

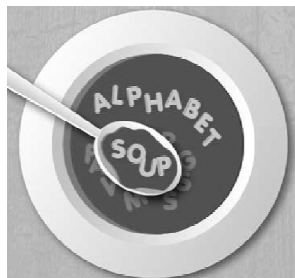
Who Do You Trust?

Know Your Customer...
And All Things AML in the Trust World



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BSA
AML
OFAC
KYC
CIP
USA Patriot

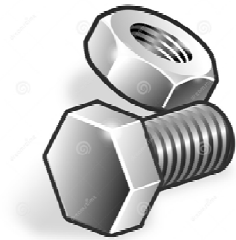
Agenda

- Nuts and Bolt Basics including Trust Specifics
- New Developments and What's Still Current
- Q & A

Note: The views expressed are those of the presenters and not Comerica, FIRMA, or any other party and do not constitute legal advice.

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Back to Basics



Nuts and Bolts

FFIEC BSA/AML Examination Manual

Revised 2014 ⁽¹⁾

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Risk Assessment

- Step 1 – Identify specific Risk Categories
 - Products
 - Services
 - Customers
 - Entities
 - Transactions
 - Geographic Locations
- Higher risks associated with:
 - Cash Intensive Businesses
 - Private Banking
 - Trusts
 - PEPs
 - Charities
 - Foreign

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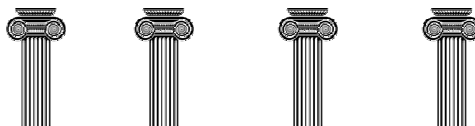
Risk Assessment

- Step 2 – Analyze risk profile data, volume, trends, changes in product offering, client base
- Update Risk Assessment whenever there is a change or every 12-18 months
- Risk Assessment drives Compliance Program

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Compliance Program

- Written
- Approved by Board of Directors
- 4 Core Pillars
 1. Internal Policies, Procedures and Controls
 2. Designation of an AML Compliance Officer
 3. Ongoing Employee Training
 4. Independent audit testing of BSA Compliance



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CIP Program

Section 326 of U.S Patriot Act

- Customer- a “person” (individual, corporation, partnership, trust, estate or other legal entity) who opens a new account for themselves, another individual who lacks legal capacity, or for an entity that is not a legal person.
Verify :
 - Name
 - Physical Address
 - DOB
 - TIN
 - Photo ID
- Documentary ID
- Non-Documentary ID
- Existing Customers as of 10/2003 Grandfathered

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Who to CIP

Power holders are those individuals who can direct the funding, investments and/or distribution of the account.

INDIVIDUAL TYPE	ENHANCED DUE DILIGENCE QUESTIONNAIRE REQUIRED
AUTHORIZED SIGNERS	Y
CONSERVATOR / CO-CONSERVATOR	Y
CORPORATION	Y
DIRECTED TRUSTEE	Y
DONOR	Y
DONOR & REMAINDERMAN	Y
GENERAL PARTNER	Y
GRANTOR / CO-GRANTOR	Y
GUARDIAN / CO-GUARDIAN	Y
INCOME BENEFICIARY	N
IRA BENEFICIARY	N
LIMITED PARTNER	Y
MINOR	N
NON-PROFIT CORP	Y
OWNER	Y
PERS REPRESENTATIVE / CO-PERS REPRESENTATIVE	Y
POWER OF ATTORNEY	Y
PRIN BENEFICIARY	N
PRIN/INC BENEFICIARY	N
PRINCIPAL / CO-PRINCIPAL	Y
REMAINDERMAN	N
SUCCESSOR	N
SUCCESSOR TRUSTEE	N
TRUSTEE (FIDUCIARY) / CO-TRUSTEE (FIDUCIARY)	Y
TRUSTEE CHARITABLE TR	Y
TRUSTEE & CUSTODIAN	Y
ANY OTHER POWER HOLDER NOT LISTED	Y
CUSTODIAN	Y
ERISA PLAN PARTICIPANT	N
BENEFICIAL OWNER > 25%	Y (Proposed Rule)
CONTROLLING INDIVIDUAL OF ENTITY	Y (Proposed Rule)

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CIP Program



- USA Patriot Act Notice – Provide at time of opening
- Record Retention – 5 years after account closes
- Reliance Agreement –
 - May rely on another financial institution (including an affiliate)
 - Other financial institution is regulated by federal functional regulators
 - Customer has account at the other institution
 - Reliance is reasonable
 - Contract to annually certify AML program and CIP requirements

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Enhanced Due Diligence for Higher-Risk Customers

- Risk Rate up-front
 - Obtain additional information regarding:
 - Source of Funds
 - Financial Statements
 - Banking References
 - Beneficial Ownership (proposed rule)
 - Controlling interest of entity (proposed rule)
- Understand nature of business and purpose of relationship (proposed rule)
- Expected Activity
- Monitor Transactions (Validate models for statistical validity)
- Re-assess ratings on on-going basis
- May need to consider SAR

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Suspicious Activity Reports (SAR)

- Policies to escalate
- Document SAR decision and reasons not to file
- File within 30 days of initial detection
- Follow up SAR for continuing activity every 90 days
- Notify Board of Directors
- Prohibition of SAR disclosure

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Currency Transaction Reporting

- Reports for \$10,000 or more
- Trust Departments -
 - Avoid currency transactions
 - Refer all cash transactions to retail side of bank



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Private Banking Due Diligence

Section 312 of U.S Patriot Act

Risk Factors:

- Private Bankers as client advocates
- Powerful clients including PEPs
- Private Banking culture of relaxed controls
- Competitive and high-profit nature of business

Must Satisfy all 3:

- Requires \$1 Million aggregate deposit of funds
- One or more non-US persons are direct or beneficial owners
- Assigned to bank employee liaison between bank and account owner (i.e. relationship managers)

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Private Banking Due Diligence

Section 312 of U.S Patriot Act

Enhanced Due Diligence must ascertain:

- Identity of all nominal and beneficial owners
- PEP
- Source of funds
- Purpose and expected use of account
- Review of transactional activity
- File SAR if warranted
- Board of Directors active oversight
- Bank compensation plans do not create incentives to ignore rules

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OFAC

- OFAC lists of sanctioned countries , blocked entities and blocked individuals
- Insure lists are regularly updated and most current list is referenced
- Reference at time of:
 - Account opening – Customer / Power holder
 - Ongoing transactions
 - Beneficiaries and other distributees



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BSA Compliance Function Structure

Bank Discretion

- Centralized vs. Multiple Business Lines
- Balance between specialized Business Line knowledge vs. consistency of centralized functions
- Reliance agreements if separate legal entities
- Corporate level testing by Audit or Compliance
- Process for escalating and objectively resolving disputes between BSA/AML Compliance and Business Line Management
- Ultimate Board oversight

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Trust Specifics

Who to CIP -

Power holders who can direct the funding, distribution, or management of the account (refer to chart on page 8)

Enhanced Due Diligence based on –

- Foreign grantors or beneficiaries
- International transactions
- Atypical account type, size, assets, transactions, geographic locale for bank or customer/account type
- Easily transportable assets (gems, precious metals, art, negotiable instruments)
- High risk customer types (PEPs, NRAs, Charities, Non-Governmental Organizations, IOLTA, Cash Intensive Businesses)
- PICs
- Identity of Principals or Beneficiaries not easily determined.

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Trust Specifics



Beneficiaries-

- OFAC at distribution
- Proposed Rule to CIP if 25% beneficial owner

Business Entities & Other Entities

- Corporate Resolutions, Partnership Agreements, etc.
- Secretary of State Filings
- Drill down to CIP authorized signers

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What's New

Hot off the Presses....



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FinCEN 2nd Notice of Proposed Rule Making Customer Due Diligence Requirements Beneficial Ownership

Notice of Proposed Rule ⁽²⁾

- Original proposed in 2012
- 2nd proposal 8/4/2014
- Pending
- Reinforces existing 4 Pillars of an AML Program
- Customer Due Diligence
 - Proposed 5th Pillar



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Notice of Proposed Rulemaking Beneficial Ownership

What's Changing

- **Collect Beneficial Ownership**
 - Required to document each beneficial owner of a new commercial legal entity customer that owns 25% or more of the equity interests of that legal entity. Supplied by customer.
 - Collect CIP information on those same beneficial owners. Verify and record identification (i.e. drivers license, passport).
 - May be none.
- **Collect a Controlling Individual**
 - Identify individual with significant managerial control (i.e. CEO, President, Treasurer).
 - Collect CIP information and verify identity on one controlling individual of the legal entity.
 - May be same as a beneficial owner above.

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Notice of Proposed Rulemaking Beneficial Ownership

What's Changing

- **Certification Form**
 - Completed and signed by the individual opening a new commercial relationship.
 - Form is used to document the beneficial owners and controlling individuals.
 - Form must be retained by the bank for five years after the date the account is closed.
- **Exempt Customers**
 - All existing customers who are currently exempt from CIP (i.e., financial institutions, publicly held companies, domestic government agencies).
 - Majority owned domestic subsidiary of any entity whose securities are listed on a U.S. Stock Exchange. *
 - Investment Company, Investment Advisor. *
 - Charity or nonprofit entity with tax exempt status with IRS. *
 - Trusts – Per current CIP rules, FinCEN feels banks are already identifying controlling individuals

* Beneficial Ownership is generally available from other credible sources.

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Notice of Proposed Rulemaking Beneficial Ownership

What's Changing

- Nature and Purpose of the Account Relationship
 - Required to document at relationship opening.
 - Current KYC data process collects business type of customer - NAICS code.
 - Proposed rule is not clear on the expectations of this requirement.
- Ongoing monitoring to maintain and update this customer information and identify and report suspicious activity
 - Proposed rule is not clear on the expectations of this requirement.

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Notice of Proposed Rulemaking Beneficial Ownership Certification Form Example

II. CERTIFICATION OF BENEFICIAL OWNER(S)

Persons opening an account on behalf of a legal entity must provide the following information:

a. Name of Person Opening Account:

b. Name of Legal Entity for Which the Account is Being Opened:

c. The following information for 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 the legal entity listed above:

(If no individual meets this definition, please write "Not Applicable.")

Name	Date of Birth	Address	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

d. The following information for any individual with significant responsibility for managing the legal entity listed above, such as:

- An executive officer or senior manager (e.g., Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, Treasurer); or
- Any other individual who regularly performs similar functions.

(If appropriate, an individual listed under section (c) above may also be listed in this section (d).)

Name	Date of Birth	Address	For U.S. Persons: Social Security Number	For Foreign Persons: Passport Number and Country of Issuance, or other similar identification number ¹

I, _____ (name of person opening account), hereby certify, to the best of my knowledge, that the information provided above is complete and correct.

Signature: _____ Date: _____

¹In lieu of a passport number, foreign persons may also provide an alien identification card number, or number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

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What About Cuba?

Department of Treasury FAQ ⁽³⁾



What exactly changed?

- As of January 16, 2015 travel restrictions were eased
- OFAC issued general licenses within 12 categories of authorized travel that previously required specific licenses pre-approved by OFAC
- Travel for tourism continues to be prohibited

What did not change?

- The Cuba embargo remains in place
- Most transactions continue to be prohibited
- OFAC continues to enforce the prohibitions contained in the Cuban Assets Control Regulations (CACR)
- Persons subject to US jurisdiction are prohibited from doing business or investing in Cuba unless licensed by OFAC

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What About Cuba?

What are spending limits for US travelers in Cuba?

- US travelers may bring back merchandise not to exceed \$400 per person
- However, only \$100 of that may be for tobacco and/or alcohol products and strictly for personal use!

Any changes in authorized remittances by US persons to Cuba?

- Yes, under certain restrictions, remittances may be sent to a Cuban national up to \$2,000/quarter (was \$500/quarter)
- Travelers to Cuba may bring remittances up to \$10,000 per authorized trip
- Under the new general licenses, US Banks, Securities Broker/Dealers and Money Transmitters are permitted to process authorized remittances to Cuba without having to obtain a specific license

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Do Large Fines Still Happen?



- **YES!!!** On March 12, 2015 Commerzbank AG, a global bank headquartered in Germany, and its US branch out of New York, admitted to sanctions and BSA violations
 - Total payments to regulators total \$1.45 Billion!!!
- First major violation, from 2002 to 2008, Commerzbank knowingly and willfully moved \$263 Million through the US financial system on behalf of Iranian and Sudanese entities subject to US economic sanctions
 - Numerous schemes were used and designed to conceal the true nature of the illicit transactions
- Second major violation, since 2008 and continuing until at least 2013, Commerz New York violated the BSA and its implementing regulations
 - As a result, Olympus, a Japanese-based manufacturer of cameras and medical devices, perpetrated a multi-billion dollar securities fraud.
 - Commerz New York loaned money to off-balance sheet entities created by or for Olympus to perpetrate its fraud and transacted more than \$1.6 Billion through Commerz New York in furtherance of the fraud

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Remediation – Why and When?

Why do remediation? When should you do it?

- When you become aware of non-compliance with requirements
- When you acquire another company or book of business
- When fraud is uncovered
- When converting from one system to another
- When converting manual processes to systematic processes
- When directed by regulators or internally by audit, compliance or risk management
- It could be isolated to a part of your book of business or a certain portion of your policies, procedures and controls; or could be pervasive in either of these

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Remediation – What to Cover?

This is really important – exactly what is the problem?

- Missing or inaccurate CIP information?
- Missing or inadequate KYC documentation
- Lack of enhanced due diligence for higher risk situations?
- Is there a breakdown in processes or controls that are causing inconsistencies or failure to execute a specific procedure altogether?
- Was there introduction of a new product or service that wasn't fully integrated into existing KYC/CIP procedures?
- Was there a failure to monitor transaction activity, or to ensure all appropriate transactions were included in the monitoring program?
- Do staff and/or management need to be trained or retrained?
- Is there a lack of coordination across business units and/or with the corporate AML group?
- Who needs to be notified – senior management, compliance, risk management, internal audit, executive management, the board, regulators?

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Remediation – How to Do It?

Define your outcome in advance

- What exactly do you need to remediate – CIP, KYC, enhanced due diligence, transaction activity review
- What does success look like?

Determine your scope

- Accounts, individuals, entities, powerholders
- How far back in time

Develop a project plan

- Like any other major effort, have a disciplined plan
- How will you handle exceptions that are identified? How will you track their resolution??

Assess the resources needed

- Who is leading the effort – the business, compliance, risk?
- Tap into expert resources – fiduciary, AML experts, compliance, risk officers, auditors, legal, expert external resources if lacking internally capabilities or expertise

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Remediation – How to Do It?

Report progress

- Regularly; determine whether daily, weekly, biweekly or monthly is appropriate
- To management, committees, auditors, the board, regulators

Be transparent

- You only want to do this once - seek feedback as you go
- Ask for independent assessment during the project or very shortly after completion

Once remediated, stay remediated

- Much easier to maintain a clean book, policies, procedures, controls and a sound risk management framework than to rebuild it when something goes wrong

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Higher Risk Areas

- Money Service Businesses (MSBs)
- Internet Gambling
- Payday Lenders
- Adult Entertainment
- Medical Marijuana
- Politically Exposed Persons (PEPs)
- Foreign Consulates and Embassies
- Foreign Correspondent Banks
- Foreign Remittances
- Unusual Single Transaction Events
 - Purchase, finance or exchange
 - Agent or middleman involved
 - Offshore origination or destination

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Emerging Product AML Risk

Mobile Banking

- Traditional banking services
 - Traditional currencies exchanged electronically
 - Fraud risk? Yes; AML Risk? Not so much
- No reliance on traditional systems to transfer value
 - Used anywhere in the world
 - Violation of Sanctions – where is the payment originating from?
 - Scan IP Addresses – wait, what if it is masked?
 - Will guidance be forthcoming?

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Emerging Product AML Risk

Virtual and Digital Currency

- Centralized virtual currency, e.g., World of Warcraft gold, Second Life “Linden Dollars”
 - Single administering authority that issues the currency, rules for use and authority to redeem
- Decentralized virtual currency, e.g., Bitcoin, LiteCoin, Ripple
 - Distributed, open source, no central administrator nor monitoring or oversight
- Bitcoins are digitally traded between users with a high degree of anonymity and can be exchanged (i.e., purchased or cashed out)
 - Transactions are “pseudo-anonymous” since the transaction identifiers are not systematically linked to an individual

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Questions?

Thank You!

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Referenced Links

1. https://www.ffiec.gov/bsa_aml_infobase/documents/BSA_AML_Man_2014_v2.pdf
2. http://www.fincen.gov/statutes_regs/files/CDD-NPRM-Final.pdf
3. http://www.treasury.gov/resource-center/sanctions/Programs/Documents/cuba_faqs_new.pdf

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