



POLICY ALERT // JANUARY 29, 2019

## Recent AML Enforcement Actions Target U.S. Broker-Dealers

---

**U.S. authorities took three enforcement actions in December against U.S. broker-dealers, underscoring the importance of anti-money laundering (AML) risk management and suggesting closer scrutiny of AML compliance and the possibility of larger fines across the securities industry.** Prosecutors announced the first-ever criminal Bank Secrecy Act (BSA) charges against a U.S. broker-dealer. Regulators fined UBS Financial Services Inc. and UBS Securities LLC \$15 million and fined Morgan Stanley Smith Barney LLC \$10 million.

- ▶ On December 19, 2018, federal prosecutors in the Southern District of New York announced the first-ever criminal charge against a U.S. broker-dealer for a BSA violation. Prosecutors charged Central States Capital Markets LLC (CSCM) for its willful failure to file a suspicious activity report (SAR) concerning the illegal activities of a customer who was convicted of racketeering, wire fraud, and money laundering for his role in an illegal payday lending scheme.<sup>1</sup> CMSC did not follow its customer identification procedures, act upon red flags prior to opening investment accounts, or verify the customer's authority over the accounts, according to court filings.<sup>2</sup> CMSC also ignored news reports alleging the customer's use of front companies to evade usury laws and did not review more than 100 AML alerts generated over a four-year period.<sup>3</sup>
- ▶ On December 17, 2018, UBS Financial Services Inc. (UBSFS) and UBS Securities LLC (UBSS) agreed to pay a combined \$15 million fine to U.S. regulators for failing to establish and implement adequate AML programs. As part of the agreement, UBSFS paid fines for, among other lapses, failing to detect, review, and file SARs on transactions involving the suspicious movement of funds through its customers' brokerage accounts,<sup>4</sup> failing to maintain an adequate due diligence program for foreign correspondent accounts,<sup>5</sup> and failing to maintain AML surveillance systems reasonably designed to monitor high-risk transactions, including foreign currency wire transfers at UBSFS and penny stocks at UBSS.<sup>6</sup>
- ▶ On December 26, 2018, FINRA assessed a \$10 million fine against Morgan Stanley Smith Barney LLC for sustained AML program and supervisory failures.<sup>7</sup> FINRA found that Morgan Stanley's automated AML surveillance systems did not receive critical data from several upstream systems, that it failed to devote sufficient resources to review alerts generated by its AML



systems, and that its AML department did not reasonably monitor customers' penny stock trades for potentially suspicious activity.<sup>8</sup> FINRA also found that Morgan Stanley failed to maintain a supervisory system reasonably designed to comply with prohibitions on the offer or sale of unregistered securities, and that it failed to conduct risk-based, periodic reviews of certain foreign correspondent accounts.<sup>9</sup>

**These enforcement actions highlight U.S. regulators' current focus on AML-related risks facing broker-dealers and the need for broker-dealers to adopt and implement effective, risk-based approaches to limit their exposure.**

- ▶ These enforcement actions build on U.S. regulators' efforts to call attention to ongoing risks associated with foreign correspondent accounts and the use of master/sub- and omnibus account arrangements, which may permit non-customers to access the securities market without disclosing their identities or business purpose.<sup>10</sup> Securities firms should ensure that their due diligence programs include risk-based reviews of all foreign financial institution clients—which, under U.S. law, include foreign broker-dealers as well as banks—both at onboarding and on a periodic basis thereafter.
- ▶ Recent actions also underscore the importance of ensuring adequate resourcing and staffing for the AML compliance function, particularly in the area of suspicious activity monitoring and reporting.<sup>11</sup> Insufficient training, authority, skills, and resources for AML compliance personnel can allow potentially suspicious activity to go undetected, create a backlog of alerts awaiting review and investigation, and lead to late SAR filings and other AML reporting violations. Securities firms should perform routine staffing and resourcing assessments of the AML compliance function and ensure that existing AML officers and staff receive regular, role-based training and performance reviews.



## Endnotes

---

- 1 Department of Justice, U.S. Attorney's Office, Southern District of New York, "Manhattan U.S. Attorney Announces Bank Secrecy Act Charges against Kansas Broker Dealer," Press Release No. 18-449, December 19, 2018, <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-bank-secrecy-act-charges-against-kansas-broker-dealer>.
- 2 Department of Justice, U.S. Attorney's Office, Southern District of New York, "Manhattan U.S. Attorney Announces Bank Secrecy Act Charges against Kansas Broker Dealer," Press Release No. 18-449, December 19, 2018, <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-bank-secrecy-act-charges-against-kansas-broker-dealer>.
- 3 Department of Justice, U.S. Attorney's Office, Southern District of New York, "Manhattan U.S. Attorney Announces Bank Secrecy Act Charges against Kansas Broker Dealer," Press Release No. 18-449, December 19, 2018, <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-bank-secrecy-act-charges-against-kansas-broker-dealer>.
- 4 SEC, "SEC Charges UBS Financial Services Inc. with Anti-Money Laundering Violations," File No. 3-18931, December 17, 2018, <https://www.sec.gov/enforce/34-84828-s>.
- 5 FinCEN, "FinCEN Assesses \$14.5 Million Penalty against UBS Financial Services for Anti-Money Laundering Failures," Number 2018-03, December 17, 2018, <https://www.fincen.gov/news/news-releases/fincen-assesses-145-million-penalty-against-ubs-financial-services-anti-money>.
- 6 FINRA, "FINRA Fines UBS \$5 Million for Significant Deficiencies in Anti-Money Laundering Programs," No. 2012034427001, December 17, 2018, <http://www.finra.org/newsroom/2018/finra-fines-ubs-5-million-for-significant-deficiencies-in-aml-programs>.
- 7 FINRA, "FINRA Fines Morgan Stanley \$10 Million for AML Program and Supervisory Failures," No. 2014041196601, December 26, 2018, <http://www.finra.org/newsroom/2018/finra-fines-morgan-stanley-10-million-aml-program-and-supervisory-failures>.
- 8 FINRA, "FINRA Fines Morgan Stanley \$10 Million for AML Program and Supervisory Failures," No. 2014041196601, December 26, 2018, <http://www.finra.org/newsroom/2018/finra-fines-morgan-stanley-10-million-aml-program-and-supervisory-failures>.
- 9 FINRA, "FINRA Fines Morgan Stanley \$10 Million for AML Program and Supervisory Failures," No. 2014041196601, December 26, 2018, <http://www.finra.org/newsroom/2018/finra-fines-morgan-stanley-10-million-aml-program-and-supervisory-failures>.
- 10 See, e.g., U.S. Department of the Treasury, National Money Laundering Risk Assessment: 2015, pages 79-81, <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>, and National Money Laundering Risk Assessment: 2018, pages 39-40, [https://home.treasury.gov/system/files/136/2018NMLRA\\_12-18.pdf](https://home.treasury.gov/system/files/136/2018NMLRA_12-18.pdf). See also FINRA, Master Accounts and Sub-Accounts, Regulatory Notice 10-18, April 2010, <http://www.finra.org/sites/default/files/NoticeDocument/p121247> and SEC, "Master/Sub-Accounts," National Exam Risk Alert, volume I, issue 1 (September 29, 2011), page 8, <https://www.sec.gov/about/offices/ocie/riskalert-mastersubaccounts.pdf>.
- 11 See, e.g., U.S. Department of the Treasury, National Money Laundering Risk Assessment: 2015, pages 82-84, <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>.