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How AML Compliance Could Soon Change

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SEPTEMBER 21ST, 2018

Despite major changes in compliance obligations starting with the Dodd-Frank Act through the more recent Economic Growth, Regulatory Relief, and Consumer Protection Act, requirements related to anti-money laundering (AML) compliance have remained largely unchanged.

The last major revision of AML compliance requirements was in 2001 with the U.S.A. PATRIOT Act amendments to the Bank Secrecy Act. This era may be coming to an end with the reintroduction earlier this summer of H.R. 6068, Counter Terrorism and Illicit Finance Act (CTIFA), and the convergence of market developments.

Although the reintroduced CTIFA bill removes a prior provision that would have required beneficial ownership information for new corporations to be collected and provided to FinCEN, the revised CTIFA would make a number of other significant changes to AML compliance requirements:

- **Increase the filing thresholds for currency transaction reports** from $10,000 to $30,000 and for suspicious activity reports (SARs) from $5,000 to $10,000;
- Require the Secretary of the Treasury to undertake a formal review of the information reporting requirements in the BSA to ensure the information is "of a high degree of usefulness" to law enforcement, and to propose changes to reduce regulatory burden;
- **Reduce impediments to the sharing of SAR information within a financial group**, including with foreign branches, subsidiaries, and affiliates;
- Create a process for FinCEN to issue no-action letters concerning the application of the BSA or any other AML law to specific conduct, including a statement whether FinCEN has any intention of taking an enforcement action with respect to such conduct;
- **Encourage the use of technological innovations** such as artificial intelligence in AML compliance;
- Establish an 18-month safe harbor from enforcement of FinCEN's beneficial ownership and customer due diligence rule, which became effective in May 2018; and
- **Commission studies** on the effectiveness of current beneficial ownership reporting regimes and cost-benefit analyses of AML requirements.

Although the CTIFA's prospects for passage are uncertain, several of its provisions track market developments that are already bringing about change. First, innovative technologies such as artificial intelligence and blockchain increasingly are being leveraged for AML compliance solutions.

Artificial intelligence has the potential to transform terabytes of customer information into actionable AML insights including, for example, customizable pre-drafted suspicious activity report templates or customer risk profiles. These risk profiles update in real time in support of the new customer due diligence "pillar" of AML compliance. Blockchain and other distributed ledger technologies may be deployed to create standardized digital identities for customers to expedite and safeguard KYC and authentication processes.

Second, banks already are taking a hard look at their CTR and SAR processes to determine the ratio of meaningful information to noise that has been included in these reports. This augmented reporting will result in a direct benefit to the network of federal government agencies tasked with analyzing reports to find information with a high degree of usefulness in law enforcement investigations.

Third, **banks are increasingly providing services to new types of high-risk businesses, such as marijuana-related businesses ("MRBs") and cryptocurrency companies**. FinCEN has for each of these industries been a pioneer in issuing guidance relatively early in the industry's lifecycle to explain how AML compliance obligations apply, but this guidance requires updating. As just one example, FinCEN's three-tiered system for filing SARs applies when a bank provides banking services directly to an MRB, but there are less clear SAR filing guidelines when a bank provides services to a customer that provides services to MRBs or owns shares of an MRB.

Banks continue to use FinCEN's administrative ruling request process or the supervisory process to obtain guidance for high-risk customers, albeit in an ad hoc, non-public way. This request process is less effective than the no-action letter process contemplated in the CTIFA.

The CTIFA, if enacted, would significantly change AML compliances. At the same time, innovation and new business opportunities, among other market developments, are already contributing to AML compliance enhancements. Regardless of whether the legislation passes, the industry appears to be entering an era of change.

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