



Risk Management Update February 2010

ANTI-MONEY LAUNDERING UPDATES – PART II: RELEASE OF THE AML SMALL FIRM TEMPLATE

Two important changes in the world of Anti-Money Laundering (“AML”) compliance became effective January 1, 2010. First, FINRA adopted Rule 3310 with some changes to replace NASD Rule 3011 in the Consolidated Rulebook. Second, FINRA released its long awaited revised AML Small Firm Template, which provides guidance to firms in enhancing existing AML policies and procedures.

Both of these updates include a number of corresponding changes which firms should be aware of for their AML compliance programs. Core Compliance & Legal Services, Inc. (“CCLS”) now presents the second of its two-part Risk Management Update on these important changes. January’s Risk Management Update focused on the changes to the AML Rule and what firms need to revisit with respect to the independent testing requirements.¹ This month, CCLS highlights the changes made to FINRA’s AML Small Firm Template.

FINRA AML Small Firm Template

As of January 1, 2010, the AML Small Firm Template² (“Template”) was updated by FINRA and expanded upon. Firms are reminded that the purpose of the template is to provide guidance to the broker-dealer; it should not be adopted as written. Rather, a firm’s AML Program must be customized and tailored to fit the firm’s business model.

A. Risk Based Procedures

FINRA begins the introduction of the Template with a discussion of how the AML policies and procedures should be formulated, addressing identified risks that should be memorialized in writing. While this concept is not new, the discussion goes on to say that firms should conduct a risk assessment:

A risk assessment is a useful tool for demonstrating to your firm’s examiner that the firm used a reasonable approach for designing its AML program.³

In developing a risk assessment, your AML Program and related supervisory procedures, consider using the “BSA/AML Risk Assessment – Overview” section of the *Bank Secrecy Act Anti-Money Laundering Examination Online Manual* published by the Federal Financial Institutions Examination Council.⁴ While the manual is geared to bank examiners, it contains a substantial discussion about risk assessments that can be used to develop a written risk assessment matrix if the firm does not already have one.

B. Expanded References



Many more resources are listed in the Template than before as the Financial Crimes Enforcement Network (“FinCEN”), the Office of Foreign Assets Control (“OFAC”) and other federal and regulatory agencies have applied the Bank Security and PATRIOT Acts to broker-dealers and other financial institutions since 2001.

One of the most notable changes in the new Template relates to the increased number of resources available to firms. Once such resource listed in several places in the Template is *The SAR Activity Review – Trends, Tips and Issues* published by FinCEN one or two times per year. Firms can find these reports in the “Reports and Publications” section of the “News Room” tab on FinCEN’s website.⁵

While the FinCEN reports are several pages in length, there are two sections in each *SAR Activity Review* that are constants and worth a second look. The section entitled, “Issues & Guidance” discusses current issues raised with regard to the preparation and filing of Suspicious Activity Reports (“SARs”) and other forms.⁶

Another section of the report that should be referred to is the “Industry Forum” section of each *SAR Activity Review* which presents guidance on issues such as how to audit the AML program and elements to consider for your suspicious activity training.⁷

Finally, for information in the reports on a specific topic presented in a *SAR Activity Review*, the SAR Activity Review Index is available on the FinCEN website at:

http://www.fincen.gov/news_room/rp/files/reg_sar_index.html. Topics are indexed alphabetically by general subject matter, and the individual subject links take you directly to the topic within the specific report.

C. New Sections and/or Subsections

FINRA added several new sections to the Template to accommodate the different ways federal agencies request information from financial institutions and changes in sharing of SARs among other topics. A brief outline of the changes is listed below:

Section 3 –AML Information for Federal Law Enforcement Agencies and Other Financial Institutions

This section has four new subsections:

- 3b. National Security Letters
- 3c. Grand Jury Subpoenas
- 3e. Joint Filings of SARs by Broker Dealers and other Financial Institutions and
- 3f. Sharing SAR-SFs with Parent Companies

There is sufficient reference information at the end of each subsection to assist you in updating your policies including citations for relevant sections of a specific SAR Activity Review as discussed above.

Section 6 – General Customer Due Diligence

This new section was discussed in Special NASD Notice to Members 02-21⁸ and is now part of the updated Template. The section reminds firms to document customer due diligence efforts they are performing as part of their AML policies.

Section 8 – Enhanced Due Diligence Requirements for Correspondent Accounts of Foreign Financial Institutions

This section expands upon the due diligence required by Section 312 of the USA PATRIOT Act,⁹ and provides guidance for firms to enact special procedures when due diligence cannot be performed.

Section 10 – Compliance with FinCEN’s Issuance of Special Measures against Foreign Jurisdictions, Financial Institutions or International Transactions of Primary Money Laundering Concern

This new section codifies information presented in two NASD Notices to Members (07-17 and 06-41) regarding Special Measures against Specified Banks and Section 311 of the USA PATRIOT Act.¹⁰ This has been a hot topic for several districts because firms had not incorporated procedures about special measures into their AML programs even after the notices were published. If the firm does not maintain accounts with any foreign jurisdictions, the financial institution must acknowledge that fact.

Section 12 – Suspicious Transactions and BSA Reporting

The information in this section has been expanded to include several FinCEN references for guidance on filing SARs and one new subsection, “Monetary Instrument Purchases.” This section requires firms to state whether or not they issue or sell bank checks or drafts, cashier’s checks, money orders or traveler’s checks in the amounts of \$3,000 to \$10,000 (inclusive).¹¹ If your firm does issue or sell these products, extensive procedures are required.

Section 13 – AML Recordkeeping

There is a new subsection here entitled, “Additional Records” that expands upon the records that firms must retain as part of their AML program.¹²

D. Other Changes

For those firms that do not carry retail customer accounts, FINRA has provided guidance and alternative language; (e.g. *see Section 5*). In addition, the following other changes have been made:

Section 3 – The updated Template provides less direction on document searches and on the timeframe as to how far back a firm must search to respond to a 314(a) request. Generally, however, this must be searched for the preceding twelve months for accounts and six months for transactions, and provided to the requesting party within fourteen calendar days.

Section 11 – The Red Flags subsection has changed considerably in that the flags are now presented in categories, which must be customized in accordance with their applicability to your business model.¹³

Conclusion

While the updated AML Small Firm Template provides more reference information and guidance than ever before, it is imperative for AML personnel to not eliminate the necessity to continue your own research into the ever changing Anti-Money Laundering landscape. If you have not done so already, or are new to AML, sign-up for the FinCEN and OFAC updates and read the *SAR Activity Review – Trends, Tips and Issues*. In addition, be sure to highlight to Senior Management what changes to your AML Program may need to occur as a result of these AML updates.

If you have questions about this article, or would like to inquire about our independent AML audit services, please contact us at (619) 278-0020.

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1 CCLS Risk Management Update, Jan. 2010, available at http://www.corecls.com/files/CCLS_Risk_Management_Update_-_AML_Updates_January_2010.pdf.

2 Updated Small Firm Template: Anti-Money Laundering (AML) Program Compliance and Supervisory Procedures, available at <http://www.finra.org/Industry/Issues/AML/p006340> (last visited Feb 17, 2010) [hereinafter Updated Template].

3 Id at 1.

4 Federal Financial Institutions Examination Council, Bank Secrecy Act/Anti-Money Laundering Examination Manual 18-26 (2007), available at http://www.ffeec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2007.pdf.

5 FinCEN, SAR Activity Review, Trends, Tips and Issues, http://www.fincen.gov/news_room/rp/sar_tti.html (last visited Feb 17, 2010).

6 The SAR Activity Review – Trends, Tips & Issues (Financial Crimes Enforcement Network, Washington, D.C.), Issue 16, Oct. 2010, at 45, available at http://www.fincen.gov/news_room/rp/files/sar_tti_16.pdf.

7 Id. at 53.

8 Anti-Money Laundering, Special NASD Notice to Members 02-21 at 7 (Apr. 2002), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p003704.pdf>.

9 31 U.S.C. § 5318(i).

10 See NASD Notice to Members 06-41 (Aug. 2006), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p017183.pdf>; NASD Notice to Members 07-17 (Apr. 2007), available at <http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p018973.pdf>.

11 Updated Template, *supra* note 2, at 40.

12 Id. at 44.

13 Id. at 33.