2010 Mid Atlantic Money Laundering Conference

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Financial Industry Regulatory Authority

Regulatory Update

- **Interagency Guidance on Obtaining and Retaining Beneficial Ownership Information**
  - Requirement that a financial institution know its customers and the risk present by its customers is basic and fundamental to effective BSA/AML program.
  - Financial institutions should establish and maintain Customer Due Diligence (“CDD”) procedures that are reasonably designed to identify and verify the identity of beneficial owners of an account as appropriate, based on the institutions evaluation of risk pertaining to an account.
  - Agencies considers this a clarification of regulatory expectations and not new guidance.

Regulatory Update

- **Procedures may include:**
  - Determining whether the customer is acting as an agent for or on behalf of another, and if so, obtaining information regarding the capacity in which and on whose behalf the customer is acting.
  - Where the customer is a legal entity that is not publicly traded in the US, obtaining information about the structure or ownership of the entity so as to allow the institution to determine whether the account poses heightened risk.
  - Where the customer is a trustee, obtaining information about the trust structure to allow the institution to establish a reasonable understanding of the trust structure and to determine the provider of funds and any persons or entities that has control over the funds or have the power to remove the trustees.

Regulatory update

- **Accounts identified as posing a heightened risk:**
  - Should be subjected to enhanced due diligence
  - May include steps to :
  - Identify and verify beneficial owners
  - Reasonably understand the sources and uses of funds in the accounts
  - And to reasonably understand the relationship between the customer and the beneficial owner.
- **Examples of higher risk accounts:**
  - Certain trusts
  - Corporate entities
  - Shell companies
  - PICs

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Exam Priority: Monitoring for Suspicious Transactions

- **System as a whole must be reasonable**
  - Is it risk-based and tailored to your business?
  - Are their silos of information?
  - Are your systems looking at those transactions that present risk for suspicious activity?
  - Are including securities transactions?
  - Not required to be automated, but at some point there may be too many transactions to review without some automation.
- **Staffing**
  - Adequate?
  - Appropriately trained based on duties and responsibilities?

Penson

- **Inadequate AML Program:**
- **Staffing: System relied on one or two employees to conduct reviews of up to a dozen exception reports for hundreds of thousands of trades per day.**
  - Some of the reports were thousands of pages in length
  - Led to inadequate and untimely reviews – some SAR-SFs filed as much as a year late
- **Risk: Exception reports not appropriately risk-based. Failed to identify:**
  - High risk locations like tax havens
  - Certain financial products like penny stocks and liquidations
  - Certain types of accounts such as foreign financial institutions and accounts that had check writing features.
- **Training – Failed to provide adequate specialized or enhanced AML training to employees that needed it to perform their function in the overall AML compliance program.**

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Questions