On February 18 & 19, 2010, the Florida International Bankers Association hosted its 10th Annual Anti Money Laundering Conference in Miami, Florida. Diaz Reus & Targ, LLP proudly returned as a Platinum Sponsor of this important conference for the fourth year in a row. At this year's gathering, attorney Carlos F. Gonzalez, a partner resident in the Firm's Miami and Shanghai offices, participated in a panel discussion entitled, *"The Convergence of Financial Fraud and AML."* The session, attended by nearly 1,000 participants, explored the new role banks and other financial institutions will play in fighting the massive frauds that characterized 2009. Following is a summary of Mr. Gonzalez's remarks.

"THE CONVERGENCE OF FINANCIAL FRAUD AND AML"

I would like to begin by thanking Florida International Bankers Association (FIBA) for inviting me to speak and for organizing another excellent conference. FIBA plays a vital role in educating bankers and compliance professionals across the United States and throughout Latin America and the Caribbean. My law firm is a longstanding and proud supporter of FIBA's work. Let me also take a moment to apologize for my partner, Michael Diaz, Jr.'s, absence. He was originally scheduled to speak on this panel but, as luck would have it, he is currently in Latin America doing exactly what I am about to talk to you about – freezing assets involved in a multi-million dollar, international Ponzi scheme.

As the description for this panel emphasized, banks can play an important role in the detection of fraud by using their existing anti-money laundering systems. I will take this concept one step further and tell you that, in my opinion, banks have a duty to their customers and to our financial system as a whole to use the tools at their disposal to fight fraud. Their failure to do so, as I will explain in a moment, will carry serious consequences.

The tools and techniques employed by government regulators and financial institutions to detect money laundering continue to evolve. That evolution has been driven, in large part, by the changing focus of policymakers, regulators, and financial institutions tasked with enforcing domestic and international compliance protocols. In the history of anti-money laundering efforts there have been, in my estimation, three important periods, each of which I will now discuss. As we will see, each new period is driven by a shifting policy objective. Thirty years ago, the focus was on narcotics. In the wake of 9/11, the emphasis became terrorism. Today, we are entering a new period, focused on combating massive frauds.

In the 1970s and 1980s, money laundering was not yet seen as a stand-alone offense. Legislators and regulators, alike, viewed money laundering as a component of other criminal acts, particularly narcotics-related offenses. With time and experience, regulators and their counterparts at banks and other financial institutions developed a series of red flags and best practices keyed to detecting and preventing the use of the financial system to launder the proceeds of drug-related crimes. Those practices depended on the "know your customer" or KYC concept. By having a complete picture of the owner of a bank account, for example, a financial institution would be able to properly assess the risk involved in maintaining the account, and the probability that the account could be used to launder the proceeds of some illegal act.

The 9/11 attacks marked a second major development in the way in which government regulators and the private sector viewed money laundering. As the world discovered the ease with which terrorist organizations were able to move money and ultimately use those funds to execute their horrific plots, the importance of detecting and blocking these transactions took on a critical importance. Although the focus changed, the tools and techniques used to detect the laundering of drug proceeds offered the first defense against terrorist-related money laundering. Again, KYC played a defining role. As financial institutions continued to develop and refine their risk assessment tools, they built upon the lessons learned during the height of the drug wars to detect and block suspicious financial transactions.

As we approach the end of this decade, there is a new concern. The use of financial systems to perpetrate massive frauds is now taking center-stage. The names Madoff, Stanford, and, in South Florida, Rothstein, now join Ponzi as synonymous with fraud. These perpetrators deprived countless individuals of their life-savings, threatened the financial stability of many companies and charities, and ultimately cast a dark cloud over the U.S. financial and regulatory system. Of critical importance to you – as bankers and compliance officers – is the role that financial institutions played in these fraudulent schemes.

Financial institutions play a central role in fraud prevention, just as they do in combating drug trafficking and terrorism. The tools used by banks to combat money laundering are also important weapons in the new war against fraud. And, for those banks that turn a blind eye, or are simply negligent, the consequences will be severe. The number of requests for legal assistance from defrauded investors, including groups of individuals, corporations, and charitable organizations, is skyrocketing. Schemes to defraud take many forms – from affinity fraud which capitalizes on individual membership in certain religious organizations, to complex, multi-jurisdictional investment scams. These days, it seems that the opportunities to swindle (and be swindled) are endless.

As new and more sophisticated schemes emerge, banks will need to be vigilant in

making sure that their financial systems are not used to perpetrate these schemes. Fortunately, the basic tools banks currently employ to combat money laundering – KYC, for example – can easily be adapted to detect and prevent fraud. A bank's failure to take these steps in light of the systems already in place can have serious consequences.

Consider what a Receiver recently had to say about a major U.S. bank's role in a real-estate investment scam that defrauded several hundred investors out of millions of dollars:

"As an important side note, [the bank] should be investigated as . . . it does not appear that [the bank] complied with important, required federal statutes, including the PATRIOT Act."

The Receiver's comments make clear that a bank's failure to follow strict account opening protocols, even for established clients, may result in civil and even criminal exposure. In the case I just mentioned, the bank allowed a well-established customer to open several corporate bank accounts with little oversight. A subsequent investigation revealed that those accounts were used to funnel millions of dollars of investor funds to accounts outside of the United States.

A law firm representing defrauded investors would likely seek recovery against the banks for their negligence. At a bare minimum, lawyers representing the defrauded investors would want to engage in significant discovery, questioning the relevant bank employees involved in opening the accounts, reviewing the account opening documentation, including the information supplied by the person opening the account, the steps taken by the bank to verify the information provided, and the extent to which those steps were consistent with the bank's internal procedures. Any misstep along the way would likely be seen as evidence of the bank's liability.

In closing, I would offer this piece of advice. Banks have the tools to combat fraud. Those tools are not just efficient at detecting drug trafficking and terrorist-related money laundering activities, they are also effective in identifying fraudsters. As fighting fraud becomes a priority in Washington, D.C. and around the world, U.S. and international banks will be well-advised to vigilantly enforce their internal procedures, and explore how existing AML tools can be applied to combat fraud. Otherwise, the banks, just like the fraudsters, will find themselves involved in lengthy and intrusive criminal and civil proceedings.

Thank you.

Please feel free to contact Carlos F. Gonzalez directly if you would like to learn more about the firm's Anti-Money Laundering practice.