



FORENSIC, FRAUD AND INTERNAL CONTROLS WORKSHOP

Theme: Uncovering Fraud from the shadows

Date: 29th November 2019

Venue: Hilton Hotel, Nairobi Kenya

Presentation agenda



Session Objectives

To enable participants to have an understanding of the forensic investigation developments and trends in AML cases by:

- ☐ Assessing the role of a forensic auditor in a money launder case;
- ☐ Identifying elements and evidence of money laundering;
- ☐ Inspecting financial records and trial exhibits prepared by a forensic auditor; and
- ☐ Preparing for direct and cross examination.

Let's agree to



Clear
distractions

Fully engage

Learn together





Introduction –Money Laundering

Money Laundering



Definition

What is money laundering?

Money laundering is the process whereby proceeds generated from any criminal activity (“dirty money”) are transformed (“cleaned”) to appear legitimate money or other assets.



Stages of Money Laundering



Generally, Money Laundering happens in three stages:

Placement

Layering

Integration

Placement

Criminal puts the 'dirty' money into the financial system through a legitimate financial institution, e.g. cash bank deposits.

Layering

Complex financial transactions are carried out to change its form, e.g. wire transfers between different accounts that change the money's currency; or purchasing high value items to change the form of the money.

Integration

Money is integrated into the legitimate financial system/ economy and becomes 'clean money', e.g. a final bank transfer into a local business, in which the launderer is investing; or the sale of valuable items brought during the layering stage.

Common Channels of Money Laundering



These channels can broadly categorised into three

Banks & Other depository institutions

- Electronic transfer of funds
- Correspondent banking
- Payable Through accounts (PTAs)
- Concentration Accounts
- Private Banking
- Structured transactions
- Bank Complicity
- Credit unions and building societies
- Trade

Non Bank financial institutions

- Credit card industry
- Money Remitters and Money Exchange Houses
- Insurance companies
- Securities – broker dealers

Non-Financial Businesses and Professions

- Casinos, Gambling & betting Businesses
- Dealers in High-Value Items - Jewelry, Art etc.
- Travel Agencies
- Vehicle Sellers
- Notaries, Accountants, Auditors, Lawyers
- Investment and Commodity Advisors
- Real Estate Industry
- Manipulation of Import and Export Transaction prices
- Black Market Exchange



Assessing the role of a forensic auditor in a money laundering case

Why all the fuss?



- ☐ Governments, regulators and correspondent banks are taking money laundering seriously.
- ☐ Investment in compliance is cheaper than the costs of an incident.
- ☐ The consequences of non-compliance are serious.
- ☐ AML compliance is everybody's business.
- ☐ One man's mistake is everybody's problem

Role of a forensic Auditor



- ❑ Carry out investigations of suspicious transactions and incidences brought to their attention by the regulator.
- ❑ Secure and gather the evidence required ensuring to maintain the integrity of the evidence.
- ❑ Liaise with the various law enforcement agencies.
- ❑ Appear in court as a witness if required.
- ❑ Understand the framework of internal control over AML/CFT, identify the root cause of investigated case and point out control weaknesses.



Identifying elements and evidence of a money laundering case

Obligation for reporting



Sec. 44, of POCAMLA obligates reporting entities to monitor and report suspicious, complex, large, unusual or other transaction as specified in the regulation.

- ☐ Suspicious Transaction Reports.
- ☐ Suspicious Activity Reports.
- ☐ Cash Transaction Reports.
- ☐ Cross Border Conveyance of Monetary Instruments.

Cost of Non-compliance



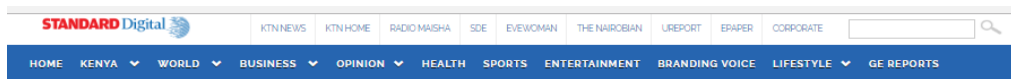
Home > Money Markets

MONEY MARKETS

Three banks fined Sh3 million for NYS cash transfers

Dubai Bank bosses charged afresh over money laundering

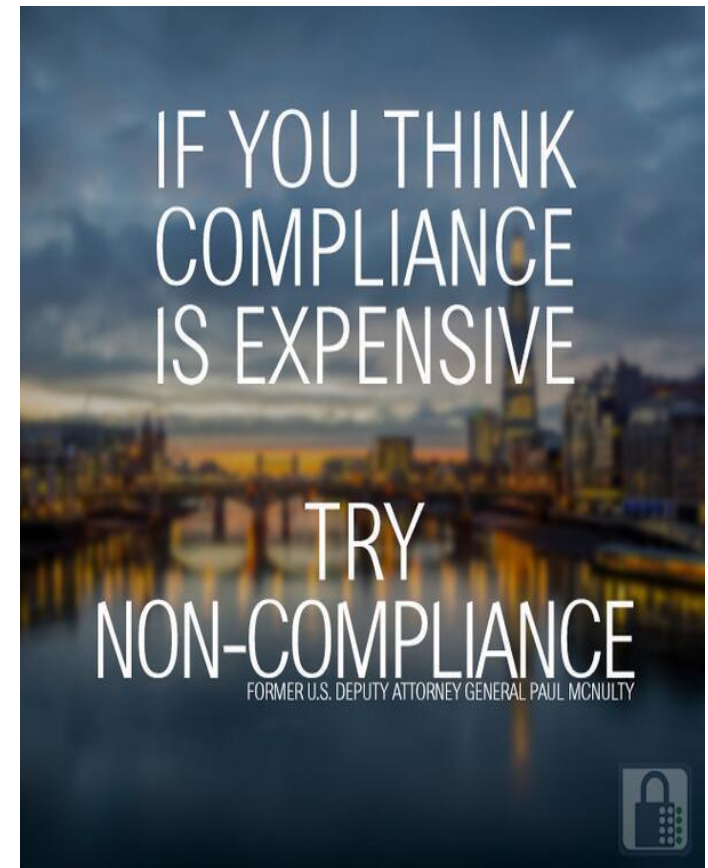
Kshs 5bn at risk health sector scandal



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German Deutsche Bank closes down NBK accounts over suspected money laundering

By Mwaniki Munuhe | Updated Sun, January 29th 2017 at 00:39 GMT +3
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Cost of Non-compliance



ML Activities in Kenya



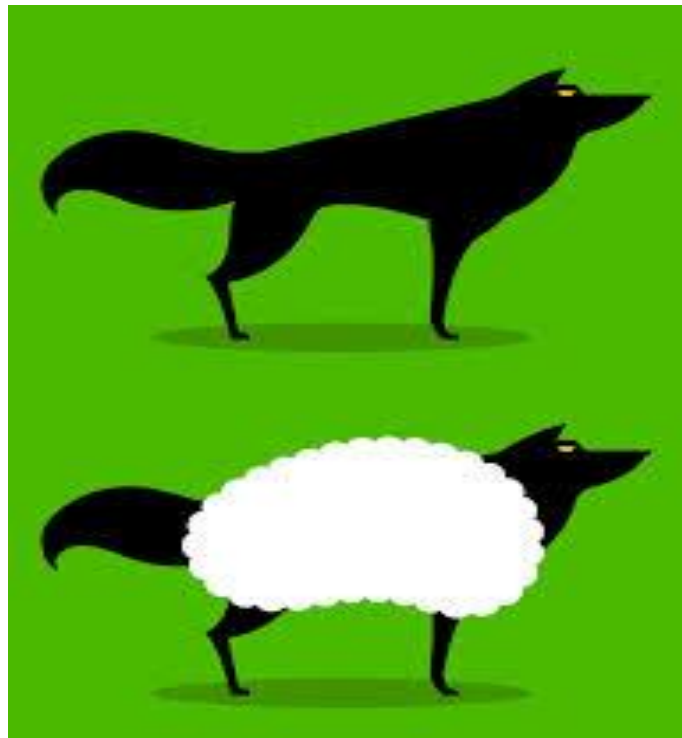
NYS, KPC, KBS, NCPB, NHIF, NSSF, KPLC, KMC, KVDA, EUROBOND, MINISTRIES, COUNTIES.

IF YOU THINK
COMPLIANCE
IS EXPENSIVE

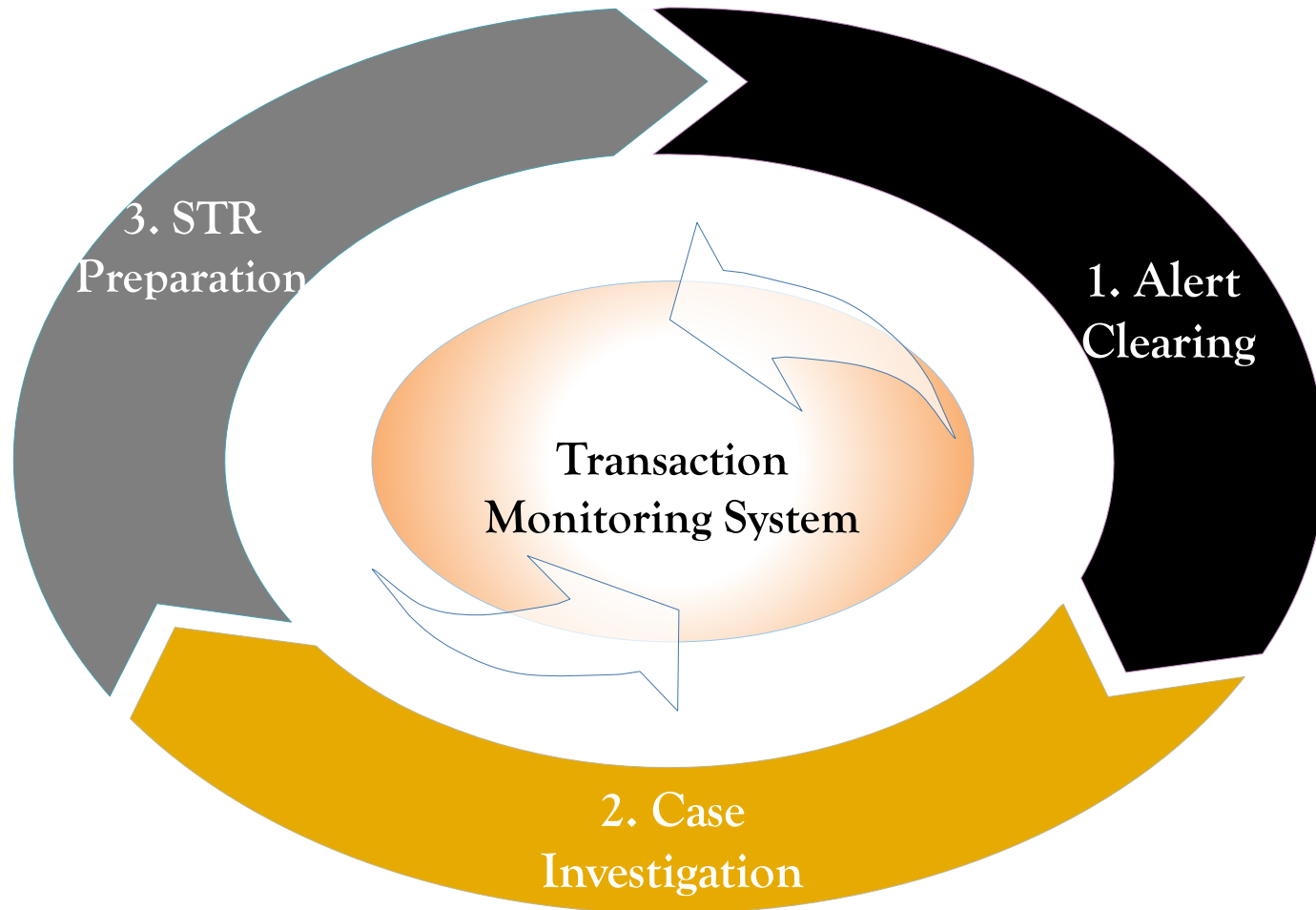
TRY
NON-COMPLIANCE
FORMER U.S. DEPUTY ATTORNEY GENERAL PAUL MCNULTY



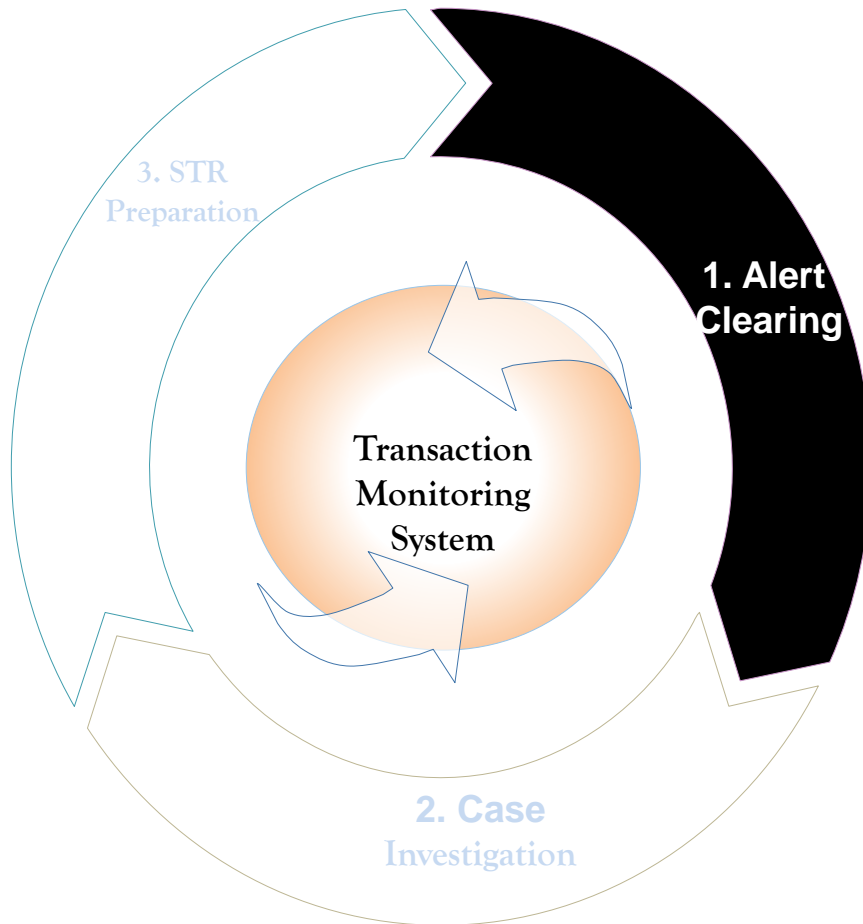
Do you have something unusual hiding in your transactions?



Transaction Monitoring System



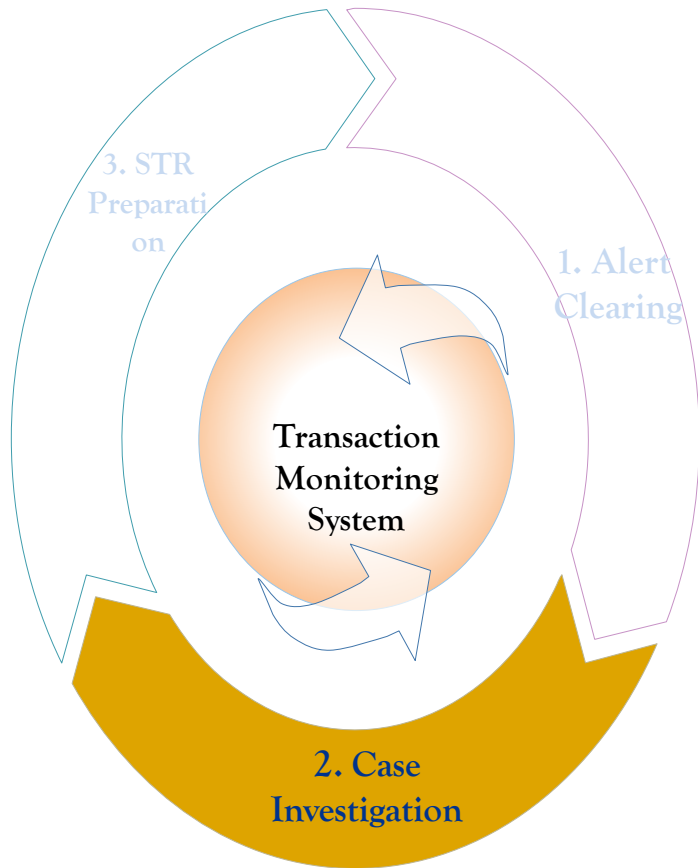
Transaction Monitoring - Alert Clearing



1. Alert Clearing

- Review the alert by examining the details and identifying its cause. E.g. Wires to/from high risk jurisdictions.
- Determine whether the alerted activity appears unusual for the customer. A rationale should be documented as to whether any suspicious activity was found or not. E.g. “Activity is not deemed unusual as it involves....which is consistent with the customers industry and prior transactions”
- Alerts which appear unusual are referred for further investigation, which will involve a more detailed analysis of the alerted activity.

Transaction Monitoring - Case Investigation



2. Case Investigation

- Investigation typically includes review of customer account(s)/ related accounts (historical transactions); analysis as to whether the alerted activity appears normal and expected for the customer and its nature of business; analysis as to whether the alerted activity was conducted to evade FRC reporting requirements (see “suspicious activity red flags” section below for further details);
- Regulators expect case investigations to be clearly documented outlining the investigative steps performed in arriving at the decision to file or not file a STR
- Documentation is subject to recordkeeping requirements (10 years).

Potentially Suspicious Activity Red Flags Examples



Transactions which lack commercial logic (selling and re-purchasing the same asset).

Transactions conducted outside the normal course of business.

Transactions where there is a lack of information or where explanations are unsatisfactory.

Transactions at amounts that are under-valued or over-valued.

Transaction with companies whose identity or beneficial ownership is difficult to establish.

Complex Group structures where complexity does not appear to be warranted.

Abnormally extensive or unusual related party transactions.

The formation of companies or trusts with no apparent commercial or other purpose.

Emerging Typologies



Public funds

- ☐ Use of proxies/ family members to access tenders from government institutions.
- ☐ Youths controlling huge and complex contracts.
- ☐ Same customer operating multiple companies and receiving payments from the same entity/entities.
- ☐ Hastily paid government contracts.
- ☐ Individuals who are never listed as directors but introduced as account agents/given full account mandates in multiple accounts receiving payments from same agency.
- ☐ State officer or County employee contracted by the County Government.
- ☐ MCA or MP or PEP contracted by the County Government.

Emerging Typologies



Foreign trades

- ☐ Foreigners being directors in new companies where the details are different from what is enlisted in the work permit (Work class D).
- ☐ Foreigners getting powers of attorney to operate companies owned by fellow foreigners.
- ☐ Addresses given being hotel residency.
- ☐ Individuals operating several import companies dealing with fast consumer goods.
- ☐ Huge and frequent cash deposits which are rapidly converted to Foreign currencies and then wired out.
- ☐ Frequent importers who only give invoices omitting Import declaration forms.
- ☐ Foreigners wiring money to Mauritius but invoices showing importation of goods from China / Hong Kong.

Emerging Typologies



Lawyers

- ☐ Lawyers receiving payments for loan agreements between foreigners, who have no known business in Kenya.
- ☐ Lawyers operating client accounts with no disclosures while accounts are operated through huge cash withdrawals and cash deposits.
- ☐ Lawyers doing multiple transfers to different banks without sufficient documents.
- ☐ Lawyers receiving huge wire transfers from non-common jurisdictions.
- ☐ Lawyers executing payment for undisclosed individuals.

Emerging Typologies



Others

- ☐ Kenyan nationals representing entities registered in Mauritius
- ☐ Kenyan nationals receiving payments for “consultancy services” from abroad (mostly Mauritius)
- ☐ Individuals operating multiple companies where they are not directors.
- ☐ Cash hidden in consignments.
- ☐ Funds sent to refugees as support
- ☐ Mix of sales with proceeds of crime
- ☐ Relation officers/ bank managers tipping off subjects by directing them to FRC offices and also forwarding of FRC requests to clients to respond to them.

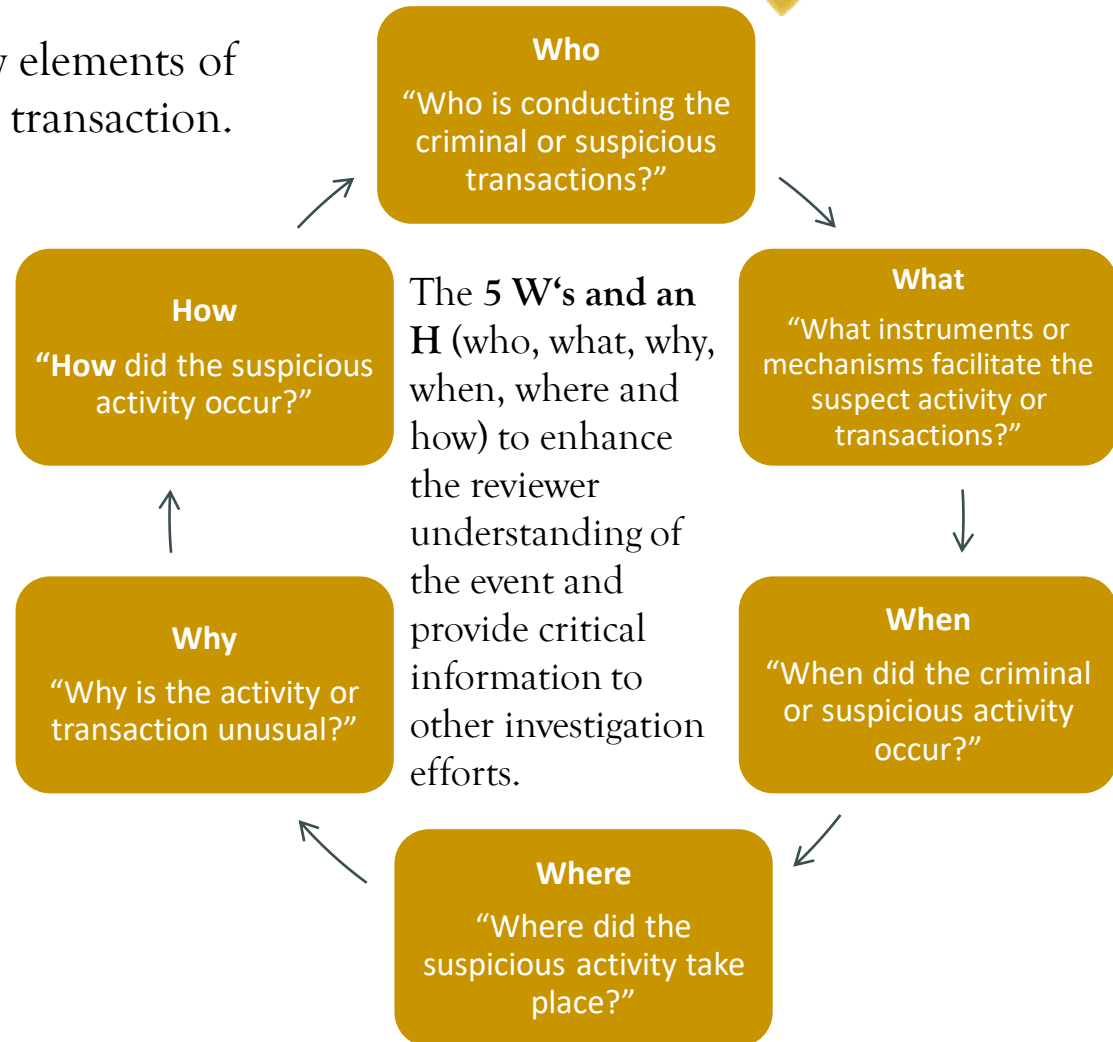


Inspecting financial records and trial exhibits prepared by forensic auditor

Financial records and exhibits are key elements of successfully investigating a suspicious transaction.

The evidence must provide:

- ❑ The essential elements of **who, what, when, where, why** and **how**.
- ❑ A fair description of the facts underlying the reported activity and the reason why the bank is filing the STR.
- ❑ A detailed description of the known or suspected criminal violation or suspicious activity in chronological order.



WHO? – “Who is conducting the criminal or suspicious activity?”



Subjects may be victims, suspects, individuals, organizations, investigators, etc.

Who Should Be Named a Suspect?

- ☐ Subjects, including counterparties and non-customers, of an investigation should be named as suspects only if they engaged or participated in the activity that gave rise to the obligation to file the STR.
- ☐ If a subject is materially important to the investigation, but the transactions relative to that subject are not suspicious, this should be highlighted.

What About Victims?

- ☐ Victims are subjects but not suspects.
- ☐ If necessary a complete description of the activity and victim information is key

WHAT? –

“What instruments or mechanisms facilitated the suspicious transactions



The STR narrative should be accompanied with the instruments or mechanisms used to conduct the suspicious activity, which may include the following:

- ☐ Account opening docs
- ☐ Bank statements
- ☐ RTGS, EFT, SWIFT Transfers
- ☐ Letters of Credit and other trade instruments
- ☐ Correspondent Accounts
- ☐ Bonds
- ☐ Stocks
- ☐ Mutual Funds
- ☐ Insurance Policies
- ☐ Bank Drafts
- ☐ Credit/Debit Cards
- ☐ Digital Currency Business

WHEN? – “When did the criminal or suspicious activity occur?”



The financial records/exhibits must show when the suspicious activity occurred.

When did the reported activity occur?

- ☐ Single instance
- ☐ Pattern of transactions over a period of time
- ☐ Date ranges

When did the suspicious activity begin?

- ☐ Date suspicious activity was claimed, date of first activity, etc.

Other important dates and details of the investigation

- ☐ Subject substantiation date, contact dates, date activity was reviewed and deemed suspicious

WHERE? –

“Where did the suspicious activity take place?”



The financial records/exhibits should show the location(s) where the activity occurred (“xyz branch office,” “greater Nairobi area,” “online,” a specific merchant location, etc.).

How to review the “Where”:

In instances of irregularly declined authorizations:

- ☐ “As of XX date, the total suspicious activity is USD which references the information provided at the time.
- ☐ If the activity occurred outside the suspect’s geographic location, the city and other location details should be in the documentation provided as exhibits/financial records.

WHY? – “Why is the activity or transaction unusual?”



The exhibits/financials should show why a particular transaction is suspicious.

What Should be Evident:

- ☐ Why certain parties involved in the activity were contacted.
- ☐ How the filing institution was notified of the suspicious activity(transaction monitoring system alert, received correspondence from FRC, etc.).
- ☐ Why the activity is suspicious (i.e. account transacting in different high risk business than stated in account opening documents etc.)

HOW? –

“How did the suspicious activity occur?”



The exhibits/financial records should show the method of operation used by the subject conducting the suspicious activity.

The Method Should:

- ☐ Be documented in a concise, accurate and logical manner
- ☐ Describe how the suspicious transaction or pattern of transactions was committed.
- ☐ Provide a picture of the suspicious activity to the review.



Prepare for direct and cross examination

Principles of engagement



- ❑ **Independence:** it is not your work to win the case. Your job is to perform a thorough investigation and reach conclusions that the evidence supports;
- ❑ **Credibility:** An expert witness most valuable asset is their credibility and appearances do matter;
- ❑ **Preparation:** its costly to prepare properly but if you don't you will pay the price in court.

Interactive Session

