

TRENDS IN US AML RULEMAKING: ALL YOU NEED TO KNOW

BDO's Chuck Pine explains three new rules in the AML pipeline

As the new presidential administration transitions into leadership, uncertainty around the direction the regulatory landscape will take is a concern for organisations in all regulated industries. For financial institutions governed by the Bank Secrecy Act (BSA), though, at least one thing is certain: regulators are continuing to make anti-money laundering (AML) compliance a top priority, so knowing how to prepare should require less guesswork. Regulatory departments and bureaus have made several key updates to satisfy expectations and needs for BSA/AML compliance.

New York Department of Financial Services Regulation

On 1 January, the NYDFS landmark anti-terrorism transaction monitoring and watch list filtering regulation came into effect to combat terrorist financing and money laundering activities. This newly implemented regulation sets forth minimum standards of demonstrating that a regulated institution doing business in New York maintains adequate programmes to (1) “monitor transactions after their execution for potential BSA/AML violations and suspicious activity reporting” and (2) “interdict transactions, before their execution, that are prohibited by applicable sanctions, which includes Office of Foreign Assets Control (OFAC) and other sanctions lists.”

A certification requirement is also now in effect requiring regulated entities to certify compliance with the regulation annually to NYDFS. Institutions must adopt either an annual board resolution or senior officer compliance finding to certify compliance with the DFS regulation beginning April 15, 2018. The resolution or finding must state that documents, reports, certifications, and opinions of officers and other relevant parties have been reviewed by the board of directors or senior officials to certify compliance with the regulations.

FinCEN

FinCEN announced the expansion of its Real Estate Geographic Targeting Order (GTO) beyond Manhattan and Miami on 27 July to include six major metropolitan areas in the US: all boroughs of New York City; Miami-Dade County and the two counties immediately north (Broward and Palm Beach); Los Angeles County; three counties comprising part

of the San Francisco area (San Francisco, San Mateo and Santa Clara); San Diego County; and the county that includes San Antonio (Bexar County).

According to FinCEN, information provided from the GTO will help law enforcement identify possible illicit activity and will assist in informing future regulatory approaches. In particular, a significant portion of covered transactions have indicated possible criminal activity associated with the individuals reported to be the beneficial owners behind shell company purchasers.

FinCEN II

On 11 May, FinCEN issued a final rule under the BSA that “clarifies and enhances” customer due diligence and beneficial ownership requirements (CDD Final Rule). The CDD Final Rule also urges Congress to pass beneficial ownership legislation that would require companies formed in the US to file beneficial ownership information with the Treasury Department or otherwise be subject to penalties.

Not only does the CDD Final Rule amend existing BSA regulations, it also strengthens the obligations of covered financial institutions. Covered financial institutions must be in full compliance with CDD Final Rule by 11 May 2018. Among other requirements prescribed by the CDD Final Rule is a mandate for covered financial institutions to identify and verify the identities of the natural persons who own, control and profit from the legal entities to which the financial institution provides services.

The ‘fifth pillar’ mandate obligates covered financial institutions to develop processes and controls of obtaining and monitoring the identification and verification of beneficial owners of legal entities, the maintenance of customer risk profiles, and the detection and reporting of any potential and actual suspicious activities.

The expectation to incorporate the ‘fifth pillar’ for an effective AML programme expands upon the four core and traditional pillars that have been in place for many years: development of internal policies, procedures and related AML controls; designation of a compliance officer; a thorough and ongoing training programme; and independent review and compliance.

For financial institutions, these updates mean regulators and examiners will scrutinise processes and controls more closely for detecting and reporting suspicious activities. Entities should be prepared to provide assurance that their program satisfies the ever-increasing expectations of an effective, adequate AML programme. ■



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