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INSIGHT

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Anti-Money-Laundering Compliance Rises to the Top—Again

FinCEN issues warning to boards

Recent headlines that related to both the Bank Secrecy Act of 1970 (BSA) and anti–money laundering (AML) reflect the view that regulators have increased their scrutiny of financial institutions' boards of directors and senior management for failing to correct alleged compliance shortcomings. As a result, the issue of individual accountability for AML violations continues to gain traction.

To be sure, board involvement plays an important role in the adoption and implementation of effective enterprise-wide BSA/AML-compliance programs. And several regulatory-enforcement actions in past years have called for the establishment of BSA/AML-compliance committees composed of outside directors. Actions have also held board members personally accountable for financial institutions' lack of compliance and in some cases have resulted in exposure to shareholder litigation risk.

Tone at the top

Tone at the top remains as vital as ever in preventing and detecting wrongdoing. It remains one of the main ingredients that can make or break a BSA/AML-compliance program. Ultimately, the responsibility for establishing a financial institution's strategic vision rests with the board of directors and senior management. As part of that vision, it is important that financial institutions establish BSA/AML-compliance tolerance. And that includes establishing proper incentives—including compensation measures—to meet needed goals.

Under current regulations of both the Bank Secrecy Act and the USA PATRIOT Act of 2001, the board of directors of a financial institution is required to approve an enterprise-wide AML-compliance program that at a minimum includes:

- Policies, procedures, and controls that mitigate the institution's money-laundering risks
- A designated AML-compliance officer with sufficient, board-conferred authority across the institution to implement the mitigating policies, procedures, and controls
- Ongoing and adequate training for employees of the institution
- Ongoing independent testing and auditing

However, in order to comply with more than just the technical regulatory requirements, a board should consider that it might also be ultimately responsible for the financial institution's AML-compliance efforts. Similarly, the board might be responsible for establishing a culture of compliance that serves (1) to reduce the risk of potential regulatory action based on lack of board oversight and (2) to minimize shareholder litigation risk.

Perhaps it is not surprising then that in August 2014, the US Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) issued an advisory on this topic: FIN-2014-A007. One observation from the FinCEN advisory is that it has become particularly important that senior management and board members at financial institutions of all sizes maintain strong cultures of compliance.

The FinCEN advisory pinpoints several deficiencies that were identified in recent BSA/AML-enforcement actions that offer important insights for financial institutions and their management and boards. In particular, the advisory reaffirms the notion that a financial institution can improve its BSA/AML-compliance culture by ensuring the following elements exist.[1]

- Leadership is engaged.
- Compliance is not compromised by revenue interests.
- Information is shared throughout the organization.
- Leadership provides adequate human and technological resources.
- The compliance program is effective and has been tested by an independent and competent party.
- Both leadership and staff understand how their BSA reports are used.

Conclusion

The FinCEN advisory sent a strong message to financial institutions—namely, that an entire organization, from staff to board members, may be held accountable for BSA/AML compliance. Perhaps more important, the advisory is a reminder of the importance that institutions review their BSA/AML engagements of senior management and boards of directors to learn whether those engagements adhere to the letter of the law and whether a true culture of compliance is in place.

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[1] Source: http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-A007.pdf.