

# ANTI-MONEY LAUNDERING (“AML”) INFORMATION

## LAW

**Criminal Money Laundering Statutes** were formed in the 1950’s. It is illegal to participate knowingly in the transfer of funds that are connected to a crime.

**Bank Secrecy Act (“BSA”)**: The Bank Secrecy Act of 1970 was designed to: • Deter laundering and the use of secret foreign bank accounts. • Create an investigative "paper trail" for large currency transactions by establishing regulatory reporting standards and requirements (e.g. the Currency Transaction Report requirement). • Impose civil and criminal penalties for noncompliance with its reporting requirements. • Improve detection and investigation of criminal, tax, and regulatory violations. Financial institutions (principally banks) are required to maintain records and report transactions over \$10,000. If a firm suspects an illegal funds transaction, a Suspicious Activity Report (“SAR”) is to be filed.

**USA PATRIOT Act**: Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”) was signed by President Bush on October 26, 2001. The PATRIOT Act requires specified financial institutions (banks, broker/dealers, investment companies, futures commission merchants, commodity trading advisors, and commodity pool operators) to have anti-money laundering programs. Financial firms not covered at this time are investment advisors, but rules have been proposed.

**Money Laundering Abatement Act** (Title III of the PATRIOT Act): Requires that BDs establish AML compliance programs by 4/24/02. The Act requires BDs to establish AML programs before the Treasury’s regulations become final, and therefore firms will have to amend their programs to satisfy new regulations as they are issued throughout the year. (FinCEN has specifically excluded RIAs from AML rules.) The Money Laundering Act strengthens the anti-money laundering provisions put into place earlier by the BSA.

## AGENCIES

**Department of Treasury**: The Mission of the Department of the Treasury is to: • Promote Prosperous and Stable American and World Economies • Manage the Government's Finances • Safeguard Our Financial Systems, Protect Our Nation's Leaders, and Secure a Safe and Drug-Free America • Continue to Build a Strong Institution. Bureaus of the Treasury include: IRS; Customs; Secret Service; Office of the Comptroller of the Currency; Office of Thrift Supervision; US Mint; Alcohol, Tobacco, & Firearms; and others. <http://www.ustreas.gov/>

**Treasury’s Financial Crimes Enforcement Network (“FinCEN”)**: FinCEN is a network, a means of bringing people and information together to fight the complex problem of money laundering. Since its creation in 1990, FinCEN has worked to maximize information sharing among law enforcement agencies and its other partners in the regulatory and financial communities. Through cooperation and partnerships, FinCEN's network approach encourages cost-effective and efficient measures to combat money laundering domestically and internationally. The mission of FinCEN is to support law enforcement investigative efforts and foster interagency and global cooperation against domestic and international financial crimes; and to provide U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns. FinCEN works toward those ends through information collection, analysis and sharing, as well as technological assistance and innovative, cost-effective implementation of the Bank Secrecy Act and other Treasury authorities. <http://www.fincen.gov/>

**Treasury’s Office of Foreign Assets Control (“OFAC”):** OFAC is an office within Treasury that administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, international narcotics traffickers, and those engaged in activities related to weapons of mass destruction. OFAC acts under Presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction. OFAC publishes a list of Sanctions Program and Country Summaries listing sanctions imposed against specific countries. OFAC also publishes a list of Specially Designated Nationals and Blocked Persons (“SDN list”). This names the individuals, organizations, companies, and motor vessels known to be owned, controlled by or associated with the governments of target countries, international narcotics traffickers or terrorists. US financial institutions are prohibited from conducting transactions with these entities. Mandatory compliance for your AML Program requires that you monitor the OFAC SDN list. The OFAC lists of sanctioned countries and SDN are available at [www.treas.gov/ofac](http://www.treas.gov/ofac). FINRA offers the SDN list at <http://www.finra.org/RulesRegulation/IssueCenter/Anti-MoneyLaundering/index.htm>

**Financial Action Task Force on Money Laundering (“FATF”):** FATF is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is a "policy-making body" created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas. <http://www.fatf-gafi.org>

**SEC:** The Securities and Exchange Commission (“SEC”) must approve all FINRA rulemaking. The SEC has direct oversight of federally covered RIAs.

**FINRA:** The Financial Industry Regulatory Authority (“FINRA”) established Rule 3011, which substantially mirrors the language of the Money Laundering Act. BDs must establish AML compliance programs by 4/24/02. Information is available at FINRA AML website at <http://www.finra.org/RulesRegulation/IssueCenter/Anti-MoneyLaundering/index.htm> (rules, Treasury forms, FINRA NTM 02-21, and more).

**State Agencies:** Check applicable state AML laws. At least one state (Texas) has attempted to enforce AML programs on RIAs and other firms that are not covered under federal AML law.

## **DEFINITION OF “FINANCIAL INSTITUTION” AND PHASE-IN**

All defined financial institutions must establish anti-money laundering programs. The definition of financial institution is extremely broad and includes: banks; savings associations; credit unions; money services (money transmitters and currency exchanges); registered securities broker/dealers; futures commission merchants; introducing brokers in commodities; dealers in precious metals, stones or jewels; pawnbrokers; loan or finance companies; trust companies; private bankers; insurance companies; travel agencies; telegraph companies; sellers of vehicles (including automobiles, airplanes, boats); persons engaged in real estate closings and settlements; investment bankers; investment companies; and commodity pool operators and commodity trading advisors. (FinCEN has specifically excluded RIAs from AML rules.)

Application of certain sections of the Act may be temporarily deferred or specifically excluded for specified financial institutions, and therefore compliance will be phased-in based upon the type of entity. Temporary deferrals or exclusions for certain financial institutions do not relieve any business (including RIAs) from their current obligation under law to report transactions in cash or currency that exceeds \$10,000.

## DATELINE

- Dec 26 2001** Do not maintain (close) accounts for shell banks
- Apr 24 2002** AML Compliance Program to be in place for specified firms [Section 352].  
Program to be in place for specified financial institutions. Includes BDs and futures commission merchants.
- Jul 23 2002** Due diligence for private banking accounts [Section 312 in part]  
(Banks must comply with Section 312 in full, to include due diligence for correspondent foreign banks. BDs have until Oct 25, 2002 to comply with due diligence for correspondent foreign banks, but must comply with due diligence for private banking accounts by the Jul 23, 2002 date. Mutual funds have until Oct 25, 2002 to comply with Section 312 in full, including due diligence for private banking accounts.) The July 2002 date reflects the interim final rule. The final rule applicability date is July 5, 2006.
- Jul 24 2002** AML Compliance Program in place for open-end mutual funds [Section 352].
- Sep 26 2002** Information Requests by Law Enforcement implemented [Section 314]  
After implementation, a brief moratorium was in place, which has been lifted as of 2/6/03.
- ~~[Oct 24 2002]~~  
**tbd** AML Compliance Program to be in place for other specified firms [Section 352].  
Program to be in place for certain investment companies (hedge funds, private equity funds, venture capital funds, closed-end investment companies, and UITs), Commodity Trading Advisors, Commodity Pool Operators, ~~insurance companies~~, loan or finance companies, trust companies, certain state-chartered credit unions, private bankers, and other miscellaneous categories.  
[Further deferral of compliance issued 10/25/02. Pending issuance of final rules for ~~insurance companies~~ (see final rule for insurance companies 12/5/05) and certain investment companies, and pending issuance of proposed rules for the other specified firms. In October 2008, FinCEN specifically excluded RIAs, unregistered investment companies and CTAs from the AML Compliance Program.]  
Mutual funds included in the general definition of “financial institution” effective May 14, 2010.
- Oct 25 2002** Due diligence for correspondent foreign banks [Section 312 in part]  
The October 2002 date reflects the interim final rule. The final rule applicability date is July 5, 2006. A key provision of Section 312 was not finalized until September 2007.
- Dec 30 2002** Suspicious Activity Reports (“SARs”) [Section 356]  
Securities BDs and Futures Merchants file Form SAR-SF (aka FinCEN Form 101).  
Banks file Form SAR as per pre-existing regulations.
- Dec 31 2001** AML Compliance Contact Person information due to FINRA
- Mar 31 2003** Foreign Bank Certifications [Section 313 and 319]  
Deadline to secure confirmation documentation that correspondent accounts maintained for foreign banks are not being used to provide services to foreign shell banks.

- Apr 24 2003** One year anniversary of AML Compliance Program implementation  
Annual audit to be completed by this date. Annual training program due for second year implementation.
- May 9 2003** Mutual Funds to implement procedures for customer identification.
- Oct 1 2003** Customer identification/verification procedures are to be in place [Section 326]  
Firms should already be taking basic steps to ensure customer identification and make reasonable efforts to verify identity, however the implementation of enhanced verification procedures final effective date was extended until 10/1/03.
- Dec 22 2003** Additional firms to report suspicious transactions  
Futures Commission Merchants and Introducing Brokers in Commodities are added to the definition of “financial institution” and required to report suspicious transactions to FinCEN.
- Mar 1 2005** FinCEN 314(a) web-based notices become operational  
AML Contact Person will receive e-mails every 2 weeks with instructions to search the secure web subject lists for matches.
- Dec 5 2005** AML Compliance Program to be in place for insurance companies [Section 352 in part]  
Insurance companies issuing or underwriting “covered products” are subject to the final rule effective 12/5/05 with a compliance date of 5/2/06. Insurance companies must file SARs.
- Aug 14 2006** Special Measures against specified banks [Section 311]  
Section 311 authorizes federal regulators to find that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions or type of account is of “primary money laundering concern” and to require financial institutions to take certain “special measures” against those jurisdictions, institutions, accounts or transactions.
- Oct 31 2006** Mutual Funds to report suspicious transactions  
Mutual Fund companies to file SARs for transactions occurring after 10/31/06.
- Sep 10 2007** Due diligence for correspondent foreign banks [Section 312 completed]  
The current rule adopts the risk-based procedures institutions should use in tailoring their enhanced due diligence to assess the risks of some foreign banking relationships. The current final rule completes the implementation of section 312.
- Nov 4 2008** FinCEN withdraws dated AML rule proposals for RIAs and others  
RIAs, unregistered investment companies, and commodity trading advisors are specifically excluded from the AML Compliance Program.
- Sep 10 2009** SEC approves elimination of the independent testing exception  
The assessment shall be an independent test. A qualified outside party (e.g., compliance consultant or other third party auditor) will perform the testing function. FINRA will announce the effective date in a future Regulatory Notice.
- May 14 2010** Final rule to include mutual funds in definition of “financial institution.”

The amendment harmonizes the definition of mutual fund in the AML program rule with the definitions found in the other BSA rules to which mutual funds are subject. The amendment makes it clear that FinCEN has not delegated to the IRS the authority to examine mutual funds for compliance with the BSA, but rather to the SEC as the federal functional regulator of mutual funds. The final rule replaces a mutual fund's requirement to file a Form 8300 with a requirement to file a CTR.

## **COMMENTARY**

All broker/dealers must have had AML compliance programs in place by April 24, 2002. "No excuses" – meaning that it applies to all types of firms (e.g., subscription way, variable annuity only BDs, institutional only clients, no "customers," \$5,000 minimum net capital BDs, etc.).

If a firm has no "customers," make this clear in the AML policies, however the firm still has an obligation to monitor for illegal activity.

## **CUSTOMER NOTICE**

Firms must provide customers with adequate notice that the firm is requesting information to verify their identities. Notice is to be given before an account is opened or trading authority is granted.

## **FORMS**

### • **Suspicious Activity Report ("SAR")**

A broker-dealer is required to file a suspicious activity report if: (i) a transaction is conducted or attempted to be conducted by, at, or through a broker-dealer; (ii) the transaction involves at least \$5000; and (iii) the broker-dealer knows, suspects, or has reason to suspect that the transaction involves funds from an illegal activity, is designed to evade requirements of the BSA, has no business or apparent lawful purpose, and the broker-dealer knows of no reasonable explanation for the transaction after examining the available facts, or involves the use of the broker-dealer to facilitate criminal activity. FinCEN advises that if a firm knows, suspects, or has reason to suspect that a customer may be linked to terrorist activity against the US, the firm should immediately call FinCEN's Hotline at (866)556-3974.

- SAR for use by banks
- SAR-SF (FinCEN Form 101) – for securities broker/dealers, mutual funds, futures merchants
- SAR-IC (FinCEN Form 108) – for insurance companies (proposed; use SAR-SF in interim)
- SARC for use by casinos

### • **Currency Transaction Report ("CTRs") (aka FinCEN Form 104)**

Broker-dealers and mutual funds are required to file with FinCEN a CTR for any transaction over \$10,000 in currency, including multiple transactions occurring during the course of the same day.

### • **Currency or Monetary Instruments Report of International Transportation ("CMIR") (aka FinCEN Form 105)**

Broker-dealers must report any transportation of more than \$10,000 in currency or monetary instruments into or outside of the U.S. on a Report of International Transportation of Currency or Monetary Instruments. (Formerly Customs Form 4790.) CMIRs are filed with the Commissioner of Customs.

- **Foreign Bank Account Report (“FBAR”) (Treasury Form TD F 90-22.1)**

Report of Foreign Bank and Financial Accounts is used to report a financial interest in or signature authority over a foreign financial account. A United States person (individual or legal entity) that has a financial interest in or signature authority over foreign financial accounts must file an FBAR if the aggregate value of the foreign financial accounts exceeds \$10,000 at any time during the calendar year.

An officer or employee of a financial institution that is registered with and examined by the Securities and Exchange Commission or Commodity Futures Trading Commission is not required to report signature authority over a foreign financial account owned or maintained by the financial institution.

- **Notice for Purposes of Subsection 314(b) (financial institution information sharing)**

This form is provided to allow submission of your financial institution's intention, for a period of one (1) year beginning on the date of this Notification, to engage in the sharing of information with other financial institutions or associations of financial institutions regarding individuals, entities, organizations, and countries. The form is available at: [http://www.fincen.gov/fi\\_infoappb.html](http://www.fincen.gov/fi_infoappb.html)

- **Certification Regarding Correspondent Accounts for Foreign Banks (Treasury model form)**

Correspondent accounts for foreign banks can be maintained after obtaining certifications that the foreign bank is not a foreign shell bank. Broker-dealers should utilize Treasury model certifications for foreign bank account holders to the extent possible. The certification forms will be sent to the foreign bank account holders for completion. The certification forms ask the foreign banks: to confirm that they are not shell banks; to provide necessary ownership information; and, to provide agent information.

- **Report of Blocked Transactions (OFAC form)**

If a customer is on the Specifically Designated Nationals and Blocked Persons (“SDN”) list the broker-dealer must reject the transaction and/or block the customer’s assets and file appropriate OFAC form.

- **Report of Rejected Transactions (OFAC form)**

If a customer is on the Specifically Designated Nationals and Blocked Persons (“SDN”) list the broker-dealer must reject the transaction and/or block the customer’s assets and file appropriate OFAC form.

- **Annual Report of Blocked Property (OFAC Form TD F 90-22.50)**

If a customer is on the Specifically Designated Nationals and Blocked Persons (“SDN”) list the broker-dealer must reject the transaction and/or block the customer’s assets and file appropriate OFAC form.

- **Report of Cash Payments Over \$10,000 Received in a Trade or Business (IRS/FinCen 8300)**

A person engaged in a trade or business who receives more than \$10,000 in cash in one or more related transactions must file joint IRS/FinCEN Form 8300. Cash is not required to be reported if received by a financial institution required to file Form 104 (CTR).

## **SUPERVISION**

Firms must designate an AML Compliance Officer. The AML Compliance Officer does not need to be a S24 Principal, but could be.

BDs must provide FINRA with contact information concerning the designated compliance person(s) and promptly notify FINRA of any changes to the contact information.

Training should be offered annually. A training program for BDs needs to be identified by the April 24, 2002 deadline, and implemented during the year. Training can be part of the CE program. BDs can utilize FINRA on-line training (\$35 cost).

AML program to be audited at least annually by most firms. First year audit for BDs was due for completion by 4/24/03. FINRA rule change as of 12/28/05 allowed members that do not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts must test at least once every two years.

### **COMPONENTS OF THE BD AML POLICY**

BD AML Compliance Program is to be in place by April 24, 2002 and requires firms at a minimum to:

- 1) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions;
- 2) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and implementing regulations;
- 3) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;
- 4) Designate, and identify to FINRA, an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to FINRA regarding any change in such designation(s); and
- 5) Provide ongoing training for appropriate personnel.

### **ADDITIONAL RESOURCES**

AML Source Tool: <http://www.sec.gov/about/offices/ocie/amlsourcetool.htm>

CTR Reference Guide for Customers: <http://www.fincen.gov/whatsnew/pdf/CTRPamphletBW.pdf>

**This is a brief overview of the Anti-Money Laundering laws.  
Broker/Dealer Sample AML Policy and Audit Checklist are available.  
Order form: <http://www.liftburden.com/Product.htm>**

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