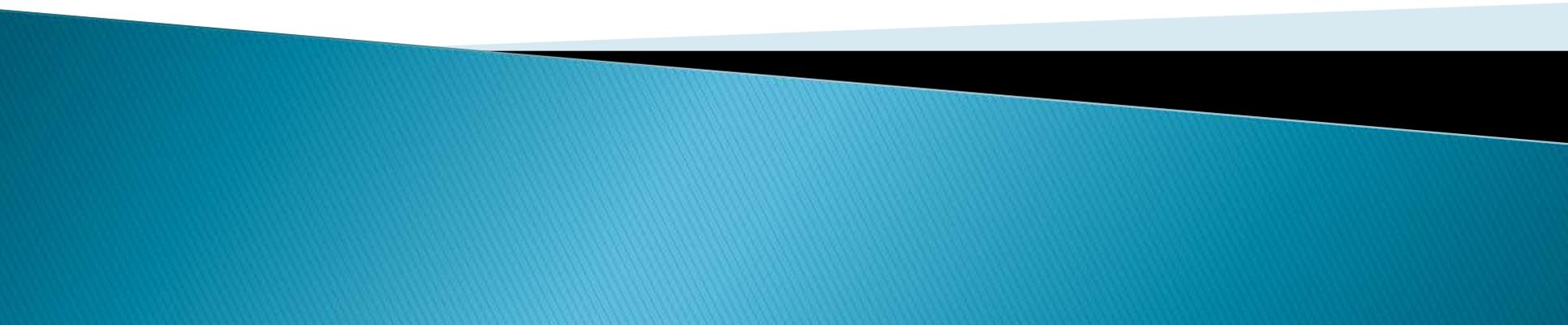


BSA Today – Regulatory Tips, Trends, and Hot Topics

FDIC New York Region Regulatory Teleconference



Promoting a Culture of Compliance

- FinCEN Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance [FIN-2014-A007 issued 8/11/2014]
 - Leadership should be engaged.
 - Compliance should not be compromised by revenue interests.
 - Information should be shared throughout the organization.

Promoting a Culture of Compliance

- Leadership should provide adequate human and technological resources.
- BSA/AML program should be effective and tested by an independent and competent party.
- Leadership and staff should understand how their BSA reports are used.

Regulatory Oversight

- ▶ Current Examination Scope Includes:
 - Emerging products, services, and markets
 - New technologies to conduct banking
 - New methods to launder money, traffic narcotics, and finance terrorist activities

Regulatory Oversight

- ▶ Bank resources allocated elsewhere during banking crisis
- ▶ Examiners have more sophisticated tools and comprehensive guidance

BSA Issues in the NY Region

- ▶ BSA/AML program has not kept pace with the bank's growth and risk profile
- ▶ Bank leadership not fully engaged
- ▶ Difficulty in finding and retaining qualified BSA/AML Officers and support staff
- ▶ Insufficient resources/training dedicated to BSA compliance
- ▶ Over reliance on third party consultants

BSA Issues in the NY Region

- ▶ Inadequate customer due diligence and enhanced due diligence
- ▶ Failure to identify, monitor, and/or report suspicious activity
- ▶ Mistaken belief that BSA/AML compliance primarily applicable to cash activity
- ▶ Issues with transaction monitoring systems – meaningful alerts are not produced, or system conversion problems when implementing new software
- ▶ Independent BSA/AML audit scope, transaction testing, and experience of auditors not sufficient for bank's risk profile

Wire Fraud Trend

- ▶ Accounts were typically actively engaged in wire transfer activity.
- ▶ The majority of fraudulent wires were sent overseas to locations such as Hong Kong, China, and Taiwan.
- ▶ Customer e-mail accounts were apparently hacked or stolen and wire request documentation received by the bank appeared to be legitimate.
- ▶ Multiple requests were received on each customer's account.
- ▶ The fraud was identified by the customer upon reviewing account statements or balances.
- ▶ Bank personnel did not make calls to the customer to verify the transaction.

Suspicious Activity Reporting

▶ SAR Filing Criteria:

- Insider abuse involving any amount
- Known or suspected federal criminal violation or pattern of criminal violations
 - \$5,000 threshold if suspect identified
 - \$25,000 threshold if no suspect identified
- Potential money laundering or violations of the Bank Secrecy Act
 - \$5,000 threshold

Suspicious Activity Reporting

- ▶ For potential money laundering or violations of the BSA, a SAR should be filed if the bank knows, suspects, or has reason to suspect that a transaction conducted or attempted by, at, or through the bank:
 - Involves funds derived from illegal activity or is an attempt to disguise funds derived from illegal activity;
 - Is designed to evade BSA regulations; or
 - Lacks a business or apparent lawful purpose or is not the sort of transaction in which the customer would normally be expected to engage (and no reasonable explanation known).

Suspicious Activity Reporting

- ▶ SAR Filing Timeframes:
 - Within 30 days of the initial detection of facts that may constitute a basis for filing a SAR
 - Additional 30 days (for a total of 60 days) if no suspect initially identified
 - For continuing suspicious activity, filing requirement expanded to a 120-day filing deadline (after a 90-day review)

Suspicious Activity Reporting

- ▶ Common Causes for Untimely SAR Filing or Failure to File SARs:
 - Resource Issues
 - Suspicious Activity Monitoring Weaknesses
 - Inadequate Unusual Activity Referral Procedures
 - Misunderstanding of SAR Regulations
 - Training Weaknesses

Board Notification of SAR Filings

- ▶ Banks are required to notify the board, or a committee thereof, of SAR filings.
- ▶ Regulations do not mandate a particular notification format.
- ▶ Banks may, but are not required to, provide to the board:
 - Copies of SARs
 - Redacted SARs
 - SAR summaries
 - Tables of SARs filed for specific violation types

SAR Confidentiality

- ▶ No bank, and no director, officer, employee, or agent of a bank that reports a suspicious transaction may notify any person involved in the transaction that the transaction has been reported.
- ▶ A SAR and any information that would reveal the existence of a SAR, are confidential, except as is necessary to fulfill BSA obligations and responsibilities.

SAR Confidentiality Guidance

- ▶ SAR Supporting Documentation
[FIN-2007-G003 issued 6/13/2007]
- ▶ Maintaining the Confidentiality of SARs
[FIN-2010-A014 issued 11/23/2010]
- ▶ SAR Confidentiality Reminder for Internal and External Counsel of Financial Institutions
[FIN-2012-A002 issued 3/2/2012]

Continuing Suspicious Activity

Are banks required to close accounts after a certain number of continuing SARs?

- ▶ The decision to maintain or close an account should be made by the bank in accordance with its own standards and guidelines.
- ▶ Bank should have policies and procedures indicating when to escalate issues resulting from repeat SAR filings on accounts.

Continuing Suspicious Activity

Procedures should include:

- ▶ Review by senior management (e.g., BSA Officer or SAR Committee);
- ▶ Criteria for when analysis of overall customer relationship is necessary;
- ▶ Criteria for whether and, if so, when to close account; and
- ▶ Criteria for when to notify law enforcement, if appropriate.

Links to Regulatory Guidance

FFIEC BSA/AML Examination Manual:

http://www.ffiec.gov/bsa_aml_infobase/default.htm

FIN-2014-A007 - Promoting Culture of Compliance:

http://www.fincen.gov/statutes_regs/guidance/html/FIN-2014-A007.html

FIL-5-2015 - Statement on Providing Banking Services:

https://www.fdic.gov/news/news/financial/2015/fil15005.html?source=govdelivery&utm_medium=email&utm_source=govdelivery

FIN-2007-G003 - SAR Supporting Documentation:

http://www.fincen.gov/statutes_regs/guidance/html/Supporting_Documentation_Guidance.html

FIN-2010-A014 - Maintaining the Confidentiality of SARs:

http://www.fincen.gov/statutes_regs/guidance/html/FIN-2010-A014.html

FIN-2012-A002 - SAR Confidentiality Reminder:

http://www.fincen.gov/statutes_regs/guidance/html/FIN-2012-A002.html

Contact Information

- ▶ Kristi Keating – kkeating@fdic.gov
Special Activities Case Manager
New York Regional Office
(917) 320-2567
- ▶ Rebecca Williams – rewilliams@fdic.gov
Special Activities Case Manager
Boston Area Office
(781) 794-5634

Questions