

## ▶ Scott K. McClain Testifies before Congress

FINCEN AND LAW ENFORCEMENT AGENCIES ARE DELUGED WITH LARGELY USELESS SARs. | BY CYNTHIA VEGA

On May 10, the House Financial Services Subcommittee on Oversight and Investigations held a hearing to discuss the relative benefits of Suspicious Activity and Currency Transaction Reports (SARs) to law enforcement agencies, versus the cost to the financial services industry in complying with associated regulations. To date, the Money Service Business (MSB) industry has demonstrated outstanding compliance with SAR and CTR requirements.

However, these reports, the cornerstone of the U.S. anti-money laundering effort, have created significant costs to MSBs in several areas, including increased technology and data systems costs, labor, and professional and service fees. Scott McClain, FiSCA's Deputy General Counsel, testified as the sole representative speaking on behalf of the MSB industry.

The first panel included the testimony of law enforcement representatives William F. Baity, Deputy Director of FinCEN, and Salvador Hernandez, Deputy Assistant Director, Criminal Investigative Division of the FBI. Each gentleman underscored the importance of maintaining the current compliance requirements for SAR and CTR filings, though neither could quantify, nor substantiate, the number of instances where these filings resulted in detection of criminal activity not already known to the authorities via other data. Neither agency acknowledged the extraordinary burden that these place on MSBs and banks or agreed with any proposed measures of possible relief, such as raising the dollar threshold on SAR filings.

Representing the financial service industry on the second panel, in addition to Scott, were Steve Bartlett, President & CEO, Financial Services Roundtable; Megan Hodge, Director AML, RBC Centura bank, on behalf of the ABA; Carolyn Mroz, President & CEO, Bay-Vanguard Savings Bank, on behalf of American Community Bankers; and R. Michael Stewart Menzies, Sr., President & CEO, Easton Bank & Trust Co, on behalf of Independent Community Bankers Association. Each witness gave real-world examples of the negative effects of current SAR and CTR requirements on their businesses.

In his testimony Scott highlighted one such example: "It is common knowledge that following the events of 9/11 and implementation of the USA PATRIOT Act, there has been a tremendous increase in regulatory scrutiny of the financial services industry. Across the board, financial institutions have responded to these pressures by engaging in a practice of defensive SAR filings. MSBs are persuaded that the key to avoiding penalties is to file reports on transactions involving even marginally irregular activity.

"As a result, FinCEN and law enforcement agencies are deluged with defensive SARs that are largely useless, and worse, may serve to obfuscate valuable direct and statistical information.

"Pressure toward defensive filings emanates in many cases from field-level examiners who 'second-guess' decisions by compliance personnel. Our members have

reported examples where examiners have been critical of MSBs who had not filed enough SARs, and where MSBs have been cited for not reporting transactions that the MSB knew to have a legitimate purpose. As a result, MSBs are adopting a 'when in doubt, fill it out' philosophy."

In an informal discussion among the panelists after the hearing, several bank witnesses thanked Scott for his testimony, noting that it demonstrated that the entire financial service industry is suffering from the fallout of current overregulation.

The committee plans additional in-depth hearings on these matters in the near future in order to form recommendations to address the areas of concern raised by law enforcement and industry. We hope to have the opportunity to continue this dialogue with these legislators at that time. ■

*Cynthia Vega is FiSCA's Communications Manager.*

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FiSCA's Deputy General Counsel