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# Annual Enforcement Action Survey

## AML Enforcement Actions Hit Bottom in 2017

*April 2, 2018* | *By Daniel Bethencourt, Koos Couvee, Manju Manglani and Valentina Pasquali*

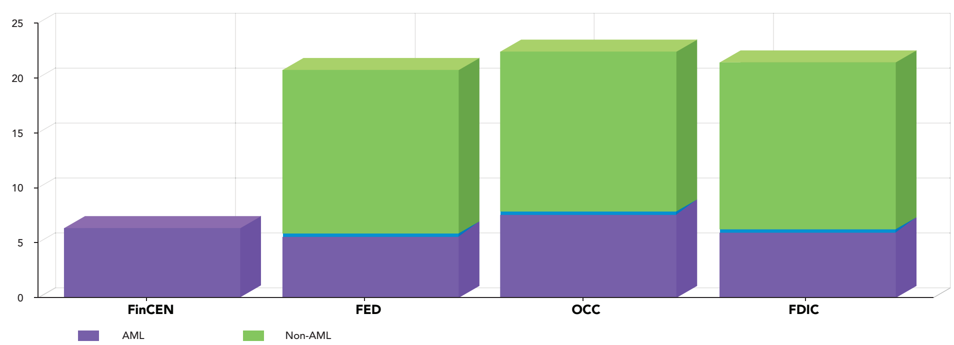
The number of U.S. enforcement actions citing individual and institutional violations of federal anti-money laundering rules hit a 10-year low in 2017 even as total outlays for AML regulatory penalties increased 10-fold over the previous year, according to data compiled by *ACAMS moneylaundering.com*.

The Office of the Comptroller of the Currency (OCC), Financial Crimes Enforcement Network (FinCEN), Federal Deposit Insurance Corp. (FDIC) and Federal Reserve issued 28 AML and Bank Secrecy Act-related enforcement actions last year, 30 percent fewer than their previous annual low of 41 in 2016.

"More banks and virtually all large banks are under Bank Secrecy Act and anti-money laundering consent orders, so there are less enforcement actions to take," said Ellen Warwick, former director of enforcement and compliance at the OCC, now senior counsel with Buckley Sandler in Washington, D.C.

AML-related enforcement actions in which the four major federal banking regulators attached monetary penalties rose slightly, from nine in 2016 to 11 last year, but the combined value of those penalties exceeded

**U.S. Federal Enforcement Actions 2017**




*The four major U.S. banking regulators issued 75 enforcement actions in 2017, 28 of which were AML-related.*

$251 million after reaching just $24 million in 2016, the lowest total value since 2009.

FinCEN led federal AML regulators in total monetary penalties issued, fining overseas cryptocurrency exchange BTC-e and its owner, Russian national Alexander Vinnik, $122 million for laundering hundreds of millions of dollars for cybercriminals. The bureau collected a total of roughly $20 million in 2016.

A state regulator, the New York State Department of Financial Services, however, levied the most AML monetary penalties for the second year running, assessing a combined $650 million in fines against Deutsche Bank and Habib Bank Ltd., the largest lenders in Germany and Pakistan, respectively.

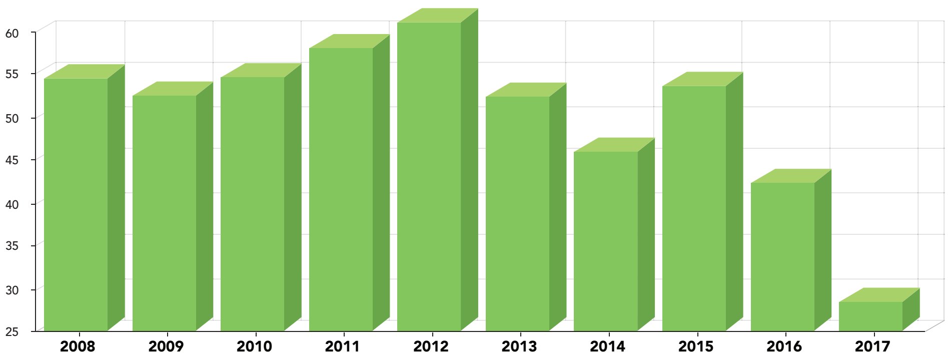
The $425 million penalty DFS levied against the German lender last January after its branches in London, Moscow and Manhattan helped move $10 billion out of Russia via "mirror trades" also represents the highest single outlay in 2017, with the $225 million fine disclosed in September against Habib Bank placing second.

"We're going to continue to see these larger penalties with these enforcement actions because regulators … have to communicate the seriousness of a lack of compliance," Fred Curry, a principal with Deloitte Financial Advisory Services in New York, said. "There's also the issue of governance, and whether information is flowing upward to management."

The OCC assessed a $70 million fine against Citibank late last year for not addressing compliance violations outlined in a 2012 consent order.

In February, Merchants Bank of California, a community bank with a single branch, agreed to pay $1 million to the OCC and $7 million to FinCEN for ignoring roughly $192 million of suspicious remittances and correspondent transactions.

## U.S. Federal AML Enforcement Actions 2008-2017




*U.S. AML enforcement actions hit a 10-year low last year.*

The Federal Reserve disclosed its only AML-related penalty of the year in January 2017, fining Deutsche Bank $41 million as part of the multi-agency settlement reached with the German lender following the mirror-trades scandal.

### Individuals in the crosshairs

The FDIC, Federal Reserve Board, OCC and FinCEN issued seven AML-related enforcement actions against individuals in 2016, led by FinCEN's record $12-million penalty against Vinnik, the owner of BTC-e, in July, and a $250,000 fine against MoneyGram's former chief compliance officer, Thomas Haider, two months earlier.

The Financial Industry Regulatory Authority, or Finra, disclosed 14 AML-related actions in 2017. Four of those actions targeted individuals, three of whom were ordered to pay a combined $65,000 in penalties.

In December, the industry regulator teamed with the Securities and Exchange Commission to collect $13 million from Merrill Lynch for, among other shortcomings, failing to monitor tens of millions of dollars-worth of transactions.

The SEC issued five AML-related actions of its own in 2017, including one against Wells Fargo's U.S. securities branch, which agreed to pay $3.5 million for failing to report suspicious activity on at least 50 occasions from March 2012 through June 2013.

The FDIC last year fined two former employees of Banamex USA, including the now-defunct affiliate's BSA chief, a total of $100,000 for BSA violations stemming from billions of dollars in unmonitored remittances, and barred a former executive of Chicago-based Edgebrook Bank from the industry for facilitating BSA violations.

The Federal Reserve similarly banned a former vice president and a former finance executive of Birmingham, AL-based Regions Bank for engaging in fraud and money laundering, but did not levy any monetary penalties independently last year.

The OCC did not issue any enforcement actions against individuals in 2017, AML or otherwise, after issuing two the previous year.

Penalties aside, the steady, sometimes dramatic decline in U.S. AML enforcement over the past decade should not be viewed as prologue, according to Clay Porter, former acting principal deputy chief of the Justice Department's money laundering and asset recovery section.

"What matters is what's in the pipeline, the nature of the crime, the nature of the facts, that's what drives the enforcement actions and the fines," said Porter, now head of investigations and managing director at Navigant in Washington, D.C. "Some investigations take longer than others."

### Justice returns…

After a dormant year that saw no sanctions or AML-related fines or forfeitures, U.S. prosecutors returned with a bullet in 2017, collecting more than $1.1 billion combined from two financial institutions, a Cypriot legal entity and a Chinese telecom manufacturer.

In January, Western Union consented to the largest-ever forfeiture by a money services business—$586 million—for willfully failing to maintain an AML program and facilitating a multiyear fraud scheme involving 26 of its now-convicted former agents in the United States and Canada.

Shenzhen, China-headquartered ZTE Corp pleaded guilty in March to conspiring to circumvent U.S. sanctions against Iran and, in addition to the $431 million fines and forfeitures paid to the Justice Department, paid $330 million to the Commerce Department and $101 million to the Treasury Department's Office of Foreign Assets Control.

OFAC collected only one penalty from a lender last year: Canada's TD Bank paid $516,000 for violating U.S. sanctions against Iran and Cuba.

Banamex USA forfeited nearly $100 million to the Justice Department for a range of offenses, including violating the BSA by using inadequate, manual processes to screen more than $8.8 billion in remittances to Mexico from 2007 to 2012. The forfeiture came two months after the FDIC disclosed monetary penalties against two senior employees of the Citigroup affiliate.

"We've seen a long string of institutional resolutions where banks agree to resolve criminal or regulatory charges through either through a DPA or other settlement, paying large financial penalties," said Seetha Ramachandran, former head of the Justice Department's money laundering and bank integrity unit, now a partner with Schulte Roth & Zabel in New York. "But now, there is definitely a shift toward individual accountability in these same type of cases."

Federal prosecutors said that Banamex USA received only partial credit for cooperation because it did not submit relevant records and facts in a "timely [or] substantial" manner at the onset of the Justice Department's investigation.

The department's basis for limiting cooperation credit to Banamex USA seems to reference aspects of the Yates memo, 2015 departmental guidance that instructs federal prosecutors to pursue cases more frequently against individual employees suspected of involvement in a firm's misconduct.

The memo, named after then-Deputy Attorney General Sally Yates, has not significantly changed how the department conducts investigations into alleged corporate crime, said Porter, the former acting principal deputy chief at the Justice Department.

"An individual gets prosecuted based on facts … and when you are looking at large institutions … everybody says 'someone else did it," said Porter, now managing director and head of investigations at Navigant in Washington, D.C. "They don't talk via email … because they know law enforcement may find what they put in their communications."

The monetary settlement that perhaps raised the most eyebrows last year was among the Justice Department's smallest.

In May, Prevezon, a Cyprus-based, real-estate holding firm controlled by Russian oligarch Denis Katsyv, paid only $5.9 million to resolve U.S. money-laundering charges stemming from a $230 million tax fraud uncovered by now-deceased Muscovite attorney Sergei Magnitsky.

Federal attorneys in New York claimed Katsyv's companies used millions of dollars of proceeds from the fraud to buy commercial and residential properties in Manhattan, but abruptly agreed to conclude their case three days before trial.

"We are seeing more use of real estate, of securities or stocks, mutual funds, things like that, to launder, instead of just depositing money in banks," Douglas Leff, special agent in charge of the FBI's division in San Juan, Puerto Rico, said. "The end game is laundering the funds into real estate or stocks, or buying and selling those first to create a paper trail for the bank."

## London calling

The number of AML cases brought by U.K. regulators did not substantially differ from 2016, when four firms and one individual paid a total of £5.3 million in penalties to the Gambling Commission and Financial Conduct Authority, but spiked in value as a result of the FCA's record £163-million fine against Deutsche Bank.

Alison Barker, FCA director of specialist supervision, told *moneylaundering.com* that the case against Deutsche Bank illustrates the importance of conducting adequate due diligence and ensuring that AML risk is properly assessed and managed.

"What it exposed was how money laundering might be perpetrated through the capital markets, and the use of mirror trades, which are quite complex across jurisdictions," Barker said. "We would see that [the enforcement action] as a major achievement from a regulatory point of view." The FCA has become "more intrusive" when examining financial institutions for AML compliance, said Guy Wilkes, former departmental head of enforcement at the agency.

"Previously, it would simply have investigated whether there were breaches of the money laundering regulations, but it is now increasingly looking to see whether those breaches have led to actual money laundering," said Wilkes, now a regulatory lawyer with Mishcon de Reya in London.

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>
> **Clay Porter**
> Head of Investigations and Managing Director
> Navigant

Not to be outdone, the Serious Fraud Office notched its third deferred prosecution agreement and most significant victory to date in January 2017, when Rolls-Royce agreed to forfeit £510 million for bribing officials in Indonesia, China, and five other countries.

The iconic engineering firm also paid $170 million to the Justice Department and $26 million to Brazilian regulators to resolve the global bribery case. "It's likely the approach of the SFO will continue under the new director," Judith Seddon, head of the anticorruption and international risk practice at Ropes & Gray in London, said. "They're going to continue to focus on prosecution of corporates, and we are likely to see more deferred prosecution agreements, as well as more focus on prosecutions of individuals."

The SFO's current director, David Green, plans to step down in April after heading the agency since 2012.

The U.K. Solicitor's Disciplinary Tribunal also appears to have ramped up its supervision of the legal industry last year, having assessed £80,000 in AML-related penalties against three professionals and one against the firm for which they worked, Clyde & Co.

Only one gaming firm, Stan James Online, was fined for AML violations last year after the Gambling Commission fined three firms for compliance-related infractions in 2016.

"Americans go heavy on enforcement and light on regulation, while in the United Kingdom they are heavy on regulation and light on enforcement," Polly Sprenger, former head of strategic intelligence with the SFO, said. "If you understand that cultural difference, it goes some way to explaining why there are more enforcement actions in the U.S. than in the U.K."

## Around the world

The Reserve Bank of India and Hong Kong Securities and Futures Commission were among the most prolific regulators in 2017, with the former issuing no fewer than eight AML-related enforcement actions and the latter tagging four firms with penalties, as well as barring one individual from the financial services industry.

Last year also saw Western institutions penalized overseas for AML infractions.

In April, the Hong Kong Monetary Authority fined the local affiliate of Swiss private bank Coutts & Co. $891,000 for AML violations possibly stemming from the lender's role in laundering funds embezzled from 1Malaysia Development Bhd.

The 1MDB scandal also landed the bank a fine back home. In February, the Swiss Financial Market Supervisory Authority ordered Coutts to pay nearly $6.6 million after $2.4 billion of the state fund's assets moved through the private lender's accounts in Switzerland.

The Central Bank of Ireland also pursued a foreign financial institution in 2017, levying a €1 million fine in November against Italian insurer Intesa Sanpaolo Life for failures tied to due diligence, risk assessment, suspicious activity reporting and other compliance expectations.

The regulator, which also fined Allied Irish Banks and Bank of Ireland €2.4 million and €3.2 million respectively for a wide range of AML violations, called last year for senior managers to be held accountable for compliance-related breaches.

*Colby Adams, Kieran Beer, Larissa Bernardes, Laura Cruz, Silas Bartels and Sonal Bhatnagar contributed to this article.*