Should Professional Service Providers Assume Greater AML Vigilance Responsibilities?

Because they are known as “gatekeepers” in the financial industry, Professional Service Providers (PSPs), Bankers, Brokers, Realtors, Casino Managers, Trust Fund Managers, Money Managers, etc., carry a level of responsibility and share financial intelligence according to the Financial Action Task Force (FATF) Recommendation #22. FATF is an independent and inter-governmental entity that develops policies for protection of our global financial system from money laundering (AML), terrorist financing and financing of weapons of mass destruction. Its Recommendations (a total of 40) are considered to be the “Standard” for AML and Crime Terrorist Financing (CTF). While no specific AML requirements exist for PSPs, FATF Recommendation #22 (d) indicates that PSPs ought to have responsibilities if engaged in:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organization of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and
- buying and selling of business entities,

in which case, a PSP ought to follow the customer due diligence and record keeping requirements as outlined in FATF Recommendations 10, 11, 12, 15, and 17, and PSPs should perform the same duties as Financial Institutions in the areas of: Customer Due Diligence (CDD), Record Keeping, Politically Exposed Persons (PEPS), New Technologies used for Money Laundering and Applying CDD when relying on a Third Party.

Bank Secrecy Act (BSA) and AML procedures describe how certain PSP entities (Such as CPA firms and Law Firms) may be vulnerable to corrupting influences or have been historically misused by money launderers and criminals. The FATF perception is that a PSP may camouflage the identity of a client when conducting financial services on the client’s behalf. In cases when a Financial Institution does not have any information on a PSP client because its banking relationship is with the PSP, the Financial Institution has to rely on a PSP’s due diligence if it wants the banking business involved. According to FinCEN, “transactions involving professional service providers present third-party risks that can raise a depository institution’s vulnerability to money laundering, structuring, or hiding beneficial ownership of an account holder”.

The degree of control that PSP (attorneys and accountants) hold over their clients’ finances in routine transactions can be quite different. In cases where attorneys conduct financial transactions on their clients’ behalf, and assume control over client funds to do so, client funds are pooled in a general client trust account over which the attorney acts as trustee.

While Accountants sometimes hold client funds in trust accounts over which they serve as trustee, for the most part, activities by an accountant are done in an advisory capacity, or in preparation of financial reports, which do not require the accountant or CPA to take control of client funds. As a result, there is no required accountant-client fund pooling in the accounting industry equivalent to attorney trust accounts.

Accountant and Attorney PSPs have no suspicious activity reporting requirements of their own. A Financial Institution holding accounts for both may detect financial activities and transactions that the Financial Institution knows or suspects may require reporting to FinCEN. So, Financial Institutions find themselves in a situation of generating Suspicious Activity Reports (SARS) based on the type of bank activity related to PSPs. FinCEN states that the "risk factors filers most frequently cited included transactions with high-risk jurisdictions; apparent shell company activities; multiple international transactions, including those through foreign correspondent banks, and clients involved with high-risk professions".

Historically the U.S. applies an "indirect approach" for monitoring PSPs via PSP bank accounts; causing Financial Institutions to carry the bulk of PSP reporting responsibility, and finding themselves pressed with paperwork and SARS.

According to the Financial Sector Assessment Program (FSAP) report dated July 7, 2015: "there was a notable shortcoming with respect to the Recommendation addressing customer due diligence (CDD) which is one of the FATF's core Recommendations. There were also other deficiencies regarding the availability of ownership information about corporations and trusts, and the requirements applicable to certain designated non-financial businesses and professions (DNFBPs)" regarding trust and company service providers (TCSPs), including lawyers and accountants. Does this signify that PSP responsibilities in the areas of AML and CTF could be enhanced and more clearly defined in the future?

Because PSPs often can:

- act as intermediaries between a financial institution and a client,
- act as financial liaisons for their clients,
- conduct financial dealings for their clients such as real estate transactions, asset transfers, money management, investment services, trust arrangements,

Should PSPs embrace AML responsibilities that mirror Financial Institution's AML responsibilities?