

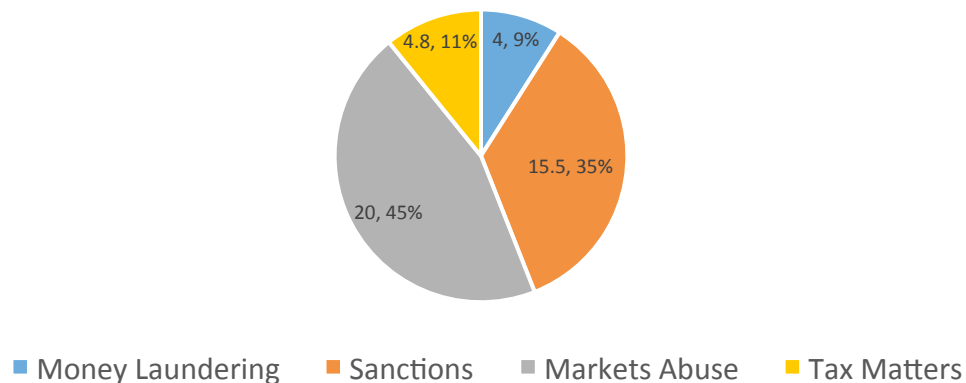
Fines - Facts, Figures & Some Observations

You could certainly be forgiven for thinking that there may be a real problem in Bank Compliance across many areas covered by Money Laundering Laws and Regulations, based on the regular announcement of fines and penalties, particularly in recent times. Still by unpicking the data, you can uncover a number of interesting observations.

Focussing on a data set going back to 1989 and including major fines, broken out into four separate types; i) in the money laundering and ii) in the sanctions areas, but also iii) covering market abuse related fines including insider dealing and securities fraud (but excluding mis-selling) and finally iv) including tax fraud and evasion, all covered under FATF definitions now within the ambit of money laundering; the following can be observed

- total fines incurred in the period amount to US\$44.3 bio covering 65 major incidents (Note a number of items are combined where industry settlements or collective acts are involved; Investment Banking Research Settlement; Late Trading and Market Timing; LIBOR etc)
- of the 4 types, Markets Abuse tops the list with US\$20 bio closely followed by Sanctions Violations with US\$15.5 bio and with both Money Laundering fines at US\$4.0 bio and Tax related fines at US\$4.9 bio some way off but each close in aggregate amounts.

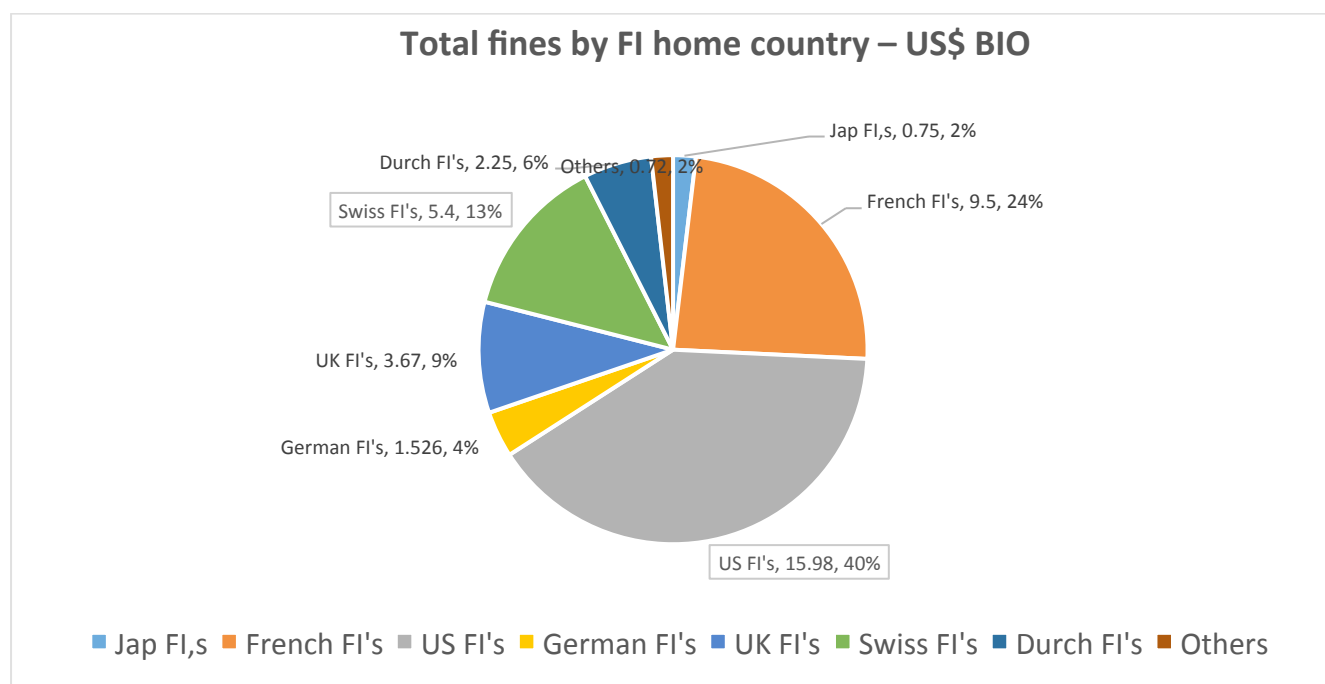
Fines for FI's from 1989 – 2014 (end June) / US\$ BIO



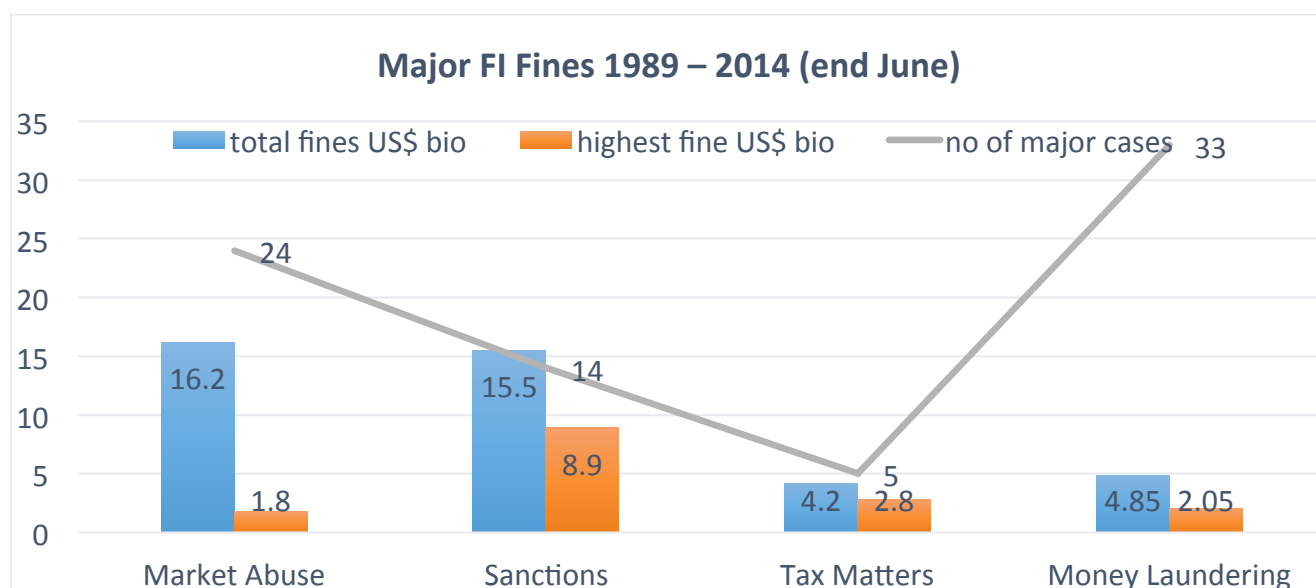
- of the 4 types, Money Laundering tops the list for the number of actions and fines levied (33) followed by Markets Abuse (25) then Sanctions violations (14) and then Tax matters (5).
- the number of major cases is increasing in value, particularly noticeable from the start of the Global Financial Crises (2007 onwards), though is not linked to whether any Bank initially had a good or a bad crises.
- the number of cases are increasing but in total still remain very small when compared to the size and number of Banks operating globally, however most of the so called "Big Banks" have had fines levied against them, with many of these repeat offenders.
- the amounts collected from Financial Institutions in fines and penalties, including forfeitures for violations dwarfs the amounts collected from criminals generating and laundering

criminal proceeds, estimating in 2011 by the UN as at US\$3.2 bio or 0.2 per cent of total criminal proceeds.

- of the FI's penalised, US FI's have incurred in aggregate more than any other with penalties of X (%), followed by France and the UK, Switzerland and Holland making up the top 5 places. Pending Sanctions cases both in France and Germany will increase both countries amounts likely in 2014, as will most likely the amounts for all top 5 countries in connection with benchmark and other manipulation investigations including more on LIBOR as well as forex and dark pools. Switzerland will continue to extend it's lead in Tax Matters fines as more Banks finalise and settlements and fines are announced.



- Highest fines per category are against BNP Paribas of US\$8.9 bio for Sanctions violations, Credit Suisse of US\$2.8 bio for Violations, JP Morgan Chase of US\$2.05 bio for AML weaknesses and SAC Capital of US\$1.8 bio for Markets Abuse (Insider Dealing).



- More than 98% of all fines levied have been by US governmental agencies (check re Eu Commission)
- corporate criminal indictments (once considered lethal as was the case of Arthur Anderson) are becoming more standard, including for example in a number of recent cases: SAC Capital (Insider Dealing) & UBS (LIBOR); Credit Suisse and Wegelin & Cie (Tax Evasion); BNP Paribas (Sanctions Violations).
- individual criminal indictments at financial institutions remain rare, particular at the most senior executive level, with indictments where they have been made largely at the level of those individually responsible for actions, for example rogue traders, such as Jerome Kerviel and Kwaku Adeboli, both of whom are serving time respectively in French and British prisons and others, for example traders involved in the LIBOR manipulation have also been charged in both the UK and the US, as have Swiss Bankers involved in assisting US tax payers to evade US taxes
- With a clear trend discernible of increasing penalties levied against Financial Institutions, a similar trend can also be seen outside of the Banking world, for example; GlaxoSmithKline was fined US\$3bio for corrupt actions in the United States and is under investigation currently in China and elsewhere; and BP incurred fines for damage to the environment, of US\$4.5bio (on top of costs in aggregate US\$42-65bio).

Still whilst these figures for fines are staggering, large fines, at least in the US, (e.g. those in the 1980s and 1990s) have been seen before, for example: in 1989 Drexel Burnham Lambert forfeited US\$650mio; in 1991 BCCI US\$560mio; Salomon Bros US\$290mio; and in 1996 Daiwa US\$340mio.

For an extensive list chronicling major fines for Financial Institution's see below:

Chronology

1989

Drexel Burnham Lambert fined US\$650mio for market abuse leading also to its closure

1991

BCCI fined US\$10mio as well as forfeiting all American assets (US\$550mio) after pleading guilty to charges of criminal conspiracy through financial fraud

Salomon Brothers (now part of Citi) fined US\$290mio for submitting false bids for T bonds

1996

Daiwa fined US\$340mio arising out of the losses as a result of fraudulent trading by Toshihide Iguchi

1997 NatWest Markets fined £420,000 (US\$684,000) following losses by rogue trader Kyriacos Papouis

Deutsche Morgan Grenfell fined £3mio (US\$4.89mio) in connection with the actions of Peter Young

1998 Sumitomo fined US\$150mio for actions of rogue trader Yasua Hamanaka

2002

Broadway Nat Bank fined US\$4mio for AML failures

2003

Global US Settlement of 10 firms for conflicts of interest between Research and Investment Banking for US\$1.4bio

NY AG case against Canary Capital & Others fined US\$2-3bio+ (Market Timing/Late Trading)

GLG Partners fined £750,000 (US\$1.2mio) for market abuse

2004

Amsouth fined US\$50mio for AML weaknesses

Riggs Bank fined US\$25mio for AML weaknesses, quickly losing its independence and sold to PNC Bank

UBS fined US\$100mio for violating the terms of its FED Banknotes ECI agreement

Citi Japan ordered to shut its private banking operations in Japan due to AML weaknesses

Citi UK fined by UK FSA in connection with Dr Evil market trades £14mio (US\$19mio)

2005

Arab Bank fined US\$24mio for AML weaknesses

BoNY fined US\$38mio for AML weaknesses and paid US\$14mio for additional Russian claims

2006

Israel Discount Bank of New York was fined US\$12mio for AML weaknesses

Bank Atlantic fined US\$10mio for AML weaknesses

Foster Bank fined US\$2mio for AML weaknesses

2007

AMEX Bank Int fined US\$65mio for AML weaknesses

Bank of America fined US\$10.5mio for AML weaknesses

Union Bank of California was fined US\$21.6mio for AML weaknesses

2008

Sigue Corp, a NY based MSB, forfeited US\$15mio (satisfying US\$12mio penalty) for AML weaknesses

ETrade fined US\$1mio for AML weaknesses

United Bank of Africa fined US\$15.5mio

Soc Gen fined US\$6.3mio in connection with losses incurred by rogue trader Kerviel

2009

UBS fined US\$780mio for aiding clients evade US taxes

Doha Bank fined US\$5mio for AML weaknesses

CS fined US\$536mio for US sanctions violations

Aon Group fined £5.25mio (US\$8mio) by UK FSA for corruption control weaknesses

Lloyds fined US\$350mio for US sanctions violations

Amaranth Advisers fined US\$7.5mio in connection with losses of US\$6.6bio

Stanford Bank shut down

ANZ fined US\$5.75mio for US sanctions violations

2010

ABN Amro fined US\$580mio (US\$80mio/2005 and US\$500mio/2010) and 2 criminal charges for violating US Sanctions (latter fine paid by RBS)

Goldman Sachs pays in aggregate US\$591.5mio in connection with alleged fraudulent Abacus deals

Wachovia fined US\$160mio for AML weaknesses later sold to Wells Fargo

Barclays fined US\$298mio for violating US sanctions

RBS fined £5.6mio (US\$8.5mio) for sanction weaknesses

Pamrapo Savings Bank fine US\$6mio and pleads guilty to AML violations

Deutsche Bank fined US\$553.6mio for selling fraudulent US tax shelters

2011

JP Morgan Chase Bank fined US\$88.3mio for violations of US sanctions regulations

Merrill Lynch fined US\$10mio for market abuse and misuse of information

Pacific National Bank fined US\$7mio for AML weaknesses

Zions National Bank fined US\$8mio for AML weaknesses

Ocean Bank fined US\$10.9mio for AML weaknesses

Lebanese Commercial Bank forfeits US\$102mio to US government for Hezbollah contacts

2012

Coutts & Co (a subsidiary of RBS) fined £8.75mio (US\$13.25mio) for AML weaknesses

HSBC fined US\$1.98bio (US\$1.92bio by US Regulators/US\$41.8mio by Mexican Regulators and US\$21mio by Argentinian Regulators) for AML weaknesses and violating of US sanctions

ING fined US\$619mio for US sanctions violations

Standard Chartered fined US\$667mio for US sanctions violations

UBS fined £29.7mio (US\$47.6mio) in connection with Adeboli's rogue trading

First Bank of Delaware fined US\$15mio for AML weaknesses

Allianz fined US\$12.3mio for corruption failures

Barclays, RBS & UBS fined re Libor (ICAP and Rabo Bank 2013) in total US\$3.7bio (and by EU Commission US\$2.33bio also with SocGen, Citibank, JP Morgan and Deutsche Bank)

2013

Swiss Bank, Wegelin fined US\$58mio and ceases business after aiding US clients evade US taxes
Hedge Fund, SAC Capital agrees to pay US\$1.8bio to settle civil and criminal insider dealing charges
UBS fined US\$14mio in France for inadequate tax fraud controls
HSBC Argentina fined US\$21mio over 3 years for AML weaknesses
EFG Private Bank fined in UK £4.2mio (US\$6.4mio) for AML weaknesses
BTMU fined US\$258.5mio for violations of US sanctions
Barclays fined US\$487.9mio for market manipulation in the energy markets
AMEX fined US\$5.2mio for US sanctions violations
Oppenheimer & Co Inc fined US\$1.42mio for Penny Stock compliance violations
Panther Energy Trading fined US\$5.8mio for market manipulation
JP Morgan fined US\$410mio for market manipulation in the energy markets
JP Morgan fined US\$920mio for lax controls over London "Whale"
RBS fined US\$100mio for US sanctions violations
JLT Specialty fined £1.8mio by UK FCA for anti-bribery weaknesses

2014 (as at end of June)

JP Morgan Chase fined US\$2.05bio in connection with its role as primary banker to Bernie Madoff
Credit Suisse fined US\$2.8 bio (US\$196 mio first by the US SEC and US\$2.6 bio by DoJ and others) in connection with the provision of cross border brokerage and investment advisory services and assisting US clients to evade taxes, admitting to a criminal violation.
Liquidnet Inc fined US\$2mio by US SEC for using client's confidential information for their own benefit.
Brown Brothers Harriman & Co was fined US\$8mio by FINRA for AML weaknesses particularly related to suspicious penny stock activity.
Barclays fined £26,033,500 (US\$43.8 mio) by the UK FCA for attempting to manipulate the gold fixing price
Goldman Sachs was fined US\$22mio for weaknesses in its controls over price sensitive information.
BNP Paribas fined US\$8.9 bio for US sanctions violations and admitting to a criminal violation.

Final Thoughts

Without condoning or commenting on individual cases, and expecting this list to continue to grow over the months and years ahead the following may be important to consider also. Financial Institutions are large complex organisations employing many people in many cases all over the world. They seek to control the activities of their employees and of course to avoid the regulatory, prosecutorial, financial and reputation risks and costs associated with such failings but there is no risk free environment in which to operate. Financial institutions also operate in an area subject to numerous laws and regulations, often complex, sometimes internationally producing conflicts, regularly being revised, with standards and expectations being raised without much notice through inspections and as a result of greater insights, particularly changing risks and threat assessments and priorities relating to AML. Financial institutions actively seek to identify weaknesses and continuously upgrade their frameworks and controls, and where weaknesses are material and fines and penalties are imposed quickly remediate the instant problems and at further substantial additional cost to themselves.

Whilst any case where a material fine or censure is applied to a financial institution is assumed to be a very serious case, there could be reasons and or mitigating circumstances that are rarely known or at least publicized. Whilst there clearly are many cases where employees within Banks have shown wilful disregard for complying with the law and or regulations, and these employees either acted on their own or at the implied behest of senior management, there may be other cases where the actions or lack of them are more arguable and less clear of serious senior management criticism.

The incentives to accept and consent to a fine and censure, versus fighting a case are substantial and almost always significantly outweigh any benefit in doing so. In consenting, the authorities in practise publicize their case, the case for the prosecution, whilst the Bank usually stays silent, not even offering any mitigating circumstances. Of course in some cases there may be none.

Financial Institutions have been rightly co-opted into the fight against money laundering, though that fight is principally a responsibility of Countries and governments, with Financial Institutions supporting. The standards that are applied to and the penalties levied for weaknesses found and incidents occurring are not consistent and are disproportionately applied against Financial Institutions. Certainly no such similar action is taken towards Countries that have been found to be less than compliant with FATF recommendations, nor to Governments or governmental agencies directly responsible for combatting crime and for acting upon information and the much good work provided by Financial Institutions in the form of Suspicious Activity Reports.

A finding that a Bank failed to comply with AML laws or a regulations quite naturally, leads to legitimate questions about the Bank in question. However, the regulatory bar is set at such a high level and set to be raised even further, moving towards applying in effect strict requirements on all business lines, all accounts held and all transactions processed, requiring full compliance for millions of accounts and in many cases hundreds of millions of transactions. Some might say this is unrealistic. In criticizing Financial Institutions there is little consideration taken of the prior good work and contribution made by that institution, in coming to a conclusion on an individual matter, or by the wider financial community.

Financial Institutions do not have limitless resources. Resources are already stretched and expertise is finite. Whilst the so called "risk based approach," is intended to provide flexibility to Financial Institutions to allocate resources sensibly to areas of greatest risk, this is meant to mean money laundering risk but instead the first priority is recognised by many as regulatory and increasingly prosecutorial risk.

Financial institutions should of course be held accountable for their actions like anyone else, but the standards expected should be clear, changes required based on new facts, risks or priorities should be factored in and transition periods provided, legal due process is essential and an impartial arbiter should ensure fines and penalties are fully justified, appropriate and consistent.