

FINCEN AND THE FEDERAL BANKING AGENCIES REINFORCE EMPHASIS ON AML COMPLIANCE AND AN INFORMED RISK MANAGEMENT APPROACH TO BSA/AML SUPERVISION

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**") published a Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (the "**Statement**"). The Statement does not create new requirements or supervisory expectations. It is significant, however, that FinCEN and the Federal Banking Agencies considered it important to reemphasize their risk-focused approach to BSA/AML supervision and noted that the Statement is part of a broader effort to reinforce and enhance the effectiveness and efficiency of the BSA/AML regime. The issuance of the Statement is yet another demonstration of the focus of the US authorities on ensuring and enforcing BSA/AML compliance.

The Statement emphasizes the importance of sound risk management practices and the ability of institutions to identify, measure, monitor, and control BSA/AML risks. The Statement further underscores that a well-developed risk assessment is a critical part of sound risk management. Further, the Statement drives home the importance of an institution's risk assessment and independent testing for the institution's ability to identify, measure, monitor and control risks.

The Statement reiterates that an institution must implement BSA/AML compliance program that is reasonably designed to be commensurate with the BSA/AML risk profile of the institution and recognizes that less complex institutions may have a lower risk profile. The Statement indicates that the Federal Banking Agencies

generally allocate resources to higher risk areas/institutions. The Statement notes that the Federal Banking Agencies conduct risk-focused BSA/AML examinations and tailor their examination plans and procedures based on the risk profile of the examined institution. The Statement further recounts common practices used by the agencies for assessing a bank's risk profile, including, among other things, review of: (i) the bank's risk assessment; (ii) independent testing; (iii) audits; and (iv) previous examination analysis and findings.

The focus of the Federal Banking Agencies and FinCEN on tailoring of compliance programs to the risk profile of the institution is consistent with the focus of US enforcement authorities in that regard as reflected in a guidance document issued in April by the U.S. Department of Justice ("**DOJ**") concerning the evaluation of the adequacy and effectiveness of corporate compliance programs (the "**DOJ Compliance Program Effectiveness Guidance**"). In its guidance the DOJ Criminal Division stated that it recognizes that each company's risk profile warrants particularized evaluation. Further, the DOJ Compliance Program Effectiveness Guidance indicates that a starting point for the assessment of the adequacy and effectiveness of the design of a compliance program is to understand the company's identification, assessment, and definition of its risk profile and the degree to which the compliance program devotes appropriate scrutiny and resources to the spectrum of risks. The DOJ Compliance Program Effectiveness Guidance also emphasizes the compliance risk management process, including methodology used to identify, analyze, and address particular risks; what information or metrics has the company collected and used to help detect misconduct; and how such information and metrics have informed the company's compliance program.

Notably, the Statement also stresses the need for BSA/AML compliance programs to be reasonably designed to identify and report potential money laundering, terrorist financing, and other illicit financial activity. The explicit reference to the need for BSA/AML compliance programs to be designed to report potential terrorist financing indicates that BSA/AML and sanctions compliance have become increasingly intertwined.

In a faint attempt to possibly address the "de-risking" issue the Statement also encourages banks to mitigate BSA/AML risks by managing the risks of individual customer relationships rather than declining to provide banking services to entire categories of customers. In that regard the Statement seems to merely emphasize the importance of risk-rating customers and applying appropriate customer due diligence to the customer relationship commensurate with the BSA/AML risk of the customer.

All in all, the Statement seems to be intended to underscore the current focus on AML compliance and informed risk management, including the importance of risk profiles and risk management processes to identify, measure, monitor, and control BSA/AML risks. Taking into account FinCEN's and the Federal Banking Agencies' stated goal of reinforcing and enhancing the effectiveness and efficiency of the BSA/AML regime and the increasing focus on AML enforcement, banking organizations should consider re-assessing the adequacy of their BSA/AML compliance programs and amplifying their BSA/AML compliance efforts, as necessary.

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