



DOJ's Tough Approach To Anti-Money Laundering Compliance

Law360, New York (November 14, 2012, 6:02 PM ET) -- On Nov. 9, 2012, the U.S. Department of Justice announced that MoneyGram International Inc., a global money services business headquartered in Dallas, had agreed to forfeit \$100 million and enter a deferred prosecution agreement in which the company admitted to criminally aiding and abetting wire fraud and failing to maintain an effective anti-money laundering ("AML") program. The agreement also includes the imposition of enhanced compliance obligations and structural changes to MoneyGram's internal monitoring systems.

This disposition is noteworthy because it is indicative of the DOJ's focus on aggressively pursuing cases where money laundering is the core of the illegal conduct, and because it also may signal expanded expectations for a financial institution's AML compliance program. Among the more remarkable compliance obligations imposed under the agreement are the adoption of a bonus system that rates all executives on success in meeting compliance obligations, with failure making the executive ineligible for any bonus for that year. In addition, MoneyGram is required to retain for five years an independent corporate compliance monitor who will report regularly to the DOJ.

The settlement stems from an investigation begun in 2007 into transactions involving MoneyGram's U.S. and Canadian agents, as well as the company's fraud-complaint data and consumer anti-fraud program. According to court documents, starting in 2004, MoneyGram processed thousands of transactions for MoneyGram agents it knew to be involved in an international scheme to defraud members of the U.S. public, particularly the elderly and other vulnerable groups. In announcing the settlement, Assistant Attorney General Lanny A. Breuer of the DOJ's Criminal Division stated that MoneyGram "knowingly turned a blind eye to scam artists and money launderers" and profited as a result by collecting fees and other revenues on the fraudulent transactions.

The DOJ added that MoneyGram's illegal activities resulted from a "systematic, pervasive, and willful failure to meet its AML obligations under the Bank Secrecy Act," including failing to implement policies or procedures governing the termination of agents involved in fraud and/or money laundering, failing to conduct effective AML audits of its agents and outlets, and failing to sufficiently provide resources and staffing for its AML program.

To resolve the criminal investigation, MoneyGram agreed to enter a DPA in which it admitted to aiding and abetting widespread fraud and to willful failure to adhere to the Bank Secrecy Act's AML requirements. Although DOJ acknowledged that since 2009 MoneyGram had taken a number of remediation measures to address shortcomings in its anti-fraud and AML program, including replacing its entire senior management team and increasing its compliance department by 100 percent, DOJ nevertheless insisted that the company implement additional enhanced compliance obligations and structural changes to prevent a repeat of the charged conduct, in addition to requiring forfeiture of \$100 million to compensate victims. Those enhanced compliance measures include:

- creation of an independent compliance and ethics committee of the board of directors with direct oversight of the chief compliance officer and the compliance program;
- adoption of a worldwide anti-fraud and anti-money laundering standard to ensure all MoneyGram agents throughout the world will, at a minimum, be required to adhere to U.S. anti-fraud and anti-money laundering standards;
- adoption of procedures to share information between the anti-fraud and AML units;
- adoption of a bonus system that rates all executives on success in meeting compliance obligations, with failure making the executive ineligible for any bonus for that year, and provides that prior bonuses can be "clawed back" for executives later determined to have contributed to compliance failures;
- adoption of enhanced due diligence for agents deemed to be high risk or operating in a high-risk area;
- retention of an independent corporate monitor who will report regularly to the DOJ for the next five years; and
- adoption of a stronger agent termination policy.

While remediation, enhanced compliance measures and even outside monitors have been regular features of corporate dispositions for criminal antitrust, export controls and Foreign Corrupt Practices Act violations, the MoneyGram DPA's far-reaching compliance obligations and imposition of an outside monitor signal the DOJ's growing intolerance of AML violations and the DOJ's move toward consistency in compliance measures across the board.

It also means that companies who fail to comply with AML laws risk not only substantial immediate monetary forfeitures and penalties, but also the imposition of long-term systematic changes, perhaps supervised by an independent (and costly) outside monitor, that could end up costing the company millions more. U.S. companies should consider MoneyGram's experience and preemptively ensure that their internal AML processes are sufficient and operating successfully.

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