

Financial Institutions Webinar: AML Regulation and Enforcement— What to Expect, How to Prepare

June 22, 2017

Sharon Cohen Levin, Partner, WilmerHale

Jeremy Dresner, Counsel, WilmerHale

Attorney Advertising



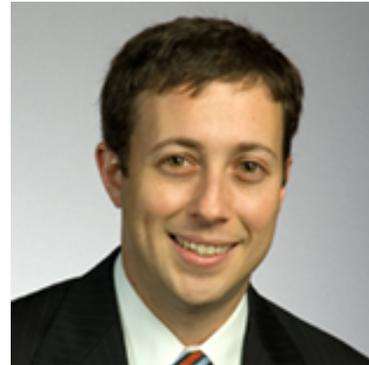
WILMER CUTLER PICKERING HALE AND DORR LLP



Speakers



Sharon Cohen Levin
Partner



Jeremy Dresner
Counsel



Webinar Guidelines

- Participants are in listen-only mode
- Submit questions via the Q&A box on the bottom right panel
- Questions will be answered as time permits
- Offering 1.0 CLE credit in California and New York*
- WebEx customer support: +1 888 447 1119, press 2

**WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional CLE credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.*



What to Expect in 2017

- Implementation of CDD rule
- Implementation of DFS Rule 504
- Focus on transaction monitoring
- SAR filing quality and quantity
- Enforcement actions brought by multiple agencies, including state regulators
- Individual liability
- Sanctions



U.S. AML Authorities

Agency	Statute	Regulations	Description
DOJ	Bank Secrecy Act 31 USC §§ 5311, 5318(g), 5318 (h), 5322	31 CFR §§ 1020.210 (AML), 1020.320 (SARs)	Criminal penalties for Bank Secrecy Act (BSA) violations—failure to establish and maintain an effective AML compliance program and failure to report suspicious transactions.
FinCEN	Bank Secrecy Act (as amended by USA PATRIOT Act and others), 12 USC § 1829b; 12 USC § 1951-59; 31 USC § 5311, et seq.	31 CFR Chapter X	FinCEN, as administrator of the BSA, has promulgated rules requiring certain types of financial institutions to, among other things, establish and implement an AML compliance program, maintain a Customer Identification Program, and report suspicious activity.
SEC	Exchange Act of 1934 § 17(a)	Exchange Act Rule 17a-8	Rule 17a-8 requires broker-dealers to comply with the reporting, recordkeeping, and record retention requirements in the regulations implementing the BSA, including to maintain a Customer Identification Program and report suspicious activity. The SEC does not have a general AML program requirement.
FINRA	N/A	FINRA Rule 3310	Rule 3310 requires FINRA member organizations to establish risk-based AML compliance programs.



U.S. AML Authorities

Agency	Statute	Regulations	Description
Federal Reserve	Federal Deposit Insurance Act, 12 USC § 1818	Reg K, 12 CFR §§ 211.24(f),(j)	Reg K requires branches, agencies, and rep offices of foreign financial institutions operating in the US to establish and maintain AML compliance programs and to report suspicious activity.
OCC		12 CFR §§ 21.11 (SARs), 21.21 (AML)	The OCC's implementing regulations requires all national banks report suspicious activity and to establish and maintain procedures reasonably designed to assure and monitor their compliance with the Bank Secrecy Act and FinCEN regulations.
NYDFS	NY Banking Law §§ 10, 14, 37, 39, 44	3 NYCRR Part 116	NYDFS regulations require banks to establish and maintain AML programs that comply with federal regulations.
Other states	Various	Various	Banks and broker dealers are also subject to the banking and securities laws and regulations of other states in which they operate.



Bank Secrecy Act Requirements

AML Compliance Program

- Internal Policies, Procedures, and Controls
- Designated BSA Compliance Officer
- Employee Training
- Independent Testing
- Customer Due Diligence

Customer Identification Program

- Identification
- Verification

Special Due Diligence

- Foreign Correspondent Accounts
- Private Banking Accounts

Reporting and Recordkeeping

- SARs
- CTRs
- CMIRs
- Other Reports

Requirements are **Risk-Based**



The 5 Pillars of AML Compliance Programs





CDD / Beneficial Ownership Rule

- Issued in May 2016, FinCEN's CDD Rule requires banks to identify beneficial owners of their legal entity customers
 - Beneficial ownership provision requires banks to identify 25% owners (to the extent applicable) and also a control person
- Adds a “fifth pillar” to the AML Program Rule, requiring banks to:
 - Establish risk-based procedures to understand the nature and purpose of customer relationships; and
 - Conduct ongoing monitoring to identify and report suspicious activity and to update customer information
- Compliance deadline is May 11, 2018

NYDFS Transaction Monitoring Rule 504

- Required features include:
 - AML transaction monitoring program
 - Watch-list filtering program
 - Certification of program by BSA/AML officer
- Initial certification due April 15, 2018.



Transaction Monitoring

- Increasing regulator focus on AML transaction monitoring, with emphasis on:
 - Integrity of outputs
 - Reliability and comprehensiveness of process
 - Threshold tuning and reduction of false positives, but not at expense of missing SARs
 - Linking related accounts
 - Monitoring parameters: appropriateness for the business and frequency of review
 - Consistent customer risk ratings that drive monitoring
 - Sufficient staffing



Transaction Monitoring Pitfalls

Threshold Tuning

- **Gibraltar** (Feb. 2016) – FinCEN fined the bank \$4 million for, among other things, failing to tune its system to reduce false positives
- **Commerzbank** (Mar. 2015) – NYDFS fined the bank \$610 million for, among other things, tuning its monitoring system to reduce alerts and investigations
- **NYDFS Rule 504** (June 2016) – requires banks to document remedial efforts to address areas, systems, or processes that require material improvement, updating or redesign

Account Linkages

- **Gibraltar** (Feb. 2016) – FinCEN criticized the bank's failure to link related accounts in its AML monitoring system
- **Charles Schwab** (Dec. 2013) – FINRA fined Schwab \$175,000 for AML violations and criticized the firm's failure to link related accounts in AML monitoring system

Adequacy of System

- **Credit Suisse Securities** (Dec. 2016) – FINRA concluded that the automated surveillance system was improperly implemented and missing data. The systems and procedures used to monitor trading for other purposes were not designed to detect potentially suspicious activity that would cause the filing of a SAR



SEC AML Examination Priorities for 2017

- Assessing whether broker-dealers' AML programs are tailored to specific risks
- Assessing how broker-dealers monitor for suspicious activity
- Assessing the effectiveness of independent testing
- Assessing compliance with SAR rules



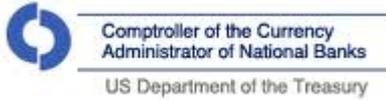
FINRA AML Examination Priorities for 2017

- Transaction monitoring—areas where FINRA “observed shortcomings”
 - gaps in surveillance systems caused by data integrity problems;
 - poorly set parameters and surveillance patterns that do not capture potentially suspicious activity.
- Microcap activity
- Foreign currency transactions
- Transactions that flow through suspense accounts
- Controls around accounts held by nominee companies



Trends in Enforcement Actions

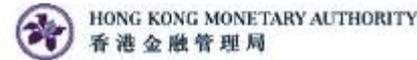
U.S. Financial Regulators



FinCEN



Foreign Authorities



Law Enforcement



Other Agencies





Individual Liability

Agency	Action
FinCEN	May 2017 – MoneyGram chief compliance officer (“CCO”) Thomas Haider settled alleged AML compliance violations for \$250,000, resolving an action FinCEN brought in federal court to enforce its penalty against Haider.
FINRA	May 2016 – FINRA fined former AML compliance officer \$25,000 and suspended her for three months.
NYDFS	June 2016 – Rule 504 requires directors or senior officers to annually certify compliance with AML transaction monitoring and watch list filtering requirements.



Sanctions

- Russia sanctions policy not dramatically changed
- New Iran sanctions bill passed Senate, which would:
 - Codify existing Executive Orders
 - Require coordination between White House and Congress
 - Tweak sectors susceptible to sanctions



What's Next?

- FATF-identified certain weaknesses
- Potential areas for reform
 - Beneficial ownership legislation
 - AML rule for investment advisers
 - AML rule for other under supervised sectors (e.g. lawyers)
 - Ensure consistent state and federal level enforcement activities
 - Expanded use of section 314 information sharing
 - Adjustments to SAR filing timing and thresholds



Questions?

Sharon Cohen Levin, Partner

+1 212 230 8804

sharon.levin@wilmerhale.com

Jeremy Dresner, Counsel

+1 202 663 6176

jeremy.dresner@wilmerhale.com

**WilmerHale has been accredited by the New York State and California State Continuing Legal Education Boards as a provider of continuing legal education. This program is being planned with the intention to offer CLE credit in California and non-transitional CLE credit in New York. This program, therefore, is being planned with the intention to offer CLE credit for experienced New York attorneys only. Attendees of this program may be able to claim England & Wales CPD for this program. WilmerHale is not an accredited provider of Virginia CLE, but we will apply for Virginia CLE credit if requested. The type and amount of credit awarded will be determined solely by the Virginia CLE Board. Attendees requesting CLE credit must attend the entire program.*

Wilmer Cutler Pickering Hale and Dorr LLP is a Delaware limited liability partnership. WilmerHale principal law offices: 60 State Street, Boston, Massachusetts 02109, +1 617 526 6000; 1875 Pennsylvania Avenue, NW, Washington, DC 20006, +1 202 663 6000. Our United Kingdom office is operated under a separate Delaware limited liability partnership of solicitors and registered foreign lawyers authorized and regulated by the Solicitors Regulation Authority (SRA No. 287488). Our professional rules can be found at www.sra.org.uk/solicitors/code-of-conduct.page. A list of partners and their professional qualifications is available for inspection at our UK office. In Beijing, we are registered to operate as a Foreign Law Firm Representative Office. This material is for general informational purposes only and does not represent our advice as to any particular set of facts; nor does it represent any undertaking to keep recipients advised of all legal developments. Prior results do not guarantee a similar outcome. © 2004-2017 Wilmer Cutler Pickering Hale and Dorr LLP