

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. (RIAs will be required to establish AML compliance programs under proposed 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.

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.

Treasury’s Office of Foreign Assets Control (“OFAC”): OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations and international narcotics traffickers based on U.S. foreign policy and national security goals. 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 Specifically 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. NASD offers a searchable OFAC SDN list at www.nasdr.com/money.asp.

Financial Action Task Force on Money Laundering (“FATF”): FATF is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering. The FATF is a policy-making body that works to generate the necessary political will to bring about national legislative and regulatory reforms to combat money laundering. FATF was established by the G-7 Summit that was held in Paris in 1989. <http://www1.oecd.org/fatf/>

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

NASD: The National Association of Securities Dealers (“NASD”) 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 the NASD AML website at www.nasdr.com/money.asp (rules, Treasury forms, NASD NTM 02-21, and more).

State Agencies: Check applicable state AML laws. As proposed in Texas as of August 2005, BDs and RIAs that are not covered by the US Patriot Act would create and implement a written AML program. **BDs:** NASD member BDs are already covered by the Patriot Act, and therefore state law would apply to non-NASD member BDs. **RIAs:** This would apply to RIAs that have assets under management and not to financial planners who provide only investment advice but do not have assets under management.

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. (Rules to cover RIAs are currently pending.)

Application of certain sections of the Act may be temporarily deferred for specified financial institutions, and therefore compliance will be phased-in based upon the type of entity. Temporary deferrals 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. Rules are currently pending for RIAs and CTAs.]
- 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. However, a key provision of Section 312 may still be under proposal.
- 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 NASD
- 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.

Oct 31 2006 Mutual Funds to report suspicious transactions
Mutual Fund companies to file SARs for transactions occurring after 10/31/06.

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”)
 - SAR for use by banks
 - SAR-SF (FinCEN Form 101) – for securities broker/dealers, mutual funds, futures merchants
 - SAR-IC for use by insurance companies (proposed)
 - SARC for use by casinos
- Currency Transaction Report (“CTRs”) (aka FinCEN Form 104)

- Currency or Monetary Instruments Report of International Transportation (“CMIR”) (aka FinCEN Form 105)
- Foreign Bank Account Report (“FBAR”) (Treasury Form TD F 90-22.1)
- Notice for Purposes of Subsection 314(b) (financial institution information sharing)
- Certification Regarding Correspondent Accounts for Foreign Banks (Treasury model form)
- Report of Blocked Transactions (OFAC form)
- Report of Rejected Transactions (OFAC form)
- Annual Report of Blocked Property (OFAC Form TD F 90-22.50)

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 the NASD with contact information concerning the designated compliance person(s) and promptly notify NASD 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 NASD 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. NASD 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 NASD, 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 NASD regarding any change in such designation(s); and
- 5) Provide ongoing training for appropriate personnel.

**This is a brief overview of the Anti-Money Laundering laws.
 Broker/Dealer Sample AML Policy and Audit Checklist are available for \$200.
 Send check to address below.**

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