
An article by Robert Mazur Published on Apr 12, 2023

# A PLAN TO INHIBIT SIGNIFICANT MONEY LAUNDERING OFFENSES

The AML vulnerabilities of our banking systems can be significantly reduced by developing a uniform industry-wide strategy to document what criminals and their intermediaries claim to have known and said when they established and maintained high-risk accounts at an institution.

The providing of false information during the onboarding process, and subsequently, is critical proof of criminal intent

Absent creating a reliable method of capturing those representations, criminal intent is significantly more difficult to prove beyond a reasonable doubt. Those facts are also critical to consistently achieving a meaningful and effective strategy to conduct enhanced due diligence that enables an institution to effectively mitigate risk.

This proposal offers that strategy in a manner that does not unnecessarily burden a financial institution or violate financial privacy. It will also act as a deterrent that will cause many sophisticated criminals to be more reluctant to attempt to launder proceeds of crime through our financial institutions.

I propose that this regulation require, under certain circumstances, account relationship managers to annually file an affidavit, under the penalties of perjury, with their bank's general counsel (with copies distributed to the head of compliance and the CEO). This affidavit would be documentation required, pursuant to regulation, to be relied upon by U.S. authorities in the process of their annual examination of the bank's operation in a safe and sound manner. This affidavit would not be filed with or accessible to law enforcement agencies without authorized due process via a subpoena or court order. This sworn affidavit should be required when an accountholder is either anticipated to, or in fact does, maintain an interest in one or more accounts that cumulatively receives $5 million or more in US dollar credits (in any form). If circumstances exist where an accountholder meeting this criteria has not interacted with an account relationship manager, such as in a Fintech setting, the institution must assign an account relationship manager to interact with the accountholder to obtain the required information. Failure to file and maintain an annual affirmation pursuant to this regulation for each account with $5 million or more in annual US dollar credits should trigger a significant regulatory fine.

The laundering of dirty money by organized criminal organizations is predominantly orchestrated by corrupt intermediaries.

The justification for this regulation

While spending 5 years undercover as a money launderer for a long list of notorious criminals, including Pablo Escobar, dozens of corrupt senior managers in numerous financial institutions, and an array of

underworld figures, I witnessed that the laundering of dirty money by organized criminal organizations was predominantly orchestrated by corrupt intermediaries.

When I say intermediaries, I mean attorneys, financial service providers, those involved in forming off-shore entities, accountants, and sometime unfortunately bankers that sold their knowledge and ethics in return for the financial profits of participating in a process of disguising and concealing the true source and ownership of funds.

During my 5 years in the underworld, I rarely witnessed an organized crime figure attempt to trick an institution into laundering their fortunes. They delegated that to the real money laundering threat, the intermediaries with whom they knowingly conspired. These intermediaries pose a serious threat to the stability of financial institutions and the spread of corruption globally. They enable the exponential growth of organized crime's wealth.

For more than three decades, I shared my evidence about the serious money laundering threat posed by corrupt intermediaries with the Anti-Money Laundering (AML) compliance world. Most of my colleagues concurred, but to date we have collectively failed to sufficiently develop a strategy to attack this Achilles heel of the underworld. No one regulation or statue will independently resolve this threat, but I offer this paper to my colleagues for its assessment as a proposal for a potential additional weapon in our struggle to improve our global AML strategy.

Consistent with the view of the critical role of intermediaries, Brooke Harrington, a sociology professor at Dartmouth, is one of the authors of the February 2023 study, "Complex systems of secrecy: the offshore networks of oligarchs" that analyses secret documents of more than 800,000 companies downloaded from the International Consortium of Investigative Journalists (ICIJ's) Offshore Leaks Database. Those documents were obtained from the whistleblowers behind the Pandora Papers, Paradise Papers, Bahamas Leaks, and Panama Papers. The study performed by Professor Harrington and her colleagues concludes that it is the "secretive intermediaries" that conceal and disguise the ownership and source of funds for those that possess money seeking secrecy from governments. While focusing on the world's efforts to identify and seize the fortunes of sanctioned oligarchs, Harrington and her colleagues further concluded that sanctioning professional intermediaries may be more effective and efficient in disrupting dark finance flows than sanctions on their wealthy clients. My first-hand experience within the underworld couldn't agree with her more.

Some may suggest that my personal observations during long-term undercover assignments as a mob connected money launderer and the findings in the study by Professor Harrington do not collectively rise to a level that supports initiating this proposal. For those disbelievers, I am happy to provide an exhaustive list of undercover agents, convicted organized crime figures, and prosecuted money launderers whose testimony also supports the need for this proposal.

The critical role of intermediaries is evident within the wake of facts behind each major financial institution's guilty plea and deferred prosecution agreement that failed to identify individual responsibility for major money laundering scandals, and suggested that the laundering of hundreds of billions mysteriously occurred due to an anti-money laundering policy and procedure failure. It is because of this sad history that we must develop a strategy that will ebb money laundering tsunamis. This paper offers a factual basis for a proposed new regulation that will:

1. Cause critical money laundering related information to be uniformly documented and retained within the books and records of financial institutions, in the normal course of business, thus providing a consistent and reliable record of individual responsibility concerning the onboarding and maintaining of high-risk account relationships.

2. Significantly improve the effectiveness of an institutions enhanced due diligence process by requiring specific uniform information to be obtained by account relationship managers from high-risk accountholders, and making that information readily available to management and compliance leaders.

3. Aide banks to solicit specific meaningful answers from accountholders and their intermediaries, thus diminishing the present extraordinarily wide industry range of enhanced due diligence procedures.

4. Reduce an institution's money laundering related risk.

5. Provide law enforcement with a means, only through the issuance of due process, to obtain a reliable starting point for evidence concerning individual responsibility. That evidence is the written confirmation of representations made by accountholders and their intermediaries to account relationship managers concerning high-risk accounts.

The need for this proposed regulation, and other new initiatives, is supported by the fact that credible studies by the United Nations on Drugs & Crime (UNODC) and other bodies confirm that the efforts of law enforcement authorities, regulators, and AML professionals has had minimal impact on the $2 trillion or more each year that is laundered worldwide. It is a fact that less than 2% of that $2 trillion is identified and seized annually by the global law enforcement community. That is unacceptable. Our AML failures facilitate clear and present dangers, the exponential growth of the underworld's wealth, and a worldwide avalanche of corruption.

When studying the biggest money laundering scandals conducted through financial institutions, the mystery of individual responsibility is often lost within the historical fog of the communication that occurred between the accountholder(s) of the laundered funds and their account relationship manager(s). Unfortunately, clear evidence that could otherwise confirm or refute an account relationship manager's complicity or innocence in laundering is often undiscernible because of the passage of time between the poorly documented development of that relationship and the discovery that a massive amount of laundering occurred through a financial institution. Other than when those scandals are uncovered through undercover operations that involve recorded conversations, like those of the Bank of Credit & Commerce International (BCCI) and Banco de Occidente in Panama, there is no record that measures the intent and dialogue between the account relationship manager(s), the accountholder(s), and their intermediaries other than present day oral claims by parties about what they knew or didn't know many years before the scandal erupted.

As a result of current statutory and regulatory requirements, we have filings that enable us to measure cash deposits, international transportations of currency, cash transactions conducted by a trade or business, suspicious transactions, and other data. These are all data points found in the historical wake of what was caused by criminals and their intermediaries that have previously established accounts in our financial markets and elsewhere. In effect, this data is a report card that may reflect the degree to which our financial institutions and business world have already been infected with proceeds of crime.

Some might argue that the protocols established for current enhanced due diligence at financial institutions already documents what this proposed regulation would record. History and reality do not support that premise. One need only read the Factual Statement section within the dozens of indictments and deferred prosecution agreements brought against national and international financial institutions. While those institutions often had well intended compliance personnel hunting down information about accountholders and their intermediaries, on a totally disconnected tangent, account relationship managers have sometime carried out sales strategies unknown to those in the compliance function. Wire stripping, secret meetings with beneficial owners of accounts maintained in the name of off-shore accounts, secretly shuttling currency to and from accountholders abroad, disguising beneficial ownership, and many other tactics have often been carried out by people on the sales side of institutions without the knowledge of compliance personnel.

Too often, financial institutions mistakenly suggest the "Know Your Customer' (KYC) responsibilities are primarily, or even exclusively, an obligation of an institution's compliance department. That approach is at best a disaster waiting to happen, and at worst a corporate alibi that provides "cover" for an account relationship manager that almost always knows much more about an accountholder than the most diligent compliance officer. Furthermore, regulatory and industry guidance relative to steps one should take when conducting enhanced due diligence is broad and conceptual, as evidenced by countless admitted enhanced due diligence failures. This proposed regulation will not only uniformly establish a minimum standard for enhanced due diligence questioning, it will also necessitate and facilitate a healthy co-responsibility between a well-intended sales force and compliance functions within an institution.

I have spoken with and trained tens of thousands of compliance personnel. During my global travel to deliver that training, I have uniformly heard compliance officers complain that their recommendations to exit an account relationship, or to decline to onboard an account, have been opposed by sales personnel that claim compliance officers don't have the knowledge the sales force has about a particular accountholder or line of business. Routinely, compliance officers and bank management are told by account relationship managers that the sales personnel and their managers have greater insight into the nature of the customer's business, and that their personal contact with the accountholder enables them to know the true credibility and reputation of the accountholder and the accountholder's clients. Compliance officers also routinely implore sales personnel to ask certain probing questions of their customer, and are often told that asking those questions would offend the customer and "chase business away". Too often, management is persuaded by the account relationship managers arguments, and meaningful enhanced due diligence suffers. The struggle to get answers to hard questions will cease to exist if some form of the regulation outlined in this paper is adopted. The responsibility for account relationship managers to obtain important answers will become mandatory by regulation, and no longer be discretionary.

The value of documenting communication between account relationship managers and high-dollar/high-risk accountholders is evident from the recent alibi offered by counsel for Danske Bank A/S in answer to a civil lawsuit alleging that bank employees intentionally opened accounts over a 9-year period that enabled the laundering of hundreds of billions for terrorists and members of the Russian Mafia. Among other arguments made by Danske's counsel, they claim it was clear from Danske's recent guilty plea to a criminal charge of defrauding their correspondent banks, that their anti-money laundering compliance policies and procedures had failed. Their anti-money laundering protocols were never enacted. They knew that failure existed, yet they misled their correspondent banks to believe that those policies and

procedures were robust. They therefore assert that not one Danske bank employee could have intentionally onboarded accounts of a "bad guy" because their compliance functions were incompetent. This alibi parallels those of HSBC, Wachovia, Union Bank of California, and a host of other major international banks that eagerly pled guilty to "intentionally failing to maintain anti-money laundering compliance program". For a corrupt account relationship manager, or an external intermediary that deceives an account relationship manager, that is a "get out of jail free" card.

It is rare that banks push mountains of dirty money through their coffers because they are incompetent, or because accountholders trick them. But it is also undeniable that there are occasions when some corrupt intermediaries do take advantage of naïve, incompetent, or willfully blind account relationship managers. Unfortunately, it is also sometime true that account relationship managers are complicit in money laundering schemes. The excuses and debates for why more than $2 trillion a year is laundered can be ended by documenting answers provided by accountholders and their intermediaries to a set group of questions asked of them by account relationship managers.

The least intrusive way to establish a record of what the account relationship manager, accountholder, and intermediaries knew when an account was opened, and while it was operating, is to document that knowledge at the time it occurs. When executives at BCCI were prosecuted for money laundering, documenting their complicity was easy and rock-solid. Their discussions were audio recorded. Juries were later able to determine, beyond any reasonable doubt, that those bankers knew they were conducting transactions that were designed to intentionally disguise and conceal drug proceeds.

Obviously, undercover agents are not present when 99.99% of the high-risk accounts are opened at international banks. Not only are they not present, they should not be. Accountholders and institutions are entitled to their financial privacy when everything is on the "up and up". So, how do we address this challenge?

In view of the sea of existing banking regulations, it may be unpopular to suggest a single additional regulation, but there is merit for this new one. This regulation would offer the institution and the accountholder financial privacy, but would give law enforcement, upon the service of due process, a critical starting point to identify important historical facts when the next bank is used or abused to launder hundreds of billions in illicit funds through global markets. Documenting these facts is extremely important to the development of a deterrent that would later reasonably hold individuals accountable for criminal conduct, rather than pursuing the current less successful approach of imposing monumental fines on institutions that are ultimately paid by innocent shareholders. In the end, isn't the greatest deterrent to financial crime a tool that will enhance the ability to establish individual responsibility for bad acts, and the prosecution of bad actors?

I am appealing to law enforcement agencies, regulatory agencies, and AML industry leaders to establish and participate in a committee that will assess this proposal, and hopefully later offer the best mechanics for its implementation. It would also be a goal of the committee, if they believe it is warranted, to thereafter take their proposal to US, UK, and other legislators, so they can assess and hopefully enact it.

This Account Relationship Affirmation (ARA) form would document responses from accountholders and their intermediaries to written questions posed by account relationship managers. It would also include some responses directly from the account relationship manger. Thereafter, the relationship manager would attest that their affirmation contains a true representation of the answers provided by each party

questioned. The account relationship manager would not be held accountable for the truthfulness of answers provided by third parties questioned, but would be required to affirm that the documented responses are in fact the responses provided by questioned parties. This affirmation would require written narrative responses, not responses affirmed by ticking a box.

These questions would be posed by account relationship managers to accountholders, those with signature authority on the account, anyone with beneficial ownership of 10% or more of the funds in the account, or any other person from whom oral instructions are received to carry out account transactions. Responses to these questions need to include answers from those that endorse or effectuate account debits and credits through mere oral instructions because, as was the case with respect to many of the accounts established during my "undercover life" by corrupt intermediaries, my control of those accounts was strictly oral. My name never appeared on one single document related to those accounts, but the relationship manager only followed orders provided by the accountholder of record if I orally confirmed those same instructions by phone.

Those that have never lived within the world of criminals possessing money seeking secrecy from governments may question whether relationship managers move funds only when a secret and unrecorded beneficial owner provides oral instructions. To allay that doubt, I offer the following transcript excerpt from a recorded undercover meeting between a DEA undercover agent (posing as a drug trafficker) and a senior account relationship manager at a Panama branch of a global U.S. financial institution. This recording was played in U.S. District Court during a criminal trial:

Officer posing as trafficker: …We have to be absolutely guaranteed that myself and the other people will never show up in anything. I mean, that's a hundred percent guaranteed?

Relationship Manager: "We (meaning the institution) prefer it that way, although, it's obvious from time to time, when you are talking about these kinds of money, the client wants to meet me, and wants to meet Steve (another relationship manager present at this meeting), and wants to meet Charlie (an intermediary introduced by the relationship manager that designed the money laundering front), and…and say, 'I'd like to measure these people.' At least, and perhaps meet each other again in Miami, something, have lunch, God knows what. But what I am trying to say is that…that if, if, there is anything that is irregular (concerning the funds)…I don't want to know about it.

During this same meeting, the relationship manager made it clear that, anything "irregular" had to be discussed by me with the intermediary (Charlie), a person that fully knew the funds moving through the account were proceeds of crime. The relationship manager also forewarned me that our phone, fax, and other communications could be monitored by law enforcement, and I should be careful when communicating. The relationship manager said all these things after I had previously told him during a lunch meeting that the millions in U.S. dollars that would be deposited to the account were drug proceeds owned by leaders of the Cali Cartel.

The intermediary named "Charlie" referenced above was formerly in charge of all accounting offices in Latin America for one of the global US based accounting firms. Charlie introduced me to yet another intermediary, a London based attorney with a formation company that operated out of the BVI. This attorney sold companies and nominees to many of Charlie's clients. At Charlie's direction, the attorney sold me a Lichtenstein Foundation, several BVI companies, many Panamanian companies, and nominees installed in those companies to hide my and my associates' control and beneficial ownership of the account. Those companies, paperwork, and nominee services were collectively used to build a money

laundering front that concealed and disguised the movement of drug proceeds and created veils of secrecy that gave the false appearance those funds were owned and transferred on behalf of a legitimate European based mutual fund with a significant number of investors, none of whom had an interest of 20% or more. The foundation, companies, nominee services, and hundreds of related documents cost me $35,000 during the first year of the front's operation.

During preliminary reviews of prior drafts of this proposal, some bank executives opined that the questions I suggest be obtained from accountholders and their intermediaries, and documented within an account relationship affirmation (ARA), are too extensive and would require an account relationship manger to have to invest too much time to obtain those answers. To that I say, "That is why I propose we establish a committee that collectively assesses what makes sense. This is not the final proposal. This is a whitepaper designed to spark the formation of a committee to assess the proposal."

At the end of the day, any bank that is not interested in the answers to these questions is derelict in their enhanced due diligence process. Does it make more sense for an account relationship manager to solicit answers to pertinent questions pursuant to a regulation, or would a bank rather spend valuable assets attempting to get answers to these questions through standard processes that we all know will never pierce corporate veils? Realistically, an honest account relationship manager communicating with an honest accountholder and his/her intermediaries can most likely collect the information needed to respond to these questions in the same amount of time it takes for those parties, as they often do in the normal course of business, to enjoy discussion during one or two bank financed 5-course dinners.

A senior compliance executive that reviewed a prior draft of this proposal graciously offered his assessment about this proposal, stating that he isn't presently convinced it is needed. In his view:

"I certainly always had a policy for high risk or sensitive customers that (required) account managers, and more important their supervisors and lines of business heads, to annually review and certify their High-Risk Sensitive Customers. We would then run independent compliance checks on these annual reviews and an independent check on what we thought, with a recommendation for either more information, okay (the account), or exit (the relationship).

You almost always get relationship managers fighting in the client's corner. I call them (relationship managers) the customers representatives in the bank – they (customers) are their (relationship managers) meal tickets. I have never lost an argument for more information or to exit, not once, and I had thousands. I have also exited thousands of customers due to this."

"If I didn't have the first clue about a country or the context, or didn't have people that did, it would have been easy for management to side with the relationship manager and not with compliance. Sometime compliance people really are useless and don't know anything about a market, and so everyone from Colombia is a drug dealer. After a short time, I was able to establish independent authority where it wasn't a pure management decision. I called it having two keys. Business had a key and must use it to say yes or no. Once they had decided, I had a key to say yes or no. You needed two keys turned each and every year for high-risk customers to be maintained."

The response this very senior compliance executive noted above, in my view, supports why this regulation is needed. Why do we accept the concept that the customer is the relationship manager's "meal ticket", that premise sets off alarms that their input is likely to be biased. How is it that the relationship manager should "fight in the customer's corner". A healthy bank should employ personnel

that, first and foremost, have the bank's best interest at heart. One shouldn't have to expect sales personnel to be putting lipstick on a pig. After all, even with lipstick, it's still a pig. And why are there so many moving parts within compliance, sales, and management to discover the answers to fundamental questions? Isn't that a major contributor to why it is so difficult to figure out who pulled the wool over whose eyes when a relationship explodes?

Why should the bank have to spend countless resources to try to dig up answers to questions that a forthright accountholder should be more than willing to share? With answers from accountholders and their intermediaries in response to uniform relevant questions, the valuable compliance resources of a bank can be reduced and targeted to the most important issues. No one will have to fish to find facts that, most likely, won't be as revealing as those in response to standardized questions I propose be included in an account relationship affirmation. Why are we so afraid to uniformly and definitively document the representations made by accountholders and their intermediaries to bank personnel? Absent this approach, the answers to key questions become part of a calculation of who hit or missed a moving target. Individual responsibility becomes a blur.

After reading an earlier draft of this proposal, this same former senior compliance executive opined that "maybe 1 – 2% (of account relationship managers) are criminal and 5% are willing to look the other way." His life experience certainly puts him in a position to credibly assess the degree of criminality within the account relationship side of banking. He was globally responsible for preventing an international bank's involvement in financial crime, ensuring effective compliance, and minimizing risk. While heading those functions, although he was not involved whatsoever in any wrongdoing and clearly deserves nothing but total respect for a highly successful career, during his tenure, that bank had a wealth management division that intentionally created many tens of thousands of secret accounts to facilitate criminal tax offenses by Americans. The institution not only admitted criminal guilt, but had to pay hundreds of millions in fines because facilitating criminal tax offenses was a practice endorsed by the institution. Despite a highly trained and dedicated senior compliance leader with nothing but the best intentions, large scale crimes facilitated by a significant portion of account relationship managers went unnoticed. This proposal, had it previously been in place, would have inhibited the evolution of that criminal conspiracy.

With recognition that this proposal and the related list of questions for high-dollar/high-risk accountholders can be improved with input from a committee of AML professionals, regulators, and law enforcement representatives, I have listed questions in Appendix A to this whitepaper that I propose should be considered for inclusion in an account relationship affirmation.

Cumulatively, with respect to the questions below, the phrase "those related to the account" includes anyone that is the accountholder, has signature authority, has beneficial ownership of 10% or more of the funds in the account, or has caused transactions in the account to occur by oral instruction.

A lot of thought, from all perspectives, needs to be applied to the process of developing a regulation that requires an internal annual sworn statement by account relationship managers relative to their knowledge, and the answers they were provided by individuals related to high dollar/high risk accounts. This affirmation will not only document the knowledge of the account relationship manager, it will most importantly clearly document the representations made by those related to a high-risk account, an act that could later provide proof that an account relationship manager was misled by those related to an account.

I propose that subject matter experts in banking, regulation, and law enforcement collaborate concerning this proposal by becoming members of an Account Relationship Affirmation (ARA) research committee to assess this proposal and render a written opinion about it. If warranted, that written opinion should be tendered by members of the committee to legislators for their consideration.

Appendix A

- When and how did you first come to have contact with those related to the account? List each of these individuals and their relationship to the account.
- Were those related to the account introduced by a lawyer, another banker, a representative of a wealth management company, a representative of an entity that forms companies, another accountholder, or any other third party? If so, identify this introducer, and what they said about those related to the account.
- Have you met those related to the account? With whom did you meet, when and where did those meetings occur during this year, and what was the nature of the discussions?
- What have those related to the account told you about the purpose of the account. Include details about who provided this information, when it was provided, and what corroboration those related to the account provided about the purpose for the account.
- Explain what you know about the beneficial ownership of the funds received into the account, the purpose of the account, and how you know this information.
- If the account is maintained in the name of a person or entity other than the beneficial owner(s) of the funds received into the account, explain the reason why the account is in this other name.
- Do those related to the account have a beneficial ownership in any other accounts maintained at our bank?
- What do you know about the personal and business history of those related to the account, and how do you know this information?
- Have you obtained 3 business and 3 banking references from each of those related to the account?
- Who are the business and banking references you were provided, and what have they told you during this year about those related to the account?
- Have you obtained a resume from those related to the account, copies of bank statements of accounts in other institutions those related to the account maintain, or any other documentation?
- Are the resumes, bank statements, and other documentation of those related to the account consistent with the representations made to you by those related to the account?
- Are you, any member of your family, or any associates of yours related (personally or through business) to those related to the account? If so, identify those individuals and what they have advised you about those related to the account?

- Do you have any reason to suspect that those related to the account may be involved, now or in the past, in any type of illegal activity? Regardless of your answer, explain the reason for your response.
- Do you have any reason to suspect that any associate of those related to the account may be, now or in the past, involved in any type of illegal activity? Regardless of your answer, explain the reason for your response.
- What is the source of the funds being received into the account, and are the actual deposits consistent with what those related to the account have said would be the purpose of the account.
- Are the disbursements from the account consistent with the nature of the business?
- What do you know about the clients of those related to the account? How did you obtain this information, and what have you done to attempt to verify its accuracy?
- Have you conducted any research to confirm representations made by those related to the account concerning the funds received into the account or disbursed from the account? Explain your answer.
- What other financial institutions have maintained accounts for those related to the account? How do you know about these other institutions, and are you aware of any negative or derogatory information related to those relationships?
- Are you aware of any financial institution having declined a request by those related to the account to open or maintain an account in which they had an interest of any kind?
- Other than through the operation of this account, do you, or anyone you know, have any personal or business association with those related to the account?
- Do you have any reason to believe that those related to the account are Politically Exposed People (PEPs), or have any connection to any Politically Exposed People (PEPs)?
- If your answer to the question above is yes, please provide all the information you have about the political connection of those related to the account.

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