AML Challenges
Wednesday, May 23
9:45 a.m. – 10:45 a.m.

Join FINRA staff and industry experts as they discuss changes impacting the financial services industry, and policy makers in the current AML and financial crime environment. Topics covered include the new Customer Due Diligence (CDD) rule, the intersection of cybersecurity, senior investors and AML for financial institutions, including regulatory requirements and expectations related to SAR filings on cyber events and elder exploitation.

Moderator: Jason Foye
Examination Manager
FINRA Anti-Money Laundering Investigative Unit (AMLIU)

Panelists:
Mitch Atkins
Founder and Principal
FirstMark Regulatory Solutions, Inc.

James Fiebelkorn
Vice President, AML & Anti-Fraud Compliance
Ameriprise Financial, Inc.

Lourdes Gonzalez
Assistant Chief Counsel, Sales Practice, Division of Trading and Markets
U.S. Securities and Exchange Commission (SEC)
AML Challenges Panelist Bios:

Moderator:

Jason Foye is Examination Manager in FINRA’s AML Unit and in that role is responsible for managing AML investigations, consulting with FINRA staff around the country on AML-related issues as well as developing and delivering AML training to FINRA staff and the industry. Mr. Foye has been with FINRA for more than 10 years and previously worked as an examiner in both the Florida District and AML Unit. Mr. Foye is a Certified Anti-Money Laundering Specialist and a Certified Fraud Examiner.

Panelists:

Mitchell Atkins is Founder and Principal of FirstMark Regulatory Solutions, Inc., a compliance consultancy based in Boca Raton, Florida. His focus is complex problem solving for FINRA broker-dealers and registered investment advisers. His recent compliance focuses include anti-money laundering compliance, supervisory controls assessments, cyber security compliance, FINRA membership applications, broker-dealer acquisitions, and non-traded REIT and variable annuity compliance. Mr. Atkins has 24 years of experience in the industry, 20 years of which was in various roles at FINRA (previously NASD), most recently as Senior Vice President and Regional Director, with overall responsibility for four districts comprising FINRA's South Region (home to 850 brokerage firms). He oversaw the region's routine inspection program, sales practice special investigations, financial surveillance, and membership application programs. Mr. Atkins oversaw the development of innovative initiatives such as the National Anti-Money Laundering Investigative Unit in 2012. Mr. Atkins oversaw the successful startup of the Florida District Office of FINRA in 2005. Mr. Atkins frequently addresses financial services industry groups. He is a Certified Regulatory and Compliance Professional™ through the FINRA Institute at Wharton. He is a graduate of Louisiana State University and a member of the Florida Securities Dealer's Association and the SIFMA Compliance and Legal Society.

James Fiebelkorn is Vice President and the Global AML Officer for Ameriprise Financial Inc., where he leads the enterprise AML, Sanctions, Anti-Bribery and Anti-Fraud programs. Mr. Fiebelkorn is responsible for managing a global team across Ameriprise’s wealth management, trust, asset management, and insurance businesses. Prior to joining Ameriprise, Mr. Fiebelkorn was a Director and the AML Officer for Pershing LLC, a BNY Mellon company. He was responsible for the management of a global AML team, creating policy, enhancing surveillance systems and communicating with regulatory and law enforcement agencies. Prior to joining Pershing, Mr. Fiebelkorn was a Vice President for Lehman Brothers in the Financial Crimes Prevention and Intelligence Department where he managed a team that conducted enhanced due diligence on high-risk clients. Mr. Fiebelkorn is a participant in numerous industry associations and represents Ameriprise on the SIFMA Anti-Money Laundering and Financial Crimes Committee. Mr. Fiebelkorn holds a Master of Science degree from the University of Michigan and is a graduate of Colby College. He holds Series 7 and 24 licenses.

Lourdes Gonzalez is Assistant Chief Counsel for Sales Practices in the Division of Trading and Markets at the U.S. Securities and Exchange Commission. The Office of Chief Counsel has program responsibility for a broad range of broker-dealer issues, including broker-dealer registration, sales practices, supervision, securities arbitration, and anti-money laundering compliance. She is a frequent speaker on these topics, and has represented the Commission both nationally and internationally. In addition, Ms. Gonzalez is the Commission’s representative to the Bank Secrecy Act Advisory Group and she oversees the Commission staff’s participation in the Financial Action Task Force. Prior to joining the Commission, Ms. Gonzalez worked at the U.S. Department of the Treasury. She earned her law degree from George Washington University and her undergraduate degree from Georgetown University.
AML Challenges
Panelists

Moderator
- Jason Foye, Examination Manager, FINRA Anti-Money Laundering Investigative Unit (AMLIU)

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- Mitch Atkins, Founder and Principal, FirstMark Regulatory Solutions, Inc.
- James Fiebelkorn, Vice President, AML & Anti-Fraud Compliance, Ameriprise Financial, Inc.
- Lourdes Gonzalez, Assistant Chief Counsel, Sales Practice, Division of Trading and Markets, U.S. Securities and Exchange Commission (SEC)
To Access Polling

- Under the “Schedule” icon on the home screen,
- Select the day,
- Choose the AML Challenges session,
- Click on the polling icon: ☑️
Polling Question 1

1. What is the approximate size of your broker-dealer?
   a. 10 of fewer employees
   b. 10 to 50 employees
   c. 50 to 100 employees
   d. Over 100 employees
Polling Question 2

2. What types of AML and Compliance programs are in place at your broker-dealer?
   a. We manually review blotters periodically
   b. We use exception reports from our clearing firm
   c. We use proprietary exception reports
   d. We use fully automated surveillance systems
Polling Question 3

3. How does your AML department integrate cyber-events and elder exploitation into its SAR filing decision process?

a. AML receives employee escalations from groups that cover those risks
b. AML monitors for red flags these events and files SARs when appropriate
c. AML has not yet integrated cyber-events and elder exploitation into its SAR filing decision process
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Resources

FinCEN Resources

  

- Customer Due Diligence Requirements for Financial Institutions; Correction A Rule by the Financial Crimes Enforcement Network on (September 2017)
  

- Customer Due Diligence Requirements for Financial Institutions (May 2016)
  
  www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions

- FinCEN: Advisory to Financial Institutions on Cyber-Events and Cyber-Enabled Crime. (October 2016)
  
  www.fincen.gov/resources/advisories/fincen-advisory-fin-2016-a005

  

  
  www.fincen.gov/sites/default/files/shared/FAQ_Cyber_Threats_508_FINAL.PDF

- FinCEN Guidance: Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions (July 2016)
  
  www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-regarding-customer-due-diligence
FINRA Resources

- FINRA Regulatory Notice 17-40, FinCEN's Customer Due Diligence Requirements for Financial Institutions and FINRA Rule 3310 (November 2017)

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<th>AML Quick Reference Guide</th>
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<td>knowyourcountry.com</td>
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AML Challenges
A practical Guide to FinCEN’s CDD Rule

FINRA Annual Conference
Washington, DC
May 2018
Practical Guide to the FinCEN CDD Rule

— Revised CIP Requirements
  • Identification of beneficial ownership of legal entity customers
  • Ownership prong: Verification of identity of these 25% (or more) beneficial owners (natural persons)
  • Control prong: Identification and verification of a natural person who “controls” the entity (CEO, CFO, COO, President, VP, etc.)

— New “Fifth Pillar”
  • FinCEN notes pre-existing guidance in this area
  • Understand “nature and purpose” of customer relationships (i.e., develop customer risk profiles as a baseline, and update customer information on a risk basis)
  • Conduct ongoing monitoring to identify and report suspicious transactions
The beneficial ownership requirement applies to legal entity customers. It applies to natural persons who own 25 percent or more of the equity interests of a legal entity customer.

- **Legal Entity Customers** –
  “...a 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 that opens an account.” – 31 CFR 1010.230(e)(1)

- **Beneficial owner** –
  “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;” – 31 CFR 1010.230(d)(1) (*Ownership Prong*)
  -and-
  “A single individual with significant responsibility to control, manage, or direct a legal entity customer, including: an executive officer or senior manager...; or any other individual who regularly performs similar functions.” – 31 CFR 1010.230(d)(1) (*Control Prong*)
Many Exclusions from “Legal Entity”

“Legal Entity Customers” definition does not include –

– A financial institution regulated by a Federal functional regulator or a bank regulated by a State bank regulator
– An issuer that is a reporting company under section 15(d) of the ’34 Act
– An SEC registered investment company
– An SEC registered investment advisor
– An SEC registered exchange or clearing agency
– Any other entity registered with the SEC
– A CFTC registered entity, commodity pool operator, commodity trading advisor, retail foreign exchange dealer, swap dealer, or major swap participant, as defined in Section 1a of the Commodity Exchange Act
– A public accounting firm registered under SOX
– A bank holding company of savings and loan holding company
– A pooled investment vehicle operated or advised by a financial institution excluded from the definition of Legal Entity Customer
– An insurance company that is regulated by a State
– A FSOC financial market utility
– A foreign financial institution established in a jurisdiction where the regulator of that institution maintains beneficial ownership information regarding that institution
– A non-U.S. governmental department, agency, or political subdivision that engages only in governmental rather than commercial activities,
– Any legal entity to the extent that it opens a private banking account subject to 1010.620,
– Natural persons, sole proprietorships, unincorporated associations, and trusts (except statutory trusts).
Verification of Beneficial Ownership

- **Verification of beneficial owners** (ownership and control prongs) can be accomplished in the same manner as currently is the case, except that for purposes of the new rule, documentary verification can be accomplished using photocopies of the required document.

- **Reliance on Beneficial Ownership Information**: Financial institutions may rely on information supplied by the legal entity customer as to its beneficial owners unless it has knowledge of facts that would reasonably call into question the reliability of such information.

- **Beneficial Ownership Form Template**: FinCEN provides, as Appendix A to the rule, a certification form that may be used. Firms may use their own forms so long as the information provided is certified as complete and correct by the natural person opening the account.

- **Existing Customers**: The requirements apply to accounts opened after May 11, 2018, but firms will have to update customer information (including beneficial ownership information) if it detects “information relevant to assessing or reevaluating” the risk attributable to the customer.
The “Fifth Pillar” – Ongoing Due Diligence

• Appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:
  – Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and
  – Conducting ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. Customer information shall include information regarding the beneficial owners of legal entity customers.

• Customer Risk Profile may include such information as:
  – Type of customer
  – Account or service being offered
  – Customer’s income
  – Customer’s net worth
  – Customer’s domicile
  – Customer’s principal occupation or business
  – Customer’s history of account activity (existing customers)
  – May be “self-evident” for certain lower risk customers
  – Should be used to develop a “baseline against which customer activity, such as the customer’s expected use of wires or typical number of deposits in a month, can be assessed for possible suspicious activity reporting.” (FinCEN FAQ April 2018, at Q. 36)

• Ongoing monitoring – Updates to customer information may be “event driven”
Compliance with the FinCEN CDD Rule
A Framework.

**Step 1**
Assessment
- Consider impacts to various departments (include constituents from each)
- Review existing policies and procedures (CDD, risk assessment and suspicious activity monitoring)
- Gather information on current customer risk assessment capability
- Gather current forms and tools utilized for CIP and CDD
- Determine types of accounts (client relationships) affected
- Assess processes for ongoing verification and monitoring (including OFAC) and whether changes must be made to facilitate continued ongoing monitoring
- Assess current state of firm assessment of “nature and purpose” of customer and account

**Step 2**
Gap Analysis
- Determine whether existing systems and processes can satisfy requirements (e.g., customer risk profile, suspicious activity monitoring, information systems, etc.)
- Ensure that new beneficial owner information will be screened against sanctions lists (OFAC)
- Determine whether to use the FinCEN form for CDD, or incorporate into existing forms
- Consider using FinCEN 25% threshold or lower threshold based on risk (i.e., a lower threshold for higher risk clients)
- Consider changes to suspicious activity monitoring policies and processes – “nature of account” and identification of material deviations
- Consider changes to customer risk profile and overall risk assessment
- Determine factors critical to the development of a customer risk profile
- Consider FinCEN FAQs

**Step 3**
Implementation
- Consider starting with the FINRA Small Firm AML Template as a guide for new procedures
- Incorporate all aspects of the revised processes in the procedures – be specific as to tools, forms, etc.
- Implement changes to forms and systems
- Modify (or implement) customer risk profiling process and overall risk assessment as appropriate
- Implement desired changes to monitoring processes for suspicious activity monitoring, taking into account the firm’s approach to learning and monitoring “nature and purpose” of account
- Final procedures should be approved by senior management
- Deliver training related to changes to affected staff
Helpful Tools

- **FINRA Small Firm AML Template**
- **FinCEN CDD Rule**
- **FinCEN CDD Rule FAQ**

*The information contained in this presentation is for illustrative purposes and should not be construed as individual or complete advice to any one broker-dealer. Written policies, programs, and procedures must be tailored to the facts and circumstances of each firm after a thorough review of the nature of the business in which the firm engages, and all other relevant facts and circumstances. Review all regulatory guidance on the FinCEN CDD Rule for additional information that may be relevant to your firm. FirstMark Regulatory Solutions, Inc. is responsible for this content.*