WITH THE IMMINENT ROLLOUT OF THE NEW AML RULES, COMPLIANCE TRAINING IS KEY

BY MITCH GOLDBERG AND LIZ LYONS

In May of 2018, firms will be required to comply with the new Anti-Money Laundering (AML) rules. Though the new rules actually went into effect on July 11, 2016, the Financial Crimes Enforcement Network (FinCEN) gave firms until May 11, 2018 to bring their systems into compliance. With the compliance deadline quickly approaching, firms should include AML updates in their annual reviews and staff training.

The new AML rules significantly expand the obligations of FCMs and IBs when taking in new clients, opening new accounts for existing clients, and even updating the information on existing clients' existing accounts – through the Customer Due Diligence (CDD) requirements for financial institutions. The new rules make two major changes to the existing AML regime.

First, financial institutions covered by the FinCEN rules, including FCMs and IBs, must collect certain information on the identities of those who own or control customers that are legal entities – like corporations or LLCs. Firms should pay special attention to training their front-office staff and support personnel on what the new rules mean for them. The new rules set different standards for different types of legal-entity clients and exclude a number of legal-entity clients entirely. Even among legal-entity clients that do not qualify for any exemption, the number of beneficial owners each entity needs to identify will vary. Firms whose personnel are not trained on the new rules run the risk of collecting insufficient disclosures from new clients, even if they look sufficient to a compliance reviewer.

Second, financial institutions have an expanded obligation to engage in ongoing CDD. The FinCEN rules call on firms to analyze the risks of money laundering posed by their different customers in their specific line of business based on the specific customer's purposes for the account. In this way, FinCEN formalized the relationship between AML and know-your-customer (KYC) rules in the retail futures industry. To comply with the new AML rules, firms must also be up-to-date on their KYC obligations.

As always, KYC starts with firms' front-line personnel. With the new focus on using knowledge of the customer to identify AML risks, trigger reporting obligations, and trigger an obligation to update customers' beneficial-ownership information, regulators will likely expect firms to make sure their front-line personnel have been trained to meet these new demands, even if the firm has delegated AML compliance to a dedicated staff.

Even firms that do not fall directly within the scope of the new AML rules may need to update their internal records so that they can access services from firms that do fall within the scope of the AML rules.

For industry members that are bank affiliates, the new AML rules are likely not news – most major banks have been working to update their AML protocols since the final rule was released in 2016. But that does not mean that bank-affiliated "covered financial institutions" are in the clear. To the contrary, the increased focus on tailoring a firm's risk assessment to the specific customer and account means that AML policies that work perfectly for banking customers may be a poor fit for the affiliated non-banking firms. Firms affiliated with banks should make sure their policies reflect the specific AML risks in the futures industry and that their personnel receive training specific to the futures industry.

As with all rule changes, SROs and government regulators are likely to look closely at how firms are handling their new obligations. Firms in all sectors of the industry should make sure AML is on their training curriculum for the first quarter of 2018.

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