

Senate Subcommittee Report: Identifying PEPs and Foreign Corruption: Who Else Should Be Responsible?

As part of Daylight’s continuing efforts to keep the financial industry informed of regulatory developments relating to anti-money laundering and anti-corruption compliance, we are sending you a summary of a recent report issued by the U.S. Senate Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs.

I. BACKGROUND

On February 4, 2010, the U.S. Senate Permanent Subcommittee on Investigations (PSI) issued a report entitled “Keeping Foreign Corruption Out of the United States: Four Case Histories.” This report, through the use of four illustrative case studies, analyzes how Politically Exposed Persons (PEPs) have used various professionals—lawyers, realtors, escrow agents and lobbyists—as well as financial institutions to thwart U.S. anti-money laundering (AML) and anti-corruption defenses. The report describes how certain PEPs were able to exploit unregulated industries and professionals to integrate the likely proceeds of corruption into the U.S. as well as provide recommendations to strengthen U.S. AML and PEP controls. The report draws a clear correlation between foreign corruption and money laundering activity in the U.S.

II. CASE HISTORIES

In connection with the report, the PSI conducted an investigation to understand “how U.S. laws apply to PEPs utilizing the domestic financial system, and examine how [PEPs] may be circumventing or undermining AML and PEP controls to bring funds that may be the product of foreign corruption into the United States.” Foreign PEPs have long been considered to pose a money laundering threat to the U.S. through their use of the U.S. financial system as a means of laundering funds obtained through corruption and other activity. Since at least the passage of the Patriot Act in 2001, U.S. financial institutions have had obligations to identify and monitor the activities of foreign PEPs under certain circumstances. Other industries and professionals are similarly obliged. The PSI identified legal gaps, poor due diligence practices, and inadequate procedures for identifying and monitoring PEP activity that, at times, have enabled illicit activities conducted by certain PEPs. A brief summary of the four case histories follows:

- A. **Obiang Case.** Teodoro Nguema Obiang Mangue, son of the President of Equatorial Guinea, was able to move \$110 million in suspect funds to the U.S. from 2004-2008 with the help of U.S. lawyers, bankers, real estate agents and escrow agents who assisted him with circumventing U.S. AML processes at financial institutions. With the help of two attorneys, he used a shell company, law office and attorney client accounts to funnel his funds. Two real estate agents assisted in the sale and purchase of California real estate, including the purchase of a \$30 million Malibu residence, with funds transferred from Equatorial Guinea.

Working with an escrow agent, Mr. Obiang was also able to purchase a \$38.5 million U.S.-built Gulfstream jet.

- B. Bongo case. Omar Bongo, former President of Gabon, used a U.S. lobbyist from approximately 2003-2007 to purchase six U.S.-built armored vehicles and obtain U.S. government permission to buy six U.S.-built C-130 military cargo aircraft to support his regime. His transactions were conducted through the lobbyist's corporate accounts to avoid detection.
- C. Abubakar Case. Jennifer Douglas, the wife of Atiku Abubakar, former vice president and former candidate for the presidency of Nigeria, assisted her husband with bringing \$40 million in suspect funds from offshore accounts to numerous accounts in the U.S. The U.S. financial institutions, unaware of Ms. Douglas's PEP status, allowed her to conduct numerous high dollar transactions without undergoing enhanced scrutiny. Approximately \$15 million of the \$40 million was transferred to American University, which had no legal obligation to ask about the source of funds or the identity of the offshore corporations.
- D. Angola Case. The report details three examples of Angolan PEPs who successfully gained access to the U.S. financial system: an arms dealer, a government official and a private bank with primarily PEP clientele. One of the three cases involved transactions with Pierre Falcone, a notorious arms dealer with close Angolan political ties, now serving a six year prison term for illegal arms dealing, tax fraud and money laundering. He maintained a 28-year relationship with a large U.S. financial institution which, despite his PEP status and criminal background, did not handle him as a PEP nor consider him high risk.

III. REPORT RECOMMENDATIONS

PEPs engaged in corruption have used various unregulated U.S. professionals, such as lawyers, realtors, escrow agents and lobbyists, in addition to U.S. financial institutions, to circumvent U.S. AML and anti-corruption safeguards. These abuses were perpetuated through suspect tactics involving offshore corporations, a U.S. university and personal and correspondent accounts as conduits. Further, this abuse was not always identified as the financial institutions involved relied upon incomplete or unreliable PEP data supplied by third parties; in some cases, the financial institution did not act on available information which would have led to increased scrutiny of their customers and transactions.

The report recommends the (i) strengthening of PEP and anti-corruption regulations and controls; (ii) revocation of exemptions for certain U.S. professionals; (iii) imposition of immigration and visa restrictions on those PEPs involved with corruption; and (iv) greater transparency in the ownership structure of U.S. corporations.

IV. HOW CAN DAYLIGHT HELP

Daylight has unparalleled Bank Secrecy Act and AML expertise, which can translate to industries unaccustomed to such regulations, as well as working with institutions in the financial industry



seeking to strengthen existing programs. Daylight's breadth of AML services includes assessing, enhancing, developing and implementing policies, procedures and internal controls, providing training services and conducting independent testing to ensure that an institution's AML compliance program complies with applicable regulatory requirements. In addition, Daylight provides a full range of anti-corruption and anti-bribery services, including investigative due diligence in the U.S. and abroad to assist companies in identifying foreign political figures and the risks that they may pose.

If you would like further information on Daylight's services in these areas, please contact Ellen Zimiles at (212) 554-2602, Carmina Hughes at (202) 552-8402 or visit us at www.daylightforensic.com.