Reviewing Recent Enforcement and Regulatory Actions to Manage AML Risks
(AML Track)
Thursday, May 16
4:00 p.m. – 5:00 p.m.

Join FINRA staff and industry experts as they review legal cases and enforcement actions impacting AML programs. Panelists cover regulatory trends, potential vulnerabilities and how firms can address any pitfalls in their AML program.

Moderator: Laura Leigh Blackston
Senior Counsel
FINRA Enforcement

Panelists: David Cohen
Attorney, Office of Market Intelligence, Bank Secrecy Act Group
U.S. Securities and Exchange Commission (SEC)

Sarah Green
Global Head of Financial Crimes
Vanguard Group, Inc.

Paul Tyrrell
Partner
Sidley Austin, LLP
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Panelist Bios:

Moderator:

Laura Leigh Blackston is Senior Counsel with FINRA’s Enforcement Department. Ms. Blackston joined FINRA as an attorney in 2002. Prior to joining FINRA, she was an associate and partner with the General Litigation group of the law firm Jones Walker. As Senior Counsel, Ms. Blackston has handled key enforcement actions regarding anti-money laundering and has co-taught Anti-Money Laundering Regulation at FINRA’s Institute at Wharton. Ms. Blackston graduated from the University of Mississippi in 1988 with honors and received her J.D. Degree from Washington and Lee University with honors in 1992. She is also a member of FINRA’s Anti-Money Laundering Regulatory Expert Group and is Certified Anti-Money Laundering Specialist (CAMS).

Panelists:

David A. Cohen is an attorney in the U.S. Securities and Exchange Commission’s Office of Market Intelligence, Bank Secrecy Act Group. The BSA Group reviews SAR filings and provides guidance to the SEC’s enforcement staff in connection with AML-related matters. Mr. Cohen joined the SEC’s Office of Investor Education and Advocacy in 2013 and moved to the Office of Market Intelligence in 2017. Before joining the Commission, Mr. Cohen was an Assistant Director of Government Relations for the Financial Planning Association. Mr. Cohen also served as the Supervising Attorney in the Bureau of Registration and Enforcement for the Wisconsin Department of Financial Institutions, Division of Securities. He supervised the staff of attorneys and investigations responsible for enforcing Wisconsin’s securities laws. Mr. Cohen began his law career in private practice with firms in New York, New York and Madison, Wisconsin. He received a B.S. in Economics from the Wharton School of the University of Pennsylvania and his J.D. from Boston University.

Sarah D. Green is Global Head of Financial Crimes Officer for Vanguard Group, Inc. She joined Vanguard in December, 2017 and leads compliance teams responsible for Vanguard’s anti-money laundering (AML), trade surveillance, anti-bribery and corruption and sanctions programs. She worked previously as the Senior Director for AML Compliance at FINRA, where she supervised FINRA’s dedicated AML examination unit and coordinated FINRA’s AML enforcement cases. Ms. Green was also responsible for FINRA AML guidance and external training of financial industry professionals domestically and internationally, and she represented FINRA on the Bank Secrecy Act Advisory Group. Previously, she was the Bank Secrecy Act Specialist in the Division of Enforcement’s Office of Market Intelligence (OMI) at the U.S. Securities and Exchange Commission (SEC). In this role, she oversaw the Commission’s review and use of suspicious activity reports (SARs) and worked with Enforcement staff on AML matters. Prior to joining OMI, Ms. Green was a branch chief in the Office of Compliance Inspections and Examination at the SEC, managing the Commission’s AML examination program for broker-dealers, including developing examination modules, conducting training for SEC and self-regulatory organization (SRO) staff and coordinating with the SROs on all aspects of AML examination and enforcement. Prior to joining the SEC, Ms. Green was an associate attorney in the Corporate and Securities practice group at Gardner Carton & Douglas LLP. Ms. Green received her J.D. from the William and Mary School of Law and her B.A. from Hamilton College.

Paul M. Tyrrell, Partner of Sidley Austin, LLP, focuses his practice on securities and commodities compliance and enforcement matters affecting financial institutions, with an emphasis on sales practice and supervisory rules applicable to broker-dealers and their associated persons. He also advises clients on their compliance with the USA PATRIOT Act, Bank Secrecy Act and related anti-money laundering requirements and has been involved in leading regulatory AML disciplinary matters over the years. Mr. Tyrrell's extensive regulatory and litigation experience informs his comprehensive approach to challenges that clients encounter throughout their various lines of business. Mr. Tyrrell was a senior special regional counsel at FINRA’s (formerly NASD) Boston District Office. He managed investigations and filed disciplinary matters arising out of broker-dealer examinations. As a senior trial attorney with the CFTC in New York, Mr. Tyrrell managed enforcement matters. He received his JD from Western New England College School of Law and his BA from the University of Florida.
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- Paul Tyrrell, Partner, Sidley Austin, LLP
To Access Polling

- Under the “Schedule” icon on the home screen,
- Select the day,
- Choose the Reviewing Recent Enforcement and Regulatory Actions to Manage AML Risks (AML Track) session,
- Click on the polling icon:
Learning Objectives

- Provide you with concrete examples of risks that exist and have resulted in Enforcement Actions
- Provide tips on improving your program and avoiding common pitfalls
- Help you advocate for additional or more targeted resources.
Broker-Dealers are required to file a SAR for:

- Any transaction conducted or attempted by, at or through BD involving (separately or in aggregate) funds or assets of at least $5,000 and:
  - BD knows, suspects, or has reason to suspect that transaction (or pattern of transactions of which the transaction is a part):
SAR Rule (cont’d)

– Involves **funds related to illegal activity**, or introduced or conducted to **hide or disguise funds or assets derived from illegal activity** (including ownership, nature, sources, location, or control of funds or assets) as part of plan to hide or evade any federal law or regulation or to avoid transaction reporting requirements:

– Is designed, whether through structuring or other means, to evade any requirements of this regulation or any other regulation under Bank Secrecy.
SAR Rule (cont’d)

– Has no business or apparent lawful purpose, or is not sort in which this customer would normally be expected to engage, and BD knows of no reasonable explanation for transaction after examining available facts, including background and possible purpose of transaction; or

– Involves use of BD to facilitate criminal activity.

– FINCEN has stated that the “has no business or apparent lawful purpose” prong of the SAR Rule “should be interpreted to require the reporting of transactions that appear unlawful for virtually any reason.”
FinCEN Guidance

- **FIN-2016-A005**: Cyber-events targeting financial institutions that could affect a transaction or series of transactions would be reportable as suspicious transactions because they are unauthorized, relevant to a possible violation of law or regulation, and regularly involve efforts to acquire funds through illegal activities. (Also FIN-2011-A016)

- aggregate the funds and assets involved **or put at risk** by the cyber-event

- **FIN-2011-A003**: red flags of suspicious activity that identify possible signs of illicit activity. Does investigation reveal a reasonable explanation for the transaction? If not, file a SAR
Polling Question 1

1. Which of the following could prompt the filing of a SAR?
   a. Attempted, but unsuccessful, cyber intrusion
   b. Activity that has indicia of elder abuse
   c. Trading by an unregistered broker/investment advisor
   d. All of the above
Incorrect Application of Legal Standards

- Non-reporting of cyber-related events, such as third parties attempting to compromise a customer’s email or brokerage account, where the customer did not incur a financial loss or the attempted intrusion was not completed (LPL Financial)

- Requiring confirmation that customer funds had been misused (Schwab)

- Requiring evidence of intentional commission of a financial crime (TD Ameritrade)
SEC Schwab matter

- $2.8 million fine for failure to file SARs
- Firm applied unreasonably high standard for determining whether to file a SAR
- Suspicion that IAs had:
  - Charged excessive fees
  - Traded without registration
  - Engaged in cherry-picking
  - Misappropriated or misused client funds
Criminal Case – *U.S. v. Central States Capital Markets*

- **Complaint** – Firm willfully failed to report suspicious banking activity of Scott Tucker who used the Firm to launder millions of proceeds from an illegal payday lending scheme.

- Numerous red flags, including that Tucker was using a “rent-a-tribe” scheme to take advantage of sovereign immunity defense to usury charges

- Firm settled for two-year deferred prosecution and $400,00 penalty
SAR Contents

- 5 essential elements – who, what, when, where, and why
- Related litigation

Where low-priced securities (LPS) are involved:

- Whether there are indications that the LPS is a shell company or there is other negative history
- Stock promotion of the LPS
- Unverified issuers of the LPS
- Low trading volume of the LPS
- Foreign involvement with the LPS
Guidance for Contents of SAR Filings

- SAR Form itself
- SAR Filing instructions
- SAR Narrative Guidance issued in 2003
Polling Question 2

2. How do you address technology changes?
   a. Depend upon IT department to ensure that system is calibrated correctly.
   b. Have AML personnel test any new systems and roll out only after AML personnel have approved.
   c. Move fast and break things – adopt new technology and address issues as they arise.
   d. Use old and new systems simultaneously for a transition period.
Technology Issues from Recent Matters

- Failing to review transactions during transition in AML system
- Reports that fail to reflect data collectively from related accounts
- Falling behind in suspicious activity review and never catching up
- Exceptions – excluding “known” groups of accounts from monitoring
- Missing data for calculating risk ranking
- Calibrating thresholds too high
- Not using available Scenarios
Prevention of Data Failures

- Devote adequate resources to review of alerts
- Have a plan for compliance during transition
- Test!
- Employ unified system as opposed to patchwork system
- Look for gaps in data collection
- Document reasons for non-use of available scenarios
US broker-dealer has dual foreign customers with a Swiss bank affiliate. The customers hold all of their assets in the Swiss bank account. Wires are to and from the Swiss bank account, not the US broker-dealer. Transactions at the Swiss bank account include deposit by a dual customer Panamanian Bank of $500 million worth of gold bars and immediate liquidation. US broker-dealer’s involvement is operational only and involves only the outgoing wires (verifying source of funds, conducting World Check searches re: intended 3rd party, releasing outgoing wire info to affiliate for processing)
3. What AML Obligations Does US Broker Dealer have?
   a. Design a system that addresses the risks of handling the transactions – even when the BD’s involvement is operational only.
   b. No AML obligations. It is up to the Swiss Bank to comply with Swiss law concerning the accounts.
   c. No AML obligations as long as the Swiss Bank is conducting AML reviews under Swiss law.
   d. Investigate any obvious red flags that come to its attention as part of the BD’s operational involvement.
Obligations Regarding FFI Accounts

- Assess at account opening or thereafter, the money laundering risks posed by FFI accounts.
- Perform periodic reviews of account activity sufficient to determine consistency with information previously obtained about the type, purpose, and anticipated activity of the accounts.
FFI issues in recent matters

- Failing to conduct due diligence on account even though account was dealing in Venezuelan and Argentinian bonds (Tradition Securities)
- Failing to gather information about expected activity and comparing to actual activity (EFG)
- Gathering information about expected activity, but never monitoring the accounts to determine if the activity was consistent (UBS)
Risks Associated with FFI Accounts

- Could be supplying nominees – don’t know who the beneficial owner is
- Could be complicit in tax evasion by U.S. customers
- Popular method for liquidating dubious low-priced securities
- Issues with currency conversion (transactions in one currency go into suspense account for conversion to dollars and are then journaled to appropriate account – transaction not picked up as foreign wire by surveillance)
- Less stringent AML regimes in home jurisdiction
Resources – SEC and SDNY matters

COR Clearing

Charles Schwab

TD Ameritrade

Central States Capital Markets, LLC

Alpine Securities Corporation
Resources – FINRA matters

Morgan Stanley
• www.finra.org/sites/default/files/fda_documents/2014041196601%20Morgan%20Stanley%20Smith%20Barney%20LLC%2014977%20AWC%20DM.pdf

UBS Financial
• www.finra.org/sites/default/files/fda_documents/2012034427001%20UBS%20Financial%20Services%20Inc.%20CRD%208174%20UBS%20Securities%20LLC%20CRD%207654%20AWC%20va.pdf

LPL Financial
• www.finra.org/sites/default/files/fda_documents/2016050751901%20LPL%20Financial%20LLC%20BD%20413%20AWC%20jm.pdf

Tradition Securities and Derivatives, Inc.

EFG Capital
• www.finra.org/sites/default/files/fda_documents/201504602002%20EFG%20Capital%20International%20Corp.%20CRD%2040118%20AWC%20va.pdf
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Resources

Securities and Exchange Commission and Southern District of New York Matters

- COR Clearing, LLC
- Charles Schwab & Co., Inc.
- TD Ameritrade, Inc.
- Central States Capital Markets, LLC
- Alpine Securities Corporation

FINRA Matters

- Morgan Stanley Smith Barney LLC
- UBS Financial Services Inc.
- LPL Financial, LLC
  www.finra.org/sites/default/files/fda_documents/2016050751901%20LPL%20Financial%20LLC%20 BD%206413%20AWC%20jm.pdf
- Tradition Securities and Derivatives, Inc.

- EFG Capital International Corp.