

July 23, 2019

Agencies Issue Joint Statement on Risk-Based BSA/AML Supervision

Joint Statement Emphasizes the Agencies' Risk-Focused Approach to Examinations of BSA/AML Compliance Programs

SUMMARY

On July 22, 2019, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency (collectively, the “Federal Banking Agencies”), and the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) (together with the Federal Banking Agencies, the “Agencies”) issued a joint statement (the “Statement”) emphasizing their risk-focused approach to examinations of banks’ Bank Secrecy Act/anti-money laundering (“BSA/AML”) compliance programs. In the accompanying press release, Under Secretary Sigal Mandelker noted that the “risk-based approach to supervision enables banks to devote their compliance resources towards the areas of greater risk.” The Statement is primarily aimed at improving transparency into the risk-focused approach used for planning and performing BSA/AML examinations, and emphasizes that a critical aspect of the examination is the evaluation of a bank’s processes to identify, measure, monitor and control risks. In addition, the Statement explains the role of the board of directors in establishing a bank’s risk appetite by providing guidance regarding acceptable risk exposure levels and corresponding policies, and the role of management in translating those goals, objectives and risk limits into sound operating standards through the implementation of policies, procedures and practices. The Statement also addresses the “de-risking phenomenon” in which some banks have elected not to provide services to entire categories of customers to avoid BSA/AML risks by encouraging banks to look at customers individually. Although the Statement does not establish new requirements or supervisory expectations for banks and is not legally binding on the Agencies, it may be a useful resource that banks can point to in the face of examination findings or enforcement measures that may lose sight of the risk-based nature of the BSA/AML regime.

THE STATEMENT

Pursuant to applicable statutory requirements,¹ the Federal Banking Agencies have adopted regulations that require each bank to establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of the BSA.² The Federal Banking Agencies review these procedures during each examination cycle.³ The Statement, which is part of a broader effort to enhance the effectiveness and efficiency of the BSA/AML regime,⁴ addresses the elements of a risk-based approach to BSA/AML compliance with respect to banks' own BSA/AML compliance programs as well as the examination of those programs by the Federal Banking Agencies.

Banks' Risk-Based Compliance Programs and Risk Profiles

To ensure compliance with the requirements of the BSA, banks adopt risk-based compliance programs, based on an identification and assessment of risks, as well as a determination of the level and type of risk that each bank is willing to assume.⁵ The Statement notes that as part of a bank's risk management program, the board of directors provides guidance on the acceptable levels of risk, and the management team then translates this into operating standards through the implementation of policies, procedures and practices to meet the board's risk management objectives and instructions.⁶ By identifying and analyzing BSA/AML-related risks applicable to a bank's operations, risk assessments play an important role in informing a bank's overall BSA/AML compliance program, including the implementation of controls and the allocation of compliance resources in a manner that is commensurate with applicable risks.⁷ Moreover, the risk assessment assists examiners in understanding and evaluating the adequacy of a bank's BSA/AML compliance program relative to its unique overall risk profile, and allows examiners to assess a bank's ability to identify, measure, monitor and control risks.⁸

The Statement addresses the "de-risking" issue by indicating that banks are encouraged to assess risks on a customer-by-customer basis rather than refusing to provide services to entire customer categories,⁹ though the Statement does remind banks that they must still comply with the BSA, including the requirement to maintain appropriate risk-based procedures for conducting ongoing customer due diligence.¹⁰ The Federal Banking Agencies have issued similar statements about "de-risking" in the past,¹¹ though the reiteration of the "de-risking" point in this context is important given the Statement's focus on risk-based approaches to examination procedures.

The Federal Banking Agencies' Risk-Focused Examinations

The Federal Banking Agencies' risk-focused examination plans and procedures are based on the risk profile of each bank.¹² The Federal Banking Agencies use several common practices to assess the bank's risk profile such as leveraging available information, including the bank's BSA/AML risk assessment, independent testing or audits, analyses and conclusions from previous examinations, and information available through ongoing discussions with the banks. Based on this information, the examiners determine the examination procedures and transaction testing that should be performed. The extent of the

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examination activities needed to evaluate the BSA/AML program of a bank will depend not only on the bank's risk profile but on the quality of its risk management processes to identify, measure, monitor and control risks.¹³ The Statement further explains that Federal Banking Agencies will generally allocate more exam-related resources to higher-risk areas than to lower-risk areas and will tailor the pre-examination request list to the bank's risk profile and complexity, as well as the planned examination scope.¹⁴

IMPLICATIONS

This Statement underscores the importance of banks' ability to demonstrate effective risk management practices to identify, measure, monitor and control BSA/AML-related risks, and also appears to reaffirm the approach taken by the Federal Banking Agencies to evaluating banks' management of BSA/AML risk as part of banks' overall risk management programs. The Statement also emphasizes the respective roles of boards of directors and management in setting a bank's risk appetite and in adopting effective policies, procedures and controls, as well as effective risk measurement and reporting.

Because the Statement indicates that it will be used in assessing a bank's risk profile, a bank should ensure that its BSA/AML risk assessment is current and complete and that its independent testing and audits are adequate. In particular, banks should ensure that risk assessments include all risk areas, including newer products, services, customers and geographic locations, and should update their risk assessments on a regular basis (according to the relevant examination manual, this should occur at least every 12 to 18 months).¹⁵ Banks should also ensure that testing- and audit-related documentation is current and easily accessible during examinations.

Additionally, as noted above, the Statement explicitly encourages banks to manage customer relationships and mitigate risks on an individual customer basis rather than make decisions based on categories of customers, which should provide banks with important context as they make decisions or engage in discussions with their examiners about potential changes to their customer portfolio based, at least in part, on potential BSA/AML risks.

Finally, although the Statement itself is not legally binding on the Federal Banking Agencies, banks may find it to be a useful reference in discussions with their examiners, particularly if an examination's findings do not appear to comport with the risk-based approach expressly endorsed by the Federal Banking Agencies in this Statement.

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ENDNOTES

- 1 12 U.S.C. §§ 1818(s), 1786(q).
- 2 The authority of the Secretary of the Treasury to administer the BSA and its implementing regulations has been delegated to the Director of FinCEN under Treasury Order 180-01. 31 U.S.C. § 5318 grants the Secretary of the Treasury (and therefore the Director of FinCEN) the authority to require financial institutions to report suspicious transactions and also permits the Secretary to delegate duties and powers to “an appropriate supervising agency.” The authority to examine institutions to determine compliance with FinCEN’s reporting and recordkeeping regulations is delegated to the federal functional regulators in 31 C.F.R. § 1010.810.
- 3 12 U.S.C. §§ 1818(s)(2), 1786(q)(2).
- 4 See, e.g., THE BOARD OF GOVERNORS OF THE FED. RESERVE SYS., THE FED. DEPOSIT INS. CORP., THE NAT’L CREDIT UNION ADMIN, THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, AND THE U.S. DEP’T OF TREASURY’S FIN. CRIMES ENF’T NETWORK, *Interagency Statement on Sharing Bank Secrecy Act Resources* (Oct. 3, 2018), <https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources>; THE BOARD OF GOVERNORS OF THE FED. RESERVE SYS., THE FED. DEPOSIT INS. CORP., THE NAT’L CREDIT UNION ADMIN, THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, AND THE U.S. DEP’T OF TREASURY’S FIN. CRIMES ENF’T NETWORK, *Joint Statement on Innovative Efforts to Combat Money Laundering* (Dec. 3, 2018), <https://www.fincen.gov/news/news-releases/joint-statement-innovative-efforts-combat-money-laundering>.
- 5 THE BOARD OF GOVERNORS OF THE FED. RESERVE SYS., THE FED. DEPOSIT INS. CORP., THE NAT’L CREDIT UNION ADMIN, THE OFFICE OF THE COMPTROLLER OF THE CURRENCY, AND THE U.S. DEP’T OF TREASURY’S FIN. CRIMES ENF’T NETWORK, *Joint Statement on Risk-Focused Bank Secrecy Act Anti-Money Laundering Supervision* (July 22, 2019), <https://www.fincen.gov/news/news-releases/joint-statement-risk-focused-bank-secrecy-act-anti-money-laundering-supervision> (the “Joint Statement on Risk-Focused BSA/AML Supervision”).
- 6 *Id.* at 2.
- 7 See *id.* at 1–2.
- 8 See *id.* at 2.
- 9 *Id.*
- 10 This portion of the Statement cites 31 C.F.R. § 1010.210(b)(5), but based on the context of this citation, it appears that the intended reference was 31 C.F.R. § 1020.210(b)(5).
- 11 For example, the Federal Deposit Insurance Corporation previously released a statement encouraging supervised institutions to assess all individual customer relationships rather than decline to provide services to entire categories of customers without regard to the risks presented by an individual customer or the financial institution’s ability to manage the risks of the individual customer. THE FED. DEPOSIT INS. CORP., *FDIC Encourages Institutions to Consider Customer Relationships on a Case-by-Case Basis* (Jan. 28, 2015), <https://www.fdic.gov/news/news/press/2015/pr15009.html>. Similarly, in its risk management guidance on foreign correspondent banking, the Office of the Comptroller of the Currency noted that it does not encourage supervised institutions to terminate entire categories of customer accounts without considering the risks presented by an individual customer or the bank’s ability to manage that risk. OFFICE OF THE COMPTROLLER OF THE CURRENCY, *OCC Bulletin 2016-32, Risk Management Guidance on Periodic Risk Reevaluation of Foreign Correspondent Banking* (Oct. 5, 2016), <https://www.occ.gov/news-issuances/bulletins/2016/bulletin-2016-32.html>.
- 12 Joint Statement on Risk-Focused BSA/AML Supervision at 2.
- 13 *Id.*

ENDNOTES (CONTINUED)

14 *Id.*

15 See THE FED. FIN. INST. EXAMINATION COUNCIL, *Bank Secrecy Act/Anti-Money Laundering Examination Manual: Core Examination Procedures for Assessing the BSA/AML Compliance Program—BSA/AML Risk Assessment—Overview*, <https://bsaaml.ffiec.gov/manual/ComplianceProgram/02>.

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CONTACTS

New York

Thomas C. Baxter Jr.	+1-212-558-4324	baxtert@sullcrom.com
Whitney A. Chatterjee	+1-212-558-4883	chatterjee@sullcrom.com
H. Rodgin Cohen	+1-212-558-3534	cohenhr@sullcrom.com
Elizabeth T. Davy	+1-212-558-7257	davye@sullcrom.com
Mitchell S. Eitel	+1-212-558-4960	eitelm@sullcrom.com
Michael T. Escue	+1-212-558-3721	escuem@sullcrom.com
Jared M. Fishman	+1-212-558-1689	fishmanj@sullcrom.com
C. Andrew Gerlach	+1-212-558-4789	gerlacha@sullcrom.com
Wendy M. Goldberg	+1-212-558-7915	goldbergw@sullcrom.com
Charles C. Gray	+1-212-558-4410	grayc@sullcrom.com
Shari D. Leventhal	+1-212-558-4354	leventhals@sullcrom.com
Erik D. Lindauer	+1-212-558-3548	lindauere@sullcrom.com
Mark J. Menting	+1-212-558-4859	mentingm@sullcrom.com
Camille L. Orme	+1-212-558-3373	ormec@sullcrom.com
Stephen M. Salley	+1-212-558-4998	salleys@sullcrom.com
Rebecca J. Simmons	+1-212-558-3175	simmonsr@sullcrom.com
William D. Torchiana	+1-212-558-4056	torchianaw@sullcrom.com
Donald J. Toumey	+1-212-558-4077	toumeyd@sullcrom.com
Marc Trevino	+1-212-558-4239	trevinom@sullcrom.com
Benjamin H. Weiner	+1-212-558-7861	weinerb@sullcrom.com
Mark J. Welshimer	+1-212-558-3669	welshimerm@sullcrom.com
Michael M. Wiseman	+1-212-558-3846	wisemanm@sullcrom.com

SULLIVAN & CROMWELL LLP

Washington, DC

Eric J. Kadel, Jr.	+1-202-956-7640	kadelei@sullcrom.com
William F. Kroener III	+1-202-956-7095	kroenerw@sullcrom.com
Stephen H. Meyer	+1-202-956-7605	meyerst@sullcrom.com
Jennifer L. Sutton	+1-202-956-7060	suttonj@sullcrom.com
Andrea R. Tokheim	+1-202-956-7015	tokheima@sullcrom.com
Samuel R. Woodall III	+1-202-956-7584	woodalls@sullcrom.com

Los Angeles

Patrick S. Brown	+1-310-712-6603	brownp@sullcrom.com
William F. Kroener III	+1-310-712-6696	kroenerw@sullcrom.com

Paris

William D. Torchiana	+33-1-7304-5890	torchianaw@sullcrom.com
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Tokyo

Keiji Hatano	+81-3-3213-6171	hatanok@sullcrom.com
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