Anti-Money Laundering (AML) Source Tool for Broker-Dealers

The information in this guide is current as of January 5, 2021.

This research guide, or "source tool," is a compilation of key AML laws, rules, orders, and guidance applicable to broker-dealers. Several statutory and regulatory provisions, and related rules of the securities self-regulatory organizations (SROs), impose AML obligations on broker-dealers. A wealth of related AML guidance materials is also available. To aid research efforts into AML requirements and to assist broker-dealers with AML compliance, this source tool organizes key AML compliance materials and provides related source information.

When using this research tool, you should keep the following in mind:

First, broker-dealers are responsible for complying with all AML requirements to which they are subject. Although this research guide summarizes some of the key AML obligations that are applicable to broker-dealers, it is not comprehensive. You should not rely on the summary information provided, but should refer to the relevant statutes, rules, orders, and interpretations.

Second, AML laws, rules, and orders are subject to change and may change quickly. Statutes that include AML-related provisions may be amended from time to time, and new statutes may be enacted which include AML-related provisions.

Finally, you will find a list of telephone numbers and useful websites at the end of this guide. If you have questions concerning the meaning, application, or status of a particular law, rule, order, or guidance, you should consult with an attorney experienced in the areas covered by this guide.

This source tool represents the views of the staff of the Division of Examinations. It is not a rule, regulation, or statement of the Securities and Exchange Commission ("Commission"). The Commission has neither approved nor disapproved its content. This source tool, like all staff guidance, has no legal force or effect: it does not alter or amend applicable law, and it creates no new or additional obligations for any person.

The Division of Examinations regularly publishes Risk Alerts on its webpage, www.sec.gov/exams, some of which deal with AML topics, and also maintains a source tool regarding the AML obligations of mutual funds.

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The following topics are addressed in this guide:

1. The Bank Secrecy Act

The Bank Secrecy Act (BSA), initially adopted in 1970, establishes the basic framework for AML obligations imposed on financial institutions. Among other things, it authorizes the Secretary of the Treasury to issue regulations requiring financial institutions (including broker-dealers) to keep records and file reports on financial transactions that may be useful in investigating and prosecuting money laundering and other financial crimes. The Financial Crimes Enforcement Network (FinCEN), a bureau within Treasury, has regulatory responsibilities for administering the BSA.

Rule 17a-8 under the Securities Exchange Act of 1934 (Exchange Act) requires broker-dealers to comply with the reporting, recordkeeping, and record retention rules adopted under the BSA.

Source Documents:

- **Bank Secrecy Act:** The Bank Secrecy Act is codified at 31 U.S.C. §§ 5311 *et seq.*
- **Bank Secrecy Act Rules:** The rules adopted by FinCEN implementing the BSA are located at 31 C.F.R. Chapter X. 31 C.F.R. Chapter X is comprised of a "General Provisions Part" and separate financial-institution-specific parts for those financial institutions subject to FinCEN regulations. The General Provisions Part (Part 1010) contains regulatory requirements that apply to more than one type of financial institution, and in some cases, individuals. The financial-institution-specific parts contain regulatory requirements specific to a particular type of financial institution. Part 1023 pertains to broker-dealers (31 C.F.R. §§ 1023.100 *et seq.*).
- **Exchange Act Rule 17a-8:** 17 C.F.R. § 240.17a-8.

2. The USA PATRIOT Act

The USA PATRIOT Act was enacted by Congress in 2001 in response to the terrorist attacks on September 11, 2001. Among other things, the USA PATRIOT Act amended and strengthened the BSA. It imposed a number of AML obligations directly on broker-dealers, including:

- AML compliance programs;
- customer identification programs;
- obtaining beneficial ownership information and customer due diligence;
- monitoring, detecting, and filing reports of suspicious activity;
- due diligence on foreign correspondent accounts, including prohibitions on transactions with foreign shell banks;
- due diligence on private banking accounts;
- mandatory information-sharing (in response to requests by federal law enforcement); and
- compliance with "special measures" imposed by the Secretary of the Treasury to address particular AML concerns.

Source Document:

- **USA PATRIOT Act:** Title 3 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 296 (2001).

3. AML Programs

Section 352 of the USA PATRIOT ACT amended the BSA to require financial institutions, including broker-dealers, to establish AML programs. Broker-dealers can satisfy this requirement by implementing and maintaining an AML program that complies with SRO rule requirements.

An AML program must be in writing and include, at a minimum:

- policies, procedures, and internal controls reasonably designed to achieve compliance with the BSA and its implementing rules;
- policies and procedures that can be reasonably expected to detect and cause the reporting of transactions under 31 U.S.C. 5318(g) and the implementing regulations thereunder;
- the designation of an AML compliance officer (AML Officer), including notification to the SROs;
- ongoing AML employee training;
- an independent test of the firm's AML program, annually for most firms; and
- risk based procedures for conducting ongoing customer due diligence. These should include, but not be limited to procedures to: (1) identify and verify the identity of customers, (2) understand the nature and purpose of customer relationships to be able to develop a risk profile and (3) conduct ongoing monitoring to identify and report suspicious transactions as well as maintain and update customer information, including beneficial ownership information for legal entity customers.

Source Documents:

- **AML Program Rule:** 31 C.F.R. § 1023.210.
- **Adopting Releases:** Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016); Anti-Money Laundering Programs for Financial Institutions, 67 Fed. Reg. 21110 (Apr. 29, 2002).
- **SEC Order Approving FINRA AML Compliance Program Rule:** Exchange Act Release No. 60645 (Sept. 10, 2009); *see also* 74 Fed. Reg. 47630 (Sept. 16, 2009).
- **FINRA AML Compliance Rule and Related Guidance:**
    - FINRA Rule 3310: Anti-Money Laundering Compliance Program
    - Supplementary Material 3310.01: Independent Testing Requirements
    - Supplementary Material 3310.02: Review of Anti-Money Laundering Compliance Person Information
    - NTM 02-21: NASD Provides Guidance to Member Firms Concerning Anti-Money Laundering Compliance Programs Required by Federal Law (Apr. 2002).[1]
    - NTM 17-40: FINRA Provides Guidance to Firms Regarding Anti-Money Laundering Program Requirements Under FINRA Rule 3310 Following Adoption of FinCEN's Final Rule to Enhance Customer Due Diligence Requirements for Financial Institutions Effective Date.
    - NTM 18-19: FINRA Amends Rule 3310 to Conform to FinCEN's Final Rule on Customer Due Diligence Requirements for Financial Institutions.
    - *FINRA Small Firm Template:* The template provides model language for AML program compliance and supervisory procedures.
    - FINRA AML Frequently Asked Questions.

4. Customer Identification Programs

Section 326 of the USA PATRIOT Act amended the BSA to require financial institutions, including broker-dealers, to establish written customer identification programs (CIP). FinCEN's implementing rule requires a broker-dealer's CIP to include, at a minimum, procedures for:

- obtaining customer identifying information from each customer prior to account opening;
- verifying the identity of each customer, to the extent reasonable and practicable, within a reasonable time before or after account opening;
- making and maintaining a record of information obtained relating to identity verification;
- determining within a reasonable time after account opening or earlier whether a customer appears on any list of known or suspected terrorist organizations designated by Treasury;[2] and
- providing each customer with adequate notice, prior to opening an account, that information is being requested to verify the customer's identity.

The CIP rule provides that, under certain defined circumstances, broker-dealers may rely on another financial institution to fulfill some or all of the requirements of the broker-dealer's CIP. For example, in order for a broker-dealer to rely on the other financial institution the reliance must be reasonable. The other financial institution also must be subject to an AML compliance program rule and be regulated by a federal functional regulator. The broker-dealer and other financial institution must enter into a contract and the other financial institution must certify annually to the broker-dealer that it has implemented an AML program. The other financial institution must also certify to the broker-dealer that the financial institution will perform the specified requirements of the broker-dealer's CIP.[3]

Source Documents:

- **Customer Identification Program Rule:** 31 C.F.R. § 1023.220.
- **Adopting Releases:** Exchange Act Release No. 47752 (Apr. 29, 2003). *See also* 68 Fed. Reg. 25113 (May 9, 2003).
- **Other Rulemaking Documents:**
  - *Proposed Rule:* Exchange Act Release No. 46192 (July 12, 2002). *See also* 67 Fed. Reg. 48306 (July 23, 2002).
- **FinCEN Guidance:**
  - FIN-2008-G002: Guidance: Customer Identification Program Rule No-Action Position Respecting Broker-Dealers Operating Under Fully Disclosed Clearing Agreements According to Certain Functional Allocations (Mar. 4, 2008).
  - FIN-2008-R008: Ruling: Bank Secrecy Act Obligations of a U.S. Clearing Broker-Dealer Establishing a Fully Disclosed Clearing Relationship with a Foreign Financial Institution (June 3, 2008).
- **SEC Staff Views:**
  - Staff Q&A Regarding the Broker-Dealer Customer Identification Program Rule (Oct. 1, 2003). (The Q&A provides the views of staff regarding when a broker-dealer maintaining an "omnibus account" for a financial intermediary may treat the financial intermediary as the "customer" for CIP purposes.)
  - *No-Action Letters to the Securities Industry and Financial Markets Association* (SIFMA) (formerly the Securities Industry Association) (Feb. 12, 2004; Feb. 10, 2005; July 11, 2006; Jan. 10, 2008; Jan. 11, 2010; Jan. 11, 2011; Jan. 9, 2015; Dec. 12, 2016, Dec. 12, 2018, and Dec. 9, 2020). (The letters provide staff no-action statements regarding broker-dealers relying on investment advisers to conduct the required elements of the CIP rule. Among other things, the 2015 letter addresses the reasonableness of a broker-dealer's reliance on an investment adviser and the investment adviser's

prompt reporting to the broker-dealer of potentially suspicious or unusual activity detected as part of the CIP being performed on the broker-dealer's behalf.)

- Staff Q&A Regarding Broker-Dealer CIP Rule Responsibilities under the Agency Lending Disclosure Initiative (Apr. 26, 2006).
- Master/Sub-accounts, National Exam Risk Alert, Vol. I, Issue 1 (Sept. 29, 2011).

- **FINRA Guidance:**
  - NASD Comparison of the AML Customer Identification Rule and the SEC's Books & Records Customer Account Records Rule (2003).
  - Regulatory Notice 10-18: Master Accounts and Sub-Accounts (Apr. 2010).

5. Beneficial Ownership

Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers and to include such procedures in their anti-money laundering compliance program required under 31 U.S.C. 5318(h) and its implementing regulations.

Legal entity customer means an account holder that is corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction.

Beneficial owner means each of the following:

1. Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and
2. A single individual with significant responsibility to control, manage, or direct a legal entity customer, including:
   a. An executive officer or senior manager (e.g., a chief executive officer, chief financial officer, chief operating officer, managing member, general partner, president, vice president or treasurer); or
   b. Any other individual who regularly performs similar functions.
3. If a trust owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, the beneficial owner shall mean the trustee. If an entity that is excluded from the definition of "legal entity customer" owns directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, 25 percent or more of the equity interests of a legal entity customer, no individual need be identified with respect to that entity's interests.

Source Documents:

- **Beneficial Ownership Requirements for Legal Entity Customers:** 31 C.F.R. § 1010.230.
- **Adopting Release:** 81 Fed. Reg. 29398 (May 11, 2016).
- **Joint Guidance Issued by FinCEN, SEC, and other Federal Regulators:** Guidance on Obtaining and Retaining Beneficial Ownership Information (Mar. 2010).
- **FinCEN Guidance:**
  - FAQs Regarding Customer Due Diligence Requirements for Financial Institutions (July 19, 2016).
  - FAQs Regarding Customer Due Diligence Requirements for Financial Institutions (Apr. 3, 2018).
  - FAQs Regarding Customer Due Diligence Requirements for Financial Institutions (Aug. 3, 2020).
- **FINRA Guidance:**

- NTM 17-40: FINRA Provides Guidance to Firms Regarding Anti-Money Laundering Program Requirements Under FINRA Rule 3310 Following Adoption of FinCEN's Final Rule to Enhance Customer Due Diligence Requirements for Financial Institutions Effective Date.

6. Correspondent Accounts: Prohibition on Foreign Shell Banks and Due Diligence Programs

Overview: Sections 312, 313, and 319 of the USA PATRIOT Act, which amended the BSA, are inter-related provisions involving "correspondent accounts." These inter-related provisions include prohibitions on correspondent accounts that are maintained for foreign "shell" banks, as well as requirements for risk-based due diligence of foreign correspondent accounts more generally.

A *correspondent account* is defined as an account established for a foreign financial institution to receive deposits from, or to make payments or other disbursements on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution.

A *foreign financial institution* includes: (i) a foreign bank (including a foreign branch or office of a U.S. bank); (ii) a foreign branch or office of a securities broker-dealer, futures commission merchant, introducing broker in commodities, or mutual fund; (iii) a business organized under foreign law (other than a branch or office of such business in the U.S.) that if it were located in the U.S. would be a securities broker-dealer, futures commission merchant, introducing broker in commodities, or a mutual fund; and (iv) a money transmitter or currency exchange organized under foreign law (other than a branch or office of such entity in the U.S.).

In addition, FinCEN has clarified that, for a broker-dealer, a "correspondent account" includes:

- accounts to purchase, sell, lend, or otherwise hold securities, including securities repurchase arrangements;
- prime brokerage accounts that clear and settle securities transactions for clients;
- accounts for trading foreign currency;
- custody accounts for holding securities or other assets in connection with securities transactions as collateral; and
- over-the-counter derivatives contracts.

Prohibitions on Foreign Shell Banks: A broker-dealer is prohibited from establishing, maintaining, administering, or managing "correspondent accounts" in the U.S. for, or on behalf of, foreign "shell" banks (*i.e.,* foreign banks with no physical presence in any country). Broker-dealers also must take steps to ensure that they are not indirectly providing correspondent banking services to foreign shell banks through foreign banks with which they maintain correspondent relationships. To assist institutions in complying with the prohibitions on providing correspondent accounts to foreign shell banks, FinCEN has provided a model certification that can be used to obtain information from foreign bank correspondents. In addition, broker-dealers must obtain records in the United States of foreign bank owners and agents for service of process (Sections 313 and 319 of the USA PATRIOT Act).

Source Documents:

- **Shell Bank Prohibition:** 31 C.F.R. § 1010.630. *See also* 31 C.F.R. § 1010.605 (definitions).
- **Adopting Release:** 67 Fed. Reg. 60562 (Sept. 26, 2002).
- **Other Rulemaking Documents:**
  - Interim Guidance: 66 Fed. Reg. 59342 (Nov. 27, 2001).
  - Proposed Rule: 66 Fed. Reg. 67460 (Dec. 28, 2001).
- **FinCEN Guidance:**
  - FIN-2006-G003: Frequently Asked Questions: Foreign Bank Recertifications under 31 C.F.R. § 103.177 (Feb. 3, 2006).

- FIN-2008-G001: Application of Correspondent Account Rules to the Presentation of Negotiable Instruments Received by a Covered Financial Institution for Payment (Jan. 30, 2008).
- FIN-2008-R008: Ruling: Bank Secrecy Act Obligations of a U.S. Clearing Broker-Dealer Establishing a Fully Disclosed Clearing Relationship with a Foreign Financial Institution (June 3, 2008).

Due Diligence Regarding Foreign Correspondent Accounts: A broker-dealer is required to establish a risk-based due diligence program (as part of its overall AML compliance program) for any "correspondent accounts" maintained for foreign financial institutions. The due diligence program must include appropriate, specific, risk-based policies, procedures, and controls reasonably designed to enable the broker-dealer to detect and report, on an ongoing basis, any known or suspected money laundering conducted through or involving any foreign correspondent account (Section 312 of the PATRIOT Act). A related rule covers when enhanced due diligence on foreign financial institutions is required.

Source Documents:

- **Correspondent Account Due Diligence Rule:** 31 C.F.R. § 1010.610. *See also* 31 C.F.R. § 1010.605 (definitions).
- **Adopting Releases**: 71 Fed. Reg. 496 (Jan. 4, 2006); 72 Fed. Reg. 44768 (Aug. 9, 2007) (enhanced due diligence).
- **Other Rulemaking Documents:**
  - Enhanced Due Diligence Re-Proposed Rule: 71 Fed. Reg. 516 (Jan. 4, 2006).
  - Proposed Rule: 67 Fed. Reg. 37736 (May 30, 2002).
  - Interim Final Rule: 67 Fed. Reg. 48348 (July 23, 2002).
- **SEC Staff Views:** Staff Bulletin: Risks Associated with Omnibus Accounts Transacting in Low-Priced Securities (Nov. 12, 2020)
- **FinCEN Guidance:**
  - Fact Sheet: Section 312 of the USA PATRIOT Act (Dec. 2005).
  - FIN-2006-G009: Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities and Futures Industries (May 10, 2006).
- **FFIEC AML Examination Manual** (This examination manual, issued by the federal banking regulators regarding the AML requirements applicable to banks, contains guidance that may be of interest to securities firms.)

7. Due Diligence Programs for Private Banking Accounts

Section 312 of the USA PATRIOT Act amended the BSA to, among other things, impose special due diligence requirements on financial institutions, including broker-dealers that establish, maintain, administer or manage a private banking account or a "correspondent account" in the United States for a "non-United States person." FinCEN regulations provide that a "covered financial institution" is required to maintain a due diligence program that includes policies, procedures, and controls that are reasonably designed to detect and report any known or suspected money laundering or suspicious activity conducted through or involving a "private banking account" that is established, maintained, administered or managed in the U.S. by the financial institution. In addition, the regulations set forth certain minimum requirements for the required due diligence program with respect to private banking accounts and require enhanced scrutiny to any such accounts where the nominal or beneficial owner is a "senior foreign political figure."

The regulations define a "private banking account" as an account that: (a) requires a minimum deposit of assets of at least $1,000,000; (b) is established or maintained on behalf of one or more non-U.S. persons who are direct or

beneficial owners of the account; and (c) has an employee assigned to the account who is a liaison between the broker-dealer and the non-U.S. person.

The definition of "senior foreign political figure" extends to any member of the political figure's immediate family, and any person widely and publicly known to be a close associate of the foreign political figure as well as any entities formed for the benefit of such persons (such persons are commonly referred to as PEPs, or Politically Exposed Persons).

Broker-dealers providing private banking accounts must take reasonable steps to:

- determine the identity of all nominal and beneficial owners of the private banking accounts;
- determine whether any such owner is a "senior foreign political figure" and therefore subject to enhanced scrutiny that is reasonably designed to detect transactions that may involve the proceeds of foreign corruption;
- determine the source of funds deposited into the private banking account and the purpose and use of such account;
- review the activity of the account as needed to guard against money laundering; and
- report any suspicious activity, including transactions involving senior foreign political figures that may involve proceeds of foreign corruption.

Source Documents:

- **Private Banking Due Diligence Rule:** 31 C.F.R. § 1010.620. *See also*: 31 C.F.R. § 1010.605 (definitions).
- **Adopting Release:** 71 Fed. Reg. 496 (Jan. 4, 2006).
- **Other Rulemaking Documents:**
  - Proposed Rule: 67 Fed. Reg. 37736 (May 30, 2002).
  - Interim Final Rule: 67 Fed. Reg. 48348 (July 23, 2002).
- **Joint Guidance Issued by FinCEN, SEC, and other Federal Regulators:** Guidance on Obtaining and Retaining Beneficial Ownership Information (Mar. 2010).
- **FinCEN Guidance:**
  - Fact Sheet: Section 312 of the USA PATRIOT Act (Dec. 2005).
  - FIN-2006-G009: Application of the Regulations Requiring Special Due Diligence Programs for Certain Foreign Accounts to the Securities and Futures Industries (May 10, 2006).
- **FFIEC AML Examination Manual**

8. Suspicious Activity Monitoring and Reporting

Section 356 of the USA PATRIOT Act amended the BSA to require broker-dealers to monitor for, and report, suspicious activity (so-called SAR reporting).

Under FinCEN's SAR rule, a broker-dealer is required to file a suspicious activity report if: (i) a transaction is conducted or attempted to be conducted by, at, or through a broker-dealer; (ii) the transaction involves or aggregates funds or other assets of at least $5,000; and (iii) the broker-dealer knows, suspects, or has reason to suspect that the transaction:

1. involves funds derived from illegal activity or is intended or conducted to hide or disguise funds or assets derived from illegal activity as part of a plan to violate or evade any federal law or regulation;
2. is designed to evade any requirements set forth in regulations implementing the BSA;
3. has no business purpose or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the broker-dealer knows of no reasonable explanation for

the transaction after examining the available facts, including the background and possible purpose of the transaction; or

4. involves use of the broker-dealer to facilitate criminal activity.

Broker-dealers must report the suspicious activity using FinCEN SAR Form 111, which is confidential. FinCEN maintains instructions for filing the form, which detail, among other things, the minimum information requirements for the form.

Broker-dealers must maintain a copy of any SAR filed and supporting documentation for a period of five years from the date of filing the SAR.

In situations that require immediate attention, such as terrorist financing or ongoing money laundering schemes, broker-dealers should immediately notify law enforcement in addition to filing a SAR. If a firm wishes to report suspicious transactions that may relate to terrorist activity, in addition to filing a SAR, the firm may call FinCEN's Hotline at 1-866-556-3974.[4]

Source Documents:

- **SAR Rule:** 31 C.F.R. § 1023.320.
- **Adopting Release:** 67 Fed. Reg. 44048 (July 1, 2002).
- **Other Rulemaking Documents:**
  - Proposing Release: 66 Fed. Reg. 67670 (Dec. 31, 2001).
  - Adopting Release for Rules for Confidentiality of Suspicious Activity Reports, 75 Fed. Reg. 75593 (Dec. 3, 2010).
  - Technical Amendment moving the SAR Confidentiality Rule from 31 C.F.R. 103 to the 31 C.F.R. Chapter X.
- **BSA E-Filing System** and **BSA Forms and Filing Requirements**.
- **FinCEN Guidance:**
  - Interpretative Release No. 2004-02 — Unitary Filing of Suspicious Activity and Blocking Reports, 69 Fed. Reg. 76847 (Dec. 23, 2004).
  - FIN-2006-G014: Potential Money Laundering Risks Related to Shell Companies (Nov. 9, 2006).
  - Guidance on Sharing of Suspicious Activity Reports by Securities Broker-Dealers, Futures Commission Merchants, and Introducing Brokers in Commodities (Jan. 20, 2006).[5]
  - FIN-2007-G003: Suspicious Activity Report Supporting Documentation (June 13, 2007).
  - FIN-2007-G002: Requests by Law Enforcement for Financial Institutions to Maintain Accounts (June 13, 2007).
  - Suggestions for Addressing Common Errors Noted in Suspicious Activity Reporting (Oct. 10, 2007).
  - Guidance to Financial Institutions on Filing Suspicious Activity Reports regarding the Proceeds of Foreign Corruption (Apr. 17, 2008).
  - Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates (Nov. 23, 2010).
  - Sharing Suspicious Activity Reports by Depository Institutions with Certain U.S. Affiliates (Nov. 23, 2010).
  - FIN-2016-A005: Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime.
  - *SAR Activity Reviews:* These are available on FinCEN's website at: https://www.fincen.gov/sar-activity-review-trends-tips-issues.[6]

- **FINRA Guidance:**
  - NTM 02-21: NASD Provides Guidance to Member Firms concerning Anti-Money Laundering Compliance Programs Required by Federal Law (Apr. 2002). (This includes a list of "red flags" that may be useful in identifying possible money laundering.)
  - Regulatory Notice 19-18: Guidance to Firms regarding Suspicious Activity Monitoring and Reporting Obligations (May 6, 2019).

9. Other BSA Reports

Broker-dealers have other reporting obligations imposed by the BSA. They include:

Currency Transaction Reports (CTRs): Broker-dealers are required to file with FinCEN a CTR (Form 112, formerly IRS Form 4789) for any transaction over $10,000 in currency, including multiple transactions occurring during the course of the same day. A broker-dealer must treat multiple transactions as a single transaction if the broker-dealer has knowledge that the transactions are conducted by or on behalf of the same person and result in either cash in or cash out totaling more than $10,000 during any one business day.

Reports of Foreign Bank and Financial Accounts (FBARs): Broker-dealers are required to file reports of foreign bank and financial accounts if the aggregate value of the accounts exceeds $10,000. FBARs are filed using Form 114.

Reports of Currency or Monetary Instruments (CMIRs): Broker-dealers must report any transportation of more than $10,000 in currency or monetary instruments into or outside of the U.S. on a Report of International Transportation of Currency or Monetary Instruments, FinCEN Form 105 (formerly Customs Form 4790). CMIRs are filed with the Bureau of Customs and Border Protection.

Source Documents:

- **CTR:** 31 C.F.R. §§ 1010.311, 1010.306, 1010.312.
- **FBAR:** 31 C.F.R. §§ 1010.350, 1010.306, 1010.420.
- **Adopting Release:** 76 Fed. Reg. 10234 (Feb. 24, 2011).
- **CMIR:** 31 C.F.R. §§ 1010.340, 1010.306.
- **BSA E-Filing System** and **BSA Forms and Filing Requirements**.
- **FinCEN Guidance:**
  - FinCEN Ruling 2003-1: Regarding the Aggregation of Currency Transactions Pursuant to 31 CFR Section 103.22 (Oct. 3, 2002).
  - Guidance on Interpreting Financial Institution Policies in Relation to Recordkeeping Requirements under 31 C.F.R. 103.29 (Nov. 2002).
  - FinCEN Ruling 2005-6: Suspicious Activity Reporting (Structuring) (July 15, 2005).

10. Records of Funds Transfers

Under the "joint rule" and "travel rule," broker-dealers must keep records of funds transfers of $3,000 or more (such as wire transfers), including certain related information (such as name, address, account number of client, date and amount of wire, payment instructions, name of recipient institution, and name and account information of wire payment recipient). The "travel rule" also requires that certain information obtained or retained by the transmittor's financial institution "travel" with the transmittal order through the payment chain.

Source Documents:

- **Joint Rule:** 31 C.F.R. § 1010.410(e).

- **Travel Rule:** 31 C.F.R § 1010.410(f).
- **FinCEN Guidance:**
  - FinCEN Advisory: Funds Transfers: Questions & Answers (June 1996).[7]
  - FinCEN Advisory: Funds "Travel" Regulations: Questions & Answers (Nov. 2010).

11. Information Sharing with Law Enforcement and Financial Institutions

Two provisions relating to information sharing were added to the BSA by the USA PATRIOT Act. One provision requires broker-dealers to respond to *mandatory* requests for information made by FinCEN on behalf of federal law enforcement agencies. The other provides a safe harbor to permit and facilitate *voluntary* information sharing among financial institutions.

Mandatory Information Sharing: Section 314(a) Requests: FinCEN's BSA information sharing rules, under Section 314(a), authorize law enforcement agencies with criminal investigative authority to request that FinCEN solicit, on the agency's behalf, certain information from a financial institution, including a broker-dealer. These requests are often referred to as "Section 314(a) information requests." Upon receiving a Section 314(a) request, a broker-dealer is required to search its records to determine whether it has accounts for, or has engaged in transactions with, any specified individual, entity, or organization. If the broker-dealer identifies an account or transaction identified with any individual, entity or organization named in the request, it must report certain relevant information to FinCEN. Broker-dealers also must designate a contact person (typically the firm's AML compliance officer) to receive the requests and must maintain the confidentiality of any request and any responsive reports to FinCEN.

Source Documents:

- **Section 314(a) Rule:** 31 C.F.R. § 1010.520.
- **Adopting Release:** 67 Fed. Reg. 60579 (Sept. 26, 2002).
- **Proposed Rule Release:** 74 Fed. Reg. 58926 (Nov. 16, 2009).
- **Broadening Access to the 314(a) program:** 75 Fed. Reg. 6560 (Feb. 10, 2010).
- **FinCEN Guidance:**
  - Changing your Point of Contact for 314(a) (Nov. 2019).
  - FinCEN 314(a) Fact Sheet (June 30, 2020).

Voluntary Information Sharing Among Financial Institutions: Section 314(b): A separate safe harbor provision encourages and facilitates voluntary information sharing among participating financial institutions. The safe harbor provision, added to the BSA by Section 314(b) of the USA PATRIOT Act, protects financial institutions, including broker-dealers, from certain liabilities in connection with sharing certain AML related information with other financial institutions for the purposes of identifying and reporting activities that may involve terrorist acts or money laundering activities. FinCEN's implementing regulations require that a financial institution or association of financial institutions that intends to share information pursuant to the regulations must file an annual notice with FinCEN, maintain procedures to protect the security and confidentiality of the information, and take reasonable steps to verify that the financial institution or association of financial institutions with which it intends to share the information has filed the required notice with FinCEN. This may be done by checking a list that FinCEN makes available. FinCEN's website contains an online registration system for section 314(b) notifications.

Source Documents:

- **Section 314(b) Rule:** 31 C.F.R. § 1010.540.
- **Adopting Release:** 67 Fed. Reg. 60579 (Sept. 26, 2002).

- **Other Rulemaking Documents:**
  - Interim Final Rule: 67 Fed. Reg. 9874 (Mar. 4, 2002).
- **FinCEN 314(b) Webpage** (provides information on section 314(b) and an online registration system).

12. Special Measures Imposed by the Secretary of the Treasury

Section 311 of the USA PATRIOT Act amended the BSA to authorize the Secretary of the Treasury to require broker-dealers to take "special measures" to address particular money laundering concerns. The Secretary of the Treasury may impose special measures on foreign jurisdictions, financial institutions, or transactions or types of accounts found to be of "primary money laundering concern." One of the special measures prohibits U.S. financial institutions from opening or maintaining certain correspondent accounts.

Source Documents:

- Section 311 Special Measures.

13. OFAC Sanctions Programs and Other Lists

OFAC is an office within Treasury that administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorism sponsoring organizations, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. OFAC acts under presidential wartime and national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze foreign assets under U.S. jurisdiction.

OFAC's sanctions programs are separate and distinct from, and in addition to, the AML requirements imposed on broker-dealers under the BSA.

As a tool in administering sanctions, OFAC publishes lists of sanctioned countries and persons that are continually being updated. Its list of Specially Designated Nationals and Blocked Persons (SDNs) lists individuals and entities from all over the world whose property is subject to blocking and with whom U.S. persons cannot conduct business. OFAC also administers country-based sanctions that are broader in scope than the "list-based" programs.

In general, OFAC regulations require broker-dealers to:

- block accounts and other property or property interests of entities and individuals that appear on the SDN list and blocked persons or entities that are blocked by operation of law;
- block accounts and other property or property interests of governments, other entities and individuals subject to blocking under OFAC country-based programs; and
- reject prohibited, unlicensed trade and financial transactions, including those with OFAC-sanctioned countries.

Broker-dealers must report all blockings and rejections of prohibited transactions to OFAC within 10 days of their being identified and annually. In addition to the blocking sanctions described above, OFAC maintains several sanctions programs that prohibit U.S. persons, including broker-dealers, from dealings in equity and debt of, and extension of credit to, certain sanctions targets. OFAC has the authority to impose substantial civil penalties administratively. To guard against engaging in OFAC prohibited transactions, one best practice that has emerged entails "screening against the OFAC list." OFAC has stated that it will take into account the adequacy of a firm's OFAC compliance program when it evaluates whether to impose a penalty if an OFAC violation has occurred.

Firms should be aware of other lists, such as the Financial Action Task Force ("FATF") publications that identify "high risk and other monitored jurisdictions" which lists countries with weak measures to combat money laundering and terrorist financing. If transactions originate from or are routed to any FATF-identified countries, it might be an indication of suspicious activity.[8]

Source Documents:

- **OFAC Regulations:**
  - 31 C.F.R. §§ 501 et seq.
- **OFAC Guidance:**
  - Program information, including the SDN list and countries subject to OFAC sanctions, is available on the OFAC website at: www.treas.gov/ofac.
  - OFAC Resource Center.
  - Adopting Release, Economic Sanctions Enforcement Guidelines, 74 Fed. Reg. 57593 (Nov. 9, 2009).
  - Interim Final Rule, Economic Sanctions Enforcement Guidelines, 73 Fed. Reg. 51933 (Sept. 2, 2008).
  - Opening Securities and Futures Accounts from an OFAC Perspective (Nov. 5, 2008).
  - Risk Factors for OFAC Compliance in the Securities Industry (Nov. 5, 2008).
  - OFAC Frequently Asked Questions.
- **FinCEN Guidance:**
  - *Interpretive Release No. 2004-02 - Unitary Filing of Suspicious Activity and Blocking Reports*, 69 Fed. Reg. 76847 (Dec. 23, 2004).
- **Other lists of countries supporting international terrorism may be available at:**
  - U.S. State Dept.: https://www.state.gov/country-reports-on-terrorism/.
  - FATF: www.fatf-gafi.org.
  - FinCEN High Intensity Financial Crimes Areas Designation: https://www.fincen.gov/hifca.

14. Selected Additional AML Resources

SEC Staff Materials:

- Leaders of CFTC, FinCEN, and SEC Issue Joint Statement on Activities Involving Digital Assets (Oct. 11, 2019).
- Driscoll, Peter, “Staying Vigilant to Protect Investors,” Remarks at the SIFMA Operations Conference & Exhibition (May 8, 2019).
- Kevin Goodman, "Anti-Money Laundering: An Often-Overlooked Cornerstone of Effective Compliance" (June 18, 2015).
- Examinations/NEP Risk Alert: Broker-Dealer Controls Regarding Customer Sales of Microcap Securities (Oct. 9, 2014).
- David W. Blass, Broker-Dealer Anti-Money Laundering Compliance — Learning Lessons from the Past and Looking to the Future” (Feb. 29, 2012).

FinCEN Materials:

- FinCEN Advisories/Bulletins/Fact Sheets
- National Strategy for Combating Terrorist and Other Illicit Financing (2020).
- Remarks of FinCEN’s Deputy Director, Jamal El-Hindi, SIFMA AML and Financial Crimes Conference (Feb. 6, 2020).

- Remarks of FinCEN Director, Kenneth A. Blanco, SIFMA AML and Financial Crimes Conference (Feb. 4, 2019).
- 2018 National Money Laundering Risk Assessment.
- 2018 National Terrorist Financing Risk Assessment.

FATF Materials:

- Anti-money Laundering and Counter-Terrorist Financing Measures: Mutual Evaluation of the United States (Dec. 2016).
- Risk Based Approach Guidance for the Securities Sector, FATF (2018).

Selected AML Enforcement Cases:

- **SEC**
  - *SEC v. Alpine Securities Corp.*, No. 19-3272 (2d Cir. Dec. 4, 2020) (affirming the district court's summary judgment in *SEC v. Alpine Securities Corporation*, No. 7:17-cv-4179 (S.D.N.Y.) (Complaint), Litigation Release No. 23853 (June 5, 2017)).
  - *Interactive Brokers LLC*, Exchange Act Release No. 89510 (Aug. 10, 2020).
  - *Celadon Financial Group LLC*, Exchange Act Release No. 89404 (July 27, 2020).
  - *Biltmore International Corp.*, Exchange Act Release No. 88744 (Apr. 24, 2020).
  - *Vandham Securities Corp.*, Exchange Act Release No. 86970 (Sept. 16, 2019).
  - *Wilson-Davis & Co.*, Exchange Act Release No. 85867 (May 15, 2019).
  - *Vision Financial Markets LLC*, Exchange Act Release No. 85460 (Mar. 29, 2019).
  - *Central States Capital Markets, LLC*, Exchange Act Release No. 84851 (Dec. 19, 2018).
  - *UBS Financial Services Inc.*, Exchange Act Release No. 84828 (Dec. 17, 2018).
  - *COR Clearing, LLC*, Exchange Act Release No. 84309 (Sept. 28, 2018).
  - *TD Ameritrade, Inc.*, Exchange Act Release No. 84269 (Sept. 24, 2018).
  - *SEC v. Charles Schwab & Co.*, No. 18-cv-3942 (N.D. Cal.), Litigation Release No. 24189 (July 9, 2018).
  - *Chardan Capital Markets LLC, Industrial & Commercial Bank of China Financial Services LLC, and Jerard Basmagy*, Exchange Act Release Nos. 83251-53 (May 16, 2018); Press Release (May 16, 2018).
  - *Aegis Capital Corporation, McKenna, Eide, and Terracciano*, Exchange Act Release Nos. 82956-58 (Mar. 28, 2018); Press Release (Mar. 28, 2018).
- **FINRA**
  - *Wilson-Davis & Co.*, Complaint No. 2012032731802 (Dec. 19, 2019).
  - *Spencer Edwards, Inc.*, Complaint No. 2013035865303 (Dec. 10, 2019).
  - *C.L. King & Associates*, Complaint No. 2014040476901 (Oct. 2, 2019).
  - *BNP Paribas Securities Corp.*, AWC No. 2016051105201 (Oct. 1, 2019).
  - *Morgan Stanley Smith Barney LLC*, AWC No. 2014041196601 (Dec. 26, 2018).
  - *Meyers Associates*, Complaint No. 2013035533701 (Dec. 22, 2017).
  - *Merrimac Corporate Securities Inc.*, Complaint No. 2011027666902 (May 26, 2017).
  - *Wood (Arthur W.) Co.*, Complaint No. 2011025444501 (Mar. 15, 2017).
  - *Lek Securities Corp.*, Complaint No. 2009020941801 (Oct. 11, 2016).
  - *North Woodward Financial Corp.*, Complaint No. 2011028502101 (July 19, 2016).

15. Useful Contact Information

SEC Staff

Division of Trading and Markets
Office of Interpretation and Guidance

202-551-5777

Division of Examinations, Office of Chief Counsel

202-551-6460

Examination Hotline for SEC-Registered Entities

SEC SAR Alert Message Line

202-551-EXAM (3926)

202-551-SARS (7277)

SEC website

www.sec.gov

FinCEN

Financial Institutions Hotline:

1-866-556-3974

Regulatory Helpline:

1-800-949-2732

Office of Public Affairs:

703-905-3770

General Information:

703-905-3591

FinCEN website:

www.fincen.gov

Securities and Futures:

http://www.fincen.gov/financial_institutions/secs_futures/

FINRA
Please contact your local FINRA Coordinator directly with any questions relating to AML requirements. If you have not received notification of your assigned Coordinator, contact your FINRA District Office for more details. Contact information is available at the following link: https://www.finra.org/contact-finra.

FINRA website:

http://www.finra.org/

OFAC

Hotline:

1-800-540-6322

OFAC website:

www.treas.gov/ofac

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[1] Note that, since NTM 02-21 was issued, there have been a number of changes to AML requirements. For example, FINRA revised its AML program rule. *See* FINRA Regulatory Notice 18-19. FinCEN also adopted a number of AML requirements, including the requirement to obtain beneficial ownership information. *See* 81 Fed. Reg. 29398 (May 11, 2016).

[2] As of the date of this guide, there are no designated government lists to verify specifically for CIP purposes. Customer comparisons to lists issued by OFAC involve separate and distinct requirements.

[3] FinCEN and the federal banking agencies have issued guidance applicable to banks regarding the CIP rule that may be of interest to securities firms. *See Interagency Interpretive Guidance on Customer Identification Program Requirements under Section 326 of the USA PATRIOT Act* (Apr. 28, 2005).

[4] Broker-dealers may also, but are not required to, contact the SEC to report situations that may require immediate attention by the SEC. The *SEC SAR Alert Message Line* number [202-551-SARS (7277)] should only be used in cases where a broker-dealer has filed a SAR that may require immediate attention by the SEC and wants to alert the SEC about the filing. Calling the *SEC SAR Alert Message Line* does not alleviate the broker-dealer's obligation to file a SAR or notify an appropriate law enforcement authority.

[5] The federal banking agencies have issued guidance applicable to banks regarding SAR reporting that may be of interest to securities firms. *See Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices*

and Controlling Companies (Jan. 20, 2006) and *Suspicious Activity Report Filing Requirements for Banking Organizations Supervised by the Federal Reserve*, Federal Reserve Board (Apr. 27, 2010).

[6] SAR Activity Reviews include two separate publications: *SAR Activity Review Trends, Tips & Issues* and *SAR Activity Review by the Numbers*. They were published under the auspices of the Bank Secrecy Act Advisory Group. These publications include: statistics regarding SAR filings and trends; an industry forum highlighting compliance issues and practices prepared by private sector members of the Advisory Group; and guidance regarding practical issues relevant to SAR filing and reporting.

[7] FinCEN staff have indicated that the responses to Questions 17 and 18 in this Advisory are no longer completely accurate due to the expiration on July 1, 2004, of an exception relating to coded names and pseudonyms, at which time FinCEN confirmed the prohibition of the use of coded names and pseudonyms, but determined that the Travel Rule should be read to allow the use of mailing addresses. *See* 68 Fed. Reg. 66708 (Nov. 28, 2003).

[8] As of the date of this guide, FATF has identified Iran and North Korea as high risk jurisdictions. Eighteen other countries are also “monitored jurisdictions.” *See* http://www.fatf-gafi.org/countries/#high-risk.

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