four months, despite receiving a court order seizing some of the account holder's other accounts.

Settlement clinched

Although Martin publicly admitted to his conduct, on December 14, 2017, the U.S. government allowed him to enter into a deferred prosecution agreement (DPA) and potentially avoid jail. Based on the DPA and other filings by U.S. authorities, it appears that Martin conspired with at least three senior executives at Rabobank, N.A. to enable the bank to open and maintain accounts used to move hundreds of millions in illicit funds, and to attempt to coverup the bank's failure to report CTRs and SARs.

The Justice Department asserts in the DPA that the agreement reached with Martin is necessary to protect the interests of the United States, Martin and justice. It goes on to say that charges against Martin will be dismissed if it determines that he:

- 1) Fully cooperates over 24 months;
- 2) Remains under the supervision of the U.S. Pretrial Services, meaning that he must frequently report to a court officer;
- 3) Completes 50 hours of community service .

After Martin entered into the DPA, Rabobank, N.A. was criminally charged with conspiracy and fraud charges immediately entered a guilty plea on February 7, 2018. Pursuant to the agreement, among other things, they [agreed](#) to pay \$368.7 million.

In April 2018, the OCC filed a notice of charges and fined Akahoshi. This notice calls for her to be prohibited from participating in any manner in the conduct of a federally insured institution in the U.S. and assessed her with a \$50,000 civil penalty.

In May of 2018, Bloomberg reported that the Justice Department is considering possible charges against Rabobank, N.A.'s former Chief Executive Officer John Ryan, the bank's former General Counsel Dan Weiss, and Akahoshi.

The Bloomberg report cited two people with knowledge of the probe, and court filings support this contention.

Optimistic aspects

Unlike the enforcement actions involving HSBC, Wachovia and other institutions that, like Rabobank, secretly took in mountains of illicit currency deposits, thankfully the DOJ apparently isn't attempting to address this case by trying to suggest that financial institutions somehow mysteriously failed to maintain an anti-money laundering system because the left hand didn't know what the right hand was doing. Many professionals find the statements of the former DOJ criminal division chief, Lanny Breuer, relative to HSBC's laundering of nearly a billion in US currency for Mexican and Colombian cartels as unbelievable. When Breuer told the world:

"As bad as HSBC's conduct was, this is not a case where the HSBC people intended to create money laundering." He added, "What they did do was they affirmatively violated the Bank Secrecy Act, they did not have the controls in place that they needed to do. This was insidious and wrong and had occurred over decades of time and we've held them very accountable. I'm not sure you can find a more robust resolution."

It is impossible to read the 334-page U.S. Senate subcommittee [report](#) about the activities of HSBC and come to the same conclusion as Mr Breuer, who has since left the DOJ and is now a partner in the Washington office of the global law firm of Covington & Burling a firm with a long history of representing many of the biggest banks in the world.

In the Rabobank case it appears that authorities are taking the time to document the acts of individuals, and where they constitute a crime, are prosecuting those in the compliance department of a bank, and hopefully other departments, that intentionally broke the law.

But, the major questions to be explored in the second part of this article is whether the acts of compliance officers and their technical systems that create artificial intelligence are a result rather than the cause of a bank's laundering money. Are those high-cost computerized "traps" to catch red flags the real answer, or just shiny metal objects of distraction from the core problem much further upstream where a cozy relationship between account relationship managers and customers can cause the bank's true first line of defense to wear blinders. The article will also address the degree to which an institution should be held responsible for the conduct of an account-holder whose criminal conduct can only thrive with the aid of laundered criminal proceeds.

Although a light has been shined on individual responsibility in the Rabobank affair, the question is, has that light been cast broadly enough to learn the full picture?

Robert Mazur is the New York Times bestselling author of [The Infiltrator](#), a memoir about his undercover life, much of which was spent acting as a conduit between ruthless drug barons and corrupt legitimate appearing senior executives that cleaned billions in blood stained money through otherwise respectable international banks and businesses. For years, in the eyes of organized crime leaders he was a highly successful mob connected money launderer who helped manage their illicit fortunes. His clients, some of the most famous and deadly drug cartel bosses, issued a \$500,000 contract on his life when arrests were made around the world and he was revealed to be a highly trained U.S. federal undercover agent. After completing a highly decorated 27 year career as a federal agent in 3 U.S. agencies, Robert is now the President of KYC Solutions, Inc., a firm that provides speaking, expert witness and consulting services to companies worldwide. More information about Mr. Mazur, his book, and the film based on his life can be found at <https://www.robertmazur.com/>. The views expressed are his own.