

BSA / AML Landscape - Challenges for 2010



Compliance and Regulatory Services

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The Regulators - FINRA

- FINRA Rule 3310
 - ▶ Effective January 1, 2010
 - ▶ Adopts NASD Rule 3011 and deletes NYSE Rule 445
 - ▶ Independent testing may not be conducted by:(1) a person who performs the functions being tested,(2) the designated anti-money laundering compliance person, or(3) a person who reports to a person described in either subparagraphs (1) or (2) above. (FINRA Rule 3310.01(c))
- FINRA Updated Small Firm Template
 - ▶ Effective January 1, 2010
 - ▶ 49 Pages
- 2010 Annual Examination Priorities Letter
 - ▶ Office of Fraud Detection and Market Intelligence
 - ▶ Fraud Detection
 - ▶ Anti-Money Laundering

The Regulators –FFIEC

- FFIEC BSA/AML Examination Manual Released April 29, 2010
- Significant Updates include:
 - ▶ BSA/AML Compliance Program Structures
 - ▶ Core Examination Procedures for Assessing the BSA/AML Compliance Program
 - ▶ Developing Conclusions and Finalizing the Examination
 - ▶ Funds Transfers
 - ▶ Suspicious Activity Reporting
 - ▶ Automated Clearing House Transactions
 - ▶ Trade Finance Activities

The Dodd-Frank Wall Street Reform and Consumer Protection Act signed into law on July 21, 2010

- Categorized into 16 titles and according to a study by the law firm of Davis Polk requires regulators to create 243 rules, conduct 67 studies and issue 22 periodic reports
- This is not the USA PATRIOT Act that contained significant clarity regarding BSA/AML requirements and expectations
- Only over the next 18 months as various regulatory agencies write rules that implement various sections of the Act, will the full importance and significance of the Act be revealed
- Nevertheless it will have significant implications for BSA compliance and anti-money laundering
- “Systemic Risk” is the new mantra
- Comprehensive supervision for bank holding companies

The Wall Street Reform and Consumer Protection Act

- Title IV – “Regulations of Advisers to Hedge Funds and Others”
 - ▶ Requires a GAO study of feasibility of forming a self-regulatory organization for private funds within one year
- Title V – “Insurance” Establishes the Federal Insurance Office
- Title VI – “Improvements to Regulation”
- Title VII “Wall Street Transparency and Accountability”
- Whistle blowing payments could reach multi-million dollar amounts for information about US-listed companies and Wall Street banks
- SEC is expecting a sharp increase in tip-offs from senior employees and third parties

Financial Fraud Enforcement Task Force

- Formed by Executive Order on November 17, 2009 to prosecute those who helped cause the financial crisis
- Consists of 20 federal agencies, 94 US Attorneys Offices and state and local partners
- The broadest coalition of law enforcement, investigatory and regulatory agencies ever assembled to combat fraud
- See the FFETF website: www.stopfraud.gov/news.html for the period beginning December, 2009 to August 2010 for arrests, indictments, pleas and convictions that are attributed to the FFETF
- STOPFRAUD.GOV website includes a section for reporting financial fraud and another for protection yourself from fraud

Prosecutors -Other Initiatives

- On May 21, 2010 the U.S. Attorney for the Eastern District of Virginia formed the “Financial and Securities Fraud Task Force”
- The Eastern District of Virginia (EDVA) is uniquely positioned to prosecute multistate financial crimes because:
 - ▶ Publicly traded firms file SEC reports in EDVA
 - ▶ Richmond Federal Reserve is a primary hub for wire transfers
- Foreign Corrupt Practices Act investigations remain a priority for the Department of Justice
- Seizure and Forfeitures are a prosecutorial priority

A New Poster Child?

- HSBC's USA operations are being investigated by DOJ for possible violations of BSA, money laundering and OFAC
- Other agencies involved in the investigation are: US Attorney's Office, OCC and Federal Reserve Bank of Chicago
- The focus is on HSBC's global banknotes business and its foreign correspondent unit
- There is also a DOJ criminal tax investigation of HSBC clients regarding monies deposited into undeclared bank accounts in Singapore and India
- In February of this year Senator Carl Levin stated the he intended to refer HSBC to regulators regarding a number of questionable accounts it provided for Angolan officials
- Italy's tax police are investigating possible tax evasion in approximately 7,000 HSBC accounts
- HSBC is enhancing risk management and strengthening processes and supporting infrastructure

Fallout from HSBC

- Criminal investigations of this magnitude trigger a large number of leads to additional criminal investigations of fraud and money laundering
- The FFETF is perfectly positioned to pursue these additional criminal investigations
- Seizure and forfeiture actions will increase
- Likely political implications include additional funding for the FFETF and pressure to expedite rulemaking and implementation of regulations
- In the aftermath of the global financial crises, BSA regulators will be even more incented to take actions to assure this level of failure stops

What Does this Mean to Me

- The BSA/AML Landscape for 2010 is High Risk
- The number of significant criminal investigations of financial crimes and money laundering will continue to increase throughout the year
- As a consequence the number of criminal subpoenas issued to financial institutions will increase significantly
- Each criminal subpoena served on your company represents a test of the effectiveness of your AML Program
- FinCEN and their BSA/AML Regulators are under pressure to prevent further failures in the financial services industries including BSA, AML and OFAC failures
- The 2010 BSA/AML landscape for the Securities industry is particularly at risk due to:
 - ▶ FINRA Rule 3310
 - ▶ FINRA Updated Small Firm Template
 - ▶ 2010 Annual Examination Priorities Letter
 - ▶ SEC whistle blowing incentives

- Act now to identify your AML Program issues before prosecutors or regulators identify them for you
- Manage the two risks of BSA/AML Compliance
 - ▶ The prosecutorial risk that money laundering is occurring and re-occurring within you company
 - ▶ The regulatory risk that your AML Program does not meet all of the relevant BSA and OFAC requirements
- Prosecutorial Risk
 - ▶ Make certain that you have processes, procedures and controls for forwarding all criminal subpoenas issued on your company to the AML Officer for consideration
 - ▶ Re-visit the design and implementation of your transaction monitoring program for effectiveness
 - ▶ Review the quality of your firm's escalation, investigation and SAR filing procedures and controls
 - ▶ Review SAR filings for trends and high risk clients

- Regulatory Risk
 - ▶ BSA Regulators have consistently cited the following issues related to the adequacy of AML Programs:
 - Risk Assessments do not adequately reflect the money laundering risks of the company
 - AML Program policies procedures and controls are not tailored to the company's money laundering risks
 - Independent Testing does not test the full scope or AML requirements; insufficient testing is performed to support conclusions; and individuals performing the tests lack BSA/AML subject matter expertise
 - Testing is not in fact independent and Upgrade your BSA/AML Risk Assessment
 - Address your Regulator's Concerns
 - Seek the assistance of outside BSA/AML expertise

How To Go About It

- Brief Senior Management and the Board of Directors on the heightened BSA/AML/OFAC landscape
- Prepare a Business Plan that addresses both the Prosecutorial Risk of Money Laundering with your company and the Regulatory Risk of AML Program issues
- Obtain outside expertise for areas that represent high BSA/AML risks to your company
- Prepare an Action Plan to review and upgrade your AML Program as appropriate
- Act expeditiously to implement your action plan before problems arise

The End Game

- We have all entered into troubled waters for Bank Secrecy Act, OFAC and Money Laundering Risks
- This is a time when wise captains take precautions to safely pass through
- Upgrade your AML Program now

If you have any questions or would like to learn more about

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