

OPINION: AML trouble at Rabobank – what was the account-managers' role? Part 2

Oct 09 2018 [Robert Mazur](#)



The facts shared in [Part 1](#) of this two-part article concerning the U.S. investigation of Rabobank, National Association (Rabobank, N.A.) left me conflicted with both appreciation and concern.

My appreciation is for the investigators' tireless efforts that pieced the facts together that led to a guilty plea by the bank and an admission of guilt by a former bank investigations manager, who is cooperating in the case.

My concern is rooted in my experience working undercover as a money launderer, dealing with account relationship managers who opened my accounts when they understood me to be a launderer for a drug cartel. They were aware of the purported true source of the millions I deposited better than any compliance officer in the bank. More often than one would hope, in the real world illicit funds don't move through a bank only because compliance watchdogs fail. They sometime flow through an institution because the front line of defense, the sales personnel that onboard accounts, either suffer from willful blindness or, worse yet, do their best to aid a customer's efforts to prop up an alternative source for their funds.

U.S. authorities appear to still be considering possible criminal charges against several senior executives of Rabobank, N.A., a U.S. based subsidiary of the Dutch multinational. The laundering scheme 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.

Revelations

Many stunning revelations and questions emerge in this [prosecution](#). Compliance officers should take lessons from the details of this AML disaster. While some Rabobank, N.A. compliance executives may soon be exposed to possible jail time because of the facts summarized in this article, the unanswered question is: are the U.S. Justice Department and law enforcement agencies taking the time to determine whether bank executives outside of the compliance function possibly also carry responsibility in what played out along the U.S.-Mexican border at the Rabobank, N.A. branches?

I have lectured and trained thousands of bank personnel about money laundering techniques, best practices in compliance, and essential enhanced due diligence steps to ensure that an institution knows its customer and the true source of customer funds. In dealing with a wide array of compliance employees and studying dozens of bank prosecutions, my conclusion is that the overwhelming majority of compliance personnel in the industry are well intended. They aggressively attempt to exercise their responsibility and often bring their findings to a senior management team that weighs compliance findings with contradictory arguments offered by an aggressive sales and account-relationship team.

More times than one would hope, the compliance arguments can be viewed differently by non-compliance personnel eager to land an account that brings large deposits and generates increased commissions and compensation for everyone other than compliance officers. Basically, many banks struggle with two brains, a compliance brain and an account-relationship brain, that often see things differently.

One has to wonder why the Rabobank, N.A. story so far appears to have focused only on those involved in the compliance function. The fact pattern at Rabobank, as well as the prior stories of HSBC, Wachovia and others, doesn't involve "rocket science." It doesn't take a compliance genius to figure out that hundreds of millions of dollars in U.S. currency being transacted in branches along the U.S.-Mexican border in massive numbers of small deposits and withdrawals carry high-risk for money laundering.

Beyond the good work done in this case to date, it is as important to make sure authorities look at the entire story. Have they dug into the e-mail, phone records, personal financial affairs, and other issues that may exist between the customers who

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made the illicit deposits and their account relationship managers? Is the picture painted thus far about Rabobank, N.A.'s compliance failures the beginning and end of the story, or is it just a piece of the puzzle that is consistent with acts of personnel in both the account relationship and management functions?

In general, I am troubled by the concept that onboarding toxic deposits is exclusively the fault of those responsible for trying to clean up behind others who are much closer to the account-holder.

When I worked undercover as a money launderer and dealt with banks that sought out relationships with questionable big deposit accounts, the employee at the bank who knew the depositor better than anyone else was the account relationship manager. In many instances that person and the depositor were related or had a pre-existing friendship with the family or associates of the depositor. The relationship manager already knew facts about the depositor that the compliance officer worked hard to try to uncover. It was often the account relationship manager who had the knowledge needed for the government to prove a money laundering prosecution. They were the employees that knew beyond a reasonable doubt that the deposits came from an illicit source and thereafter helped disguise and conceal the true source.

Cash repatriation

The second and even greater concern I have about the Rabobank, N.A. prosecution is the same concern I first raised in a New York Times [opinion](#) piece in 2010. When will the Federal Reserve and central banks around the globe be encouraged by governments to truly embrace the war on drugs and terrorism by requiring them to give law enforcement unfettered access to records concerning the repatriation of currency?

Had law enforcement and regulatory authorities competently analyzed cash repatriations into the Fed, they would have seen years earlier the blip on the radar screen that pointed to Rabobank, N.A.. In earlier years, it would have alerted them, in real time, to the hundreds of billions of dollars in currency collectively repatriated to the Fed by HSBC, The Lebanese Canadian Bank, Wachovia, Union Bank of California, and other institutions that crossed the line.

After identifying institutions repatriating or selling off irregular amounts of cash, central banks and governments can force the institutions bloated with currency to disclose specifics about how and why pallets of cash got into their vaults.

When it comes to proceeds from the sale of illegal drugs, the overwhelming majority of those involved in buying and selling such contraband still deal in cash (\$5, \$10 and \$20 bills). This has been the case for decades. Even now only a small share of global illegal drug sales is conducted in cryptocurrency, despite efforts of many to convince the world otherwise. Cryptocurrency has its own issues and space in the underworld, but that pales in comparison to the role of cash.

The United Nations Office on Drugs and Crime (UNODC) estimates that the global annual sale of illegal drugs is in the range of \$400 billion. For decades, governments have failed to identify and seize more than 1 percent of that money each year, a clear sign that we don't have a clue about real risk.

Meanwhile, the coffers of major criminal organizations have grown so fat that they are routinely buying influence in many governments around the world and digging their talons deep into societies whose honest people are fleeing in droves.

While we attempt to identify new trends and techniques, shouldn't we avoid losing sight of the basics? Should not our resources, if they are going to be meaningful, be applied to follow the obvious and fruitful courses of action we can take to try to begin to effectively address this problem?

In part, we have ourselves to blame. Regulators and governments, in their zeal to find the elusive silver bullet for anti-money laundering compliance, have pushed compliance priorities away from focusing and applying resources toward risk-based areas. The trend is to create mountains of regulations and promote the use of automated systems that pump out massive amounts of artificial intelligence that often overwhelms compliance professionals.

Completing the puzzle

Effective software is an important piece of the puzzle, but it is far from the core answer to the enduring problem of identifying and mitigating real money laundering threats. Software programs that generate alerts are only as good as the people involved in their design, oversight, maintenance, and analysis. A well-intended, adequately experienced, trained and fully staffed Financial Intelligence Unit (FIU) is critical to establishing and maintaining a successful anti-money laundering compliance program. But even that plus effective software is not enough.

One needs to create a corporate culture and institutional conscience that encourages a total buy-in by those in the account-relationship functions to the priority of compliance. There are ways to accomplish this through financial incentives for relationship managers for identifying bad actors who establish accounts, rather than expecting them to embrace the concept of closing a questionable account that otherwise brings them salary commissions.

What can't be tolerated is a culture that creates an artificial intelligence platform that, when things go wrong, becomes the fall guy for individuals that bring on high-risk accounts out of greed. Banks don't launder money, people do.

The state of affairs in the Western Hemisphere is a prime example of why we need to change how we identify and attack money laundering risk. Homicide rates in the Americas are astronomical. There were 25,339 murders in Mexico last year, and that doesn't include thousands that went missing. There were 17,250 murders in the United States during 2016. The numbers in many other countries, including Guatemala, Honduras, El Salvador, and Venezuela are equally startling. The majority of these homicides were drug related. The mafias and triads on this planet, in concert with terrorist organizations, are globally active and significantly undermining the will of the people. Their lifeblood is the laundering of their profits and preservation of their assets.

Paul Backer's motion to intervene

In August of this year, a former account-holder at Rabobank, Paul Backer, filed a motion to intervene in the *U.S. v. Rabobank* criminal case. Backer is a practicing attorney in New York. He has a history of confrontation with Rabobank that needs to be weighed when evaluating the merits of his motion, but he argues that the Justice Department abused its discretion by entering

into its plea agreement with Rabobank. He believes Rabobank's deal is far too lenient. He accuses Rabobank of being a "globally, strategically, serial criminal foreign bank" that "solicited and aided drug cartels." He claims that "Rabobank paid a manipulated penalty so small as to lack any meaning".

In Backer's pleading, he claims that "Rabobank criminally retaliated against (him) as a witness to fraudulently evade a fair penalty in *U.S. v. Rabobank*".

Backer's motion was publicly made a part of the court file on September 10, 2018. It was denied by the court on that same day, citing a lack of jurisdiction because the time had expired to challenge a sentence.

Public Citizen motion

On February 13, 2018, long before Backer filed his motion, [Public Citizen](#), a non-profit consumer advocacy organization, sent a [letter](#) to both the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC) alerting them of the group's concern about Rabobank's February 7, 2018 [guilty plea](#).

Public Citizen urged regulators to hold hearings and consider revoking Rabobank's charter and terminating its insurance status, as both the OCC and FDIC had done under similar circumstances with regard to smaller banks. They asserted that the Rabobank settlement perpetuates an inadequate response by federal efforts to combat money laundering. Public Citizen urged the OCC and FDIC to recognize that "money laundering makes possible the insidious trade in illegal, harmful drugs that have blighted the health of millions of Americans and led to fatal violence on the street."

Bart Naylor, the financial policy advocate for Public Citizen, stated that neither the OCC nor FDIC responded to the group's written request concerning Rabobank. He noted that his organization has previously made similar appeals to the OCC and FDIC relative to HSBC, Credit Suisse and other big banks that have admitted criminal offenses, but Public Citizen has never received a substantive response from either agency.

Reality

It is time to stop making excuses and acknowledge the elephant in the room: banks don't generally enable the laundering of large amounts of money simply through a failure to maintain an anti-money laundering compliance program.

At times, the problem begins before the compliance officer is brought into the picture. The reality is that we have to stop ignoring what is going on in the minds of some of those whose salaries are directly tied to harvesting deposits, no matter where they originate.

Comments from the Justice Department and Rabobank suggest that the investigation of Rabobank as a company may have ended with the bank's plea, but investigations of individuals may be continuing.

A representative of the Department of Justice (DOJ) familiar with the case declined to comment for Regulatory Intelligence about Rabobank or the DOJ investigation relative to the offenses committed at Rabobank, citing a policy barring comments about ongoing investigations.

However, the American Banker in February quoted Rabobank U.S. spokesman Greg Jones as saying the bank's guilty plea and payment of a \$369 million fine "brought closure to the previously reported investigation and compliance-program matters."

At the same time, Rabobank acknowledged in its plea agreement that the bank "was aware that the activity of certain of these high-risk customers, including their corresponding cash transactions, and the associated wire transfer activity were indicative of international narcotics trafficking, organized crime, and money laundering. Despite this risk, the bank solicited business and individuals conducting these transactions..."

One would think that it wasn't the compliance officers that "solicited" this business, since that is not their job. If not, who and how?

Hopefully, authorities will take the time to determine what, if anything, account relationship managers at Rabobank, N.A. knew about the source of the \$360 million in dirty money that passed through their institution. Compliance failures like those that occurred at Rabobank, N.A. cannot be tolerated, but isn't it logical that the problem doesn't necessarily begin and end with those in the back room responsible for sifting through the sea of transactions by account-holders taken in through the front door? Only a thorough and fair investigation can deliver that answer.

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.

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