

ANTI-MONEY LAUNDERING COMPLIANCE OFFICER TRAINING

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THE ANTI-MONEY LAUNDERING COMPLIANCE OFFICER

We're going to cover:

- ▶ Basis for the requirement to have a Compliance Officer ◀
- ▶ The Compliance Officer's Duties and responsibilities ◀
- ▶ The Compliance Officer's Qualifications ◀
 - What is Money Laundering •
 - The AML Legal Framework •
 - AML Program requirement ←
 - AML Program elements ←



THE COMPLIANCE OFFICER REQUIREMENT

Federal law and regulation requires certain businesses to have

- (1) an Anti-money Laundering (“AML”) Program
- (2) an Anti-Money Laundering Compliance Officer

The Company is among those businesses



THE COMPLIANCE OFFICER

The Compliance Officer must:

- Have *full responsibility* for overseeing, developing, updating and enforcing the AML Program
- Have *sufficient authority* to oversee, develop, update and enforce anti-money laundering policies and procedures throughout the company
- Be *competent and knowledgeable* regarding:
 - money laundering issues and risks
 - the anti-money laundering legal framework



THE COMPLIANCE OFFICER

The Compliance Officer's responsibilities include:

- (1) **Developing policies and procedures** designed to deter and detect money laundering and terrorist financing
- (2) **Implementing** the AML Program
- (3) **Directing and enforcing** the AML Program
- (4) Ensuring the **training** of employees on the AML Program
- (5) Ensuring **independent audits** of the AML Program



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(1) Developing policies designed to deter and detect money laundering and terrorist financing includes having:

- a clear corporate policy **against involvement in money laundering and terrorist financing**
- a clear corporate policy **supporting deterrence and detection of money laundering and terrorist financing** through the AML Program
- a clear policy on **enforcement of the AML Program**
- a clear policy **prohibiting retaliation** against employees who report suspected violations

THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(2) Implementing the AML Program includes setting up written procedures in the AML Program that:

- are based on the Company's actual method of doing business
- are based on a risk assessment of the Company's vulnerabilities to money laundering and terrorist financing
- are designed to detect activities related to money laundering and terrorist financing
- identify “red flags” that may indicate potential money laundering



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(3) Directing and enforcing the AML Program includes:

- Supervising compliance with the AML policies and procedures
- Updating AML procedures as:
 - the laws or regulations change
 - the business operation changes
 - new risks of money laundering and terrorist financing are identified
- Engaging in consistent disciplinary action against employees who do not follow the AML procedures



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(4) Training and education includes:

- **Training** of “appropriate” employees and new employees on the Anti-Money Laundering Program policies and procedures
- Ensuring **periodic retraining** and updating
- **Keeping records** of
 - employee attendance at training (attendance is mandatory)
 - Keep records of the training presented



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(4) Training and education includes:

- Providing clear guidance on:
 - the legal requirements
 - the due diligence required for customers – and who is responsible for conducting due diligence
 - the due diligence required for suppliers of precious stones, metals and finished products – and who does it



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(4) Training and education also includes:

- Identification of suspicious activity and “**red flags**”
- Clear guidance on what to do and who to go to with suspicious activity
- Clear guidance on how to reach the Compliance Officer
- Assurance that making reports may be made anonymously
- Assurance that reports may be made *with no retaliation*



THE COMPLIANCE OFFICER'S RESPONSIBILITIES

(5) Periodic Audits of Program requires:

- Audits must be conducted **periodically** -- frequency depends on money laundering risks – every 12 to 18 months is best
- Audits must be **independent**
- Independent audits may be done internally by the Company, but **not** by the Compliance Officer or his staff
- Purpose is to ensure Program is **functioning and enforced** as designed



QUALIFICATIONS OF THE COMPLIANCE OFFICER

The Compliance Officer must:

- be competent and knowledgeable regarding **how the business is run and its money laundering risks**
- be competent and knowledgeable regarding **how money laundering is done and the anti-money laundering legal framework**

PART I

▶ *What is money laundering and how does it work?* ◀



WHAT IS MONEY LAUNDERING?

- ✓ **For the “average” criminal:** money laundering is the process by which the proceeds of criminal activity are made to appear legitimate
- ✓ **For the “average” Terrorist:** money laundering is the process by which money used to fund terrorist activity is moved without revealing its true source, destination or purpose
- ✓ **For “average” tax evader:** money laundering is the process of spending money without leaving a trail showing who owns it

WHAT IS MONEY LAUNDERING?

- **The Treasury Department estimates that total money laundering in the world is as high as *\$1 TRILLION* per year**
- **The U.S. share of that is conservatively estimated at half of this amount – *\$600 billion per year***
- **The US Treasury Department and Justice Department have combined forces to stop it in all its forms**



WHERE DOES THAT MONEY GO?

- To **drug dealers** – to finance their drug operations
- To **terrorists** – to finance their terrorist operations
- To **tax evaders** – to finance their life styles

But only if US businesses allow money laundering.
Then legitimate businesses are helping *them*
and possibly may be breaking the law



HOW DOES MONEY LAUNDERING WORK?

- **Three stages:**
 - ***PLACEMENT***: getting criminal proceeds into the financial system
 - ***LAYERING***: moving the criminal funds to other accounts to further obscure their origin and ownership
 - ***INTEGRATION***: reintroducing the funds into the economy in such a way as to make them look legitimate



HOW DOES MONEY LAUNDERING WORK?

- So, money laundering involves **not just cash** but also **money orders, traveler's checks, wire transfers** – just about any form that money can take
- It can also be represented in products bought with “dirty money” – like **precious stones, metals and jewelry**
- In the “Placement” stage, it usually involves cash
- In the “Layering” and “Integration” stages, it usually involves other monetary instruments or products

HOW DOES MONEYLAUNDERING WORK?

Drug dealer's proceeds are all in

\$\$ CASH \$\$

Drug dealer needs to get the cash into the banking system or into the form of portable, easily sold products

- ▶ Greater security ◀
- ▶ Faster movement ◀
- ▶ More anonymous ◀

HOW DOES MONEY LAUNDERING WORK?

- The drug dealer has agents (“smurfs”) who pick up cash and “smurf” it by:
 - buying cashiers checks, traveler’s checks, money orders for under \$10,000, and/or
 - Buying re-sellable, generally portable products with cash or other forms of funds with a face value under \$10,000, and/or
 - selling re-sellable, portable products
- This gets rid of the cash
- The transformed cash is then deposited or wired into banks or the purchased goods are sold

HOW DOES MONEY LAUNDERING WORK?

- The money launderer usually stays under \$10,000 in doing cash transactions and in making cash purchases
 - to avoid attracting too much attention,
 - to avoid having banks and businesses comply with federal law that requires cash transactions over \$10,000 to be reported to the government
- This is called “structuring” – breaking cash transactions into smaller amounts **under the reporting threshold**



STRUCTURING CASH TRANSACTIONS

- For example:
 - Money launderer wants to launder \$54,000
 - Money launderer buys 6 diamond bracelets
 - For \$9,000 each

- Result:
 - The criminal got rid of cash
 - The bracelets can easily be smuggled and sold (and the proceeds from the sale look clean)
 - No report is made of the cash transaction

THE COMPLIANCE OFFICER

PART II

▶ *The Anti-Money Laundering Legal Framework* ◀

The Compliance Officer must:

be competent and knowledgeable regarding the anti-money laundering enforcement framework

ANTI-MONEY LAUNDERING: THE CRIMINAL FRAMEWORK

There are three basic laws and sets of regulations

▶ MONEY LAUNDERING CONTROL ACT ◀

(the criminal law)

▶ THE BANK SECRECY ACT ◀

(the regulatory law)

▶ THE OFAC SDN LIST ◀

(the “Terrorist List”)



ANTI-MONEY LAUNDERING: THE CRIMINAL FRAMEWORK

- Key criminal statute: **“The Money Laundering Control Act”** (18 USC 1956)
- Money Laundering is a federal crime
 - Applies to **all persons and businesses** in the US
 - Even to **persons and businesses in other countries**, as long as part of the transaction was in the U.S.

ANTI-MONEY LAUNDERING: THE CRIME OF MONEY LAUNDERING

The Money Laundering Control Act says:

If a person or business ...

- (1) **“knows”** money or property comes from
- (2) **“some”** illegal activity, and the person or business
- (3) **engages in a transaction** with it, then
- (4) **that person or business** is a money launderer



THE CRIME OF MONEY LAUNDERING

- **“Know”** includes **“Willful Blindness”** –
a court will assume that a person or business *“knew”* money came from some illegal activity if warnings signs or *“Red Flags”* that indicate that the money came from some illegal activity were *ignored*
- **“Some”** means any criminal activity, even if the person or business does not know what that criminal activity is
- Money Laundering is punishable by fines of up to \$250,000 and 20 years in jail (person) and \$500,000 (business)

WHO CAN BE PROSECUTED?

- Every person or business that engages in a financial transaction involving “*dirty money*”
 - *Anyone* involved – not just criminals, terrorists, tax evaders -
- may be prosecuted
 - *Any person or business* that “*knows*” money comes from “some” illegal source, and conducts a transaction with that money, can be prosecuted, even persons not in the U.S.
 - This includes B&M, Inc., and its employees

ANTI-MONEY LAUNDERING: THE REGULATORY FRAMEWORK

- Key regulatory statute: **“The Bank Secrecy Act”** (the “BSA”)
- Requires reports for cash transactions over \$10,000
- Makes *Structuring* illegal
- Imposes various anti-money laundering and anti-terrorist financing and regulatory requirements on “Financial Institutions”

ANTI-MONEY LAUNDERING: THE REGULATORY FRAMEWORK

- There are 24 types of “Financial Institutions” including ...
 - Banks
 - Agencies or Branches of foreign banks operating in US
 - Mutual funds
 - Insurance Companies
 - **Dealers in precious stones, metals or jewels**
- Birks & Mayors a “Financial Institution” subject to Treasury Regulations (31 CFR 103.140)
- Violations of the Bank Secrecy Act can be punished civilly by fines of up to \$100,000 and by criminal prosecution

REGULATORY REQUIREMENTS

Five basic requirements --

1. Written “Anti-Money Laundering Program”
2. Procedures to “Know Your Customer”
3. Periodic employee training and audits
4. Training to identify and react to “Suspicious Activity”
5. Checking the Government Terrorist Lists

(1) THE FIRST REQUIREMENT: A WRITTEN AML PROGRAM

Written Anti-Money Laundering Programs

- Written policies and procedures designed to deter and detect money laundering
- Training and education of employees on money laundering, terrorist financing and AML Program procedures
- Appoint official Compliance Officer to implement and supervise the AML Program
- Periodic independent audits to insure the AML Program has been implemented and is being followed



THE ANTI-MONEY LAUNDERING PROGRAM

- *an ANTI-MONEY LAUNDERING PROGRAM is something that the BSA requires and that must be followed*
- It's the best protection against being charged with violating the Money Laundering Control Act ... as long as the Program is:
 - *fully implemented*
 - *fully followed, and*
 - *fully enforced*

(2) THE SECOND REQUIREMENT: “KNOW YOUR CUSTOMER”

- **Know Your Customer Policy:**
 - to screen Customers *and* Suppliers
 - establish and enforce standards and steps to verify and document Customer and Supplier information, including
 - **identity and verify** address of both
 - **documentation verifying** personal identity
 - **documentation verifying** corporate identity
 - check the **OFAC (“Terrorist”)** List

“KNOW YOUR CUSTOMER”

The “Know Your Customer” (“KYC”) portion of the AML Program should contain procedures describing which:

- (1) prescribe which **documents are acceptable for verification**, for both persons and businesses
- (2) describe **non-documentary methods for verifying identification** and when these methods will be used
- (3) procedures for **responding** to situations where **verification cannot be accomplished**

“KNOW YOUR CUSTOMER”

- (4) procedures for **maintaining records for 5 years** of the information and documents used to verify the customer’s identity, including
- a copy of every any document relied on to verify the identity of the customer
 - record of the resolution of any discrepancy in the identifying information
- (5) procedures for determining **whether the customer is on the OFAC List**

(3) THE THIRD REQUIREMENT: EMPLOYEE TRAINING AND PROGRAM AUDITS

Internal Reviews and Audits

- Periodic *independent* audits of the Anti-Money Laundering Program
 - “independent” means it may be done internally, but *not* by the Compliance Officer or his staff
- to insure Program implemented and operating
- detect and correct instances of **employee non-compliance**
- detect and cover **new areas of risk**
- Update Program to match **changing business methods**
- to **correct problems**



EMPLOYEE TRAINING AND PROGRAM AUDITS

- All “appropriate” employees must be trained –
 - periodically (about every 12 to 18 months)
 - on money laundering
 - On the Anti-Money Laundering Program procedures
- Training is **Mandatory**
- Training must be **Documented**
- Training records must be **Maintained**



This Means The Program Must be Followed and Enforced

- **For Employees**

- *consistently enforce the compliance program with appropriate disciplinary action*

- **For Suppliers**

- take remedial action up to and including *termination of business relationship* if a Supplier is engaging in unexplained suspicious activity

(4) THE FOURTH REQUIREMENT: IDENTIFYING “SUSPICIOUS ACTIVITY”

“Suspicious Activity” is:

- **any** suspected violation of Federal law or regulation;
- a transaction related to money laundering or to terrorist financing;
- a transaction that appears to have **no legitimate or reasonable business purpose**

IDENTIFYING “SUSPICIOUS ACTIVITY”

How to Identify Suspicious Transactions

Look for “Red Flags,” such as

- Customer or supplier says or hints that his money or product is derived from any criminal activity.
- Supplier says or hints that his payment or product is intended for terrorist financing.
- Customer requests that a Form 8300 not be filed on a reportable transaction, or that it be falsified.
- Customer or supplier refuses to provide government issued photo identification



IDENTIFYING “SUSPICIOUS ACTIVITY”

- **“Red Flags” include such transactions as**
 - Customer is reluctant to provide information when opening an Account, or gives false information.
 - Supplier is reluctant to provide information or documentation, or unreasonably delays in providing it
 - Several unrelated Customers or suppliers with same addresses
 - Customers or suppliers who will give only a P.O. Box or e mail address

IDENTIFYING “SUSPICIOUS ACTIVITY”

- **“Red Flags” include such transactions as**
 - Customer pays with numerous money orders or cashier’s checks, all with a face value under \$10,000
 - Customer’s Account or purchase is paid by a person or business with no apparent connection to customer (“third party payment”)
 - Supplier wants payment made to an unrelated business
 - Customer or supplier uses a false or inconsistent form of identification

IDENTIFYING “SUSPICIOUS ACTIVITY”

- **“Red Flags” include such transactions as**
 - Supplier wants payment made in an unusual manner, or to an unrelated business or person
 - Customer engages in purchases that appear beyond the Customer’s legitimate means
 - Suppliers who do not care about the terms of a sale
 - Purchasers/Agents who engage in conduct that seems to have no legitimate or reasonable business or commercial purpose

IDENTIFYING “SUSPICIOUS ACTIVITY”

- **“Red Flags” include such transactions as**
 - Supplier wants payment made in an unusual manner, or to an unrelated business or person
 - Supplier seems not to understand or be familiar with the industry
 - Customer or supplier makes uncalled for political remarks indicating a tendency toward violence or hatred of the US
 - Customer or supplier engages in conduct that seems to have no legitimate or reasonable business or commercial purpose

IDENTIFYING “SUSPICIOUS ACTIVITY”

These are not all of the possible “Red Flags”

... employees need to use common sense ...

*if it doesn't make sense to an employee, then why would it
make sense to a criminal investigator?*

So what should an employee do?

- ▶ Be alert to the “Red Flags” of money laundering ◀
 - ▶ Ask questions ◀



REPORTING “SUSPICIOUS ACTIVITY”

- **Once a transaction has been identified as suspicious, what does the employee do?**
 - **Ask questions** – there may be a commercially reasonable explanation for the activity
 - If an employee is still suspicious, he/she should **go to the AML Compliance Officer** and follow his instructions

REPORTING “SUSPICIOUS ACTIVITY”

- If the suspicion can be resolved, the transaction can proceed
- If transaction is still “suspicious” the transaction should be stopped and the Compliance Officer may report it to local federal law enforcement agencies

REPORTING “SUSPICIOUS ACTIVITY”

- Keep the original records of the transaction and deliver them to the Compliance Officer
- The Compliance Officer does this – you may help, but the final job is his
- **DO NOT TELL THE CUSTOMER OR SUPPLIER** that a report about suspicious activity may be filed or was filed – it’s illegal to tell anyone!

REPORTING “SUSPICIOUS ACTIVITY”

The standard: **report if know, suspect, or have reason to suspect**

“Safe Harbor” -- 31 USC 5318(g)(3):

- for any “Financial Institution” making a voluntary or required disclosure
- of a possible violation of law
- to a government agency
- not liable under state or federal law



REPORTING SUSPECTED *TERRORIST* ACTIVITY

ALL SUSPECTED TERRORIST ACTIVITY SHOULD BE REPORTED IMMEDIATELY TO

- Local federal law enforcement authorities
- Local state law enforcement authorities
- The US Treasury Department through the Financial Crimes Enforcement Network (“FinCEN”) at 1-866-556-3974



(5) THE FIFTH REQUIREMENT: CHECKING THE “TERRORIST LIST”

All “United States Persons” are **prohibited** from any business transaction directly or indirectly involving **any person or entity on the SDN List or the President’s Terrorist List**

This applies to all “*United States Persons*”

Status as a “Financial Institution” is *irrelevant* to application of law



CHECKING THE “TERRORIST LIST”

A “United States Person” means –

- Every person in the United States
- Every business formed in the U.S
- Every U.S. citizen doing business outside the U.S.
- Every U.S. business doing business *outside* the U.S.



OFAC PENALTIES

“Financial Institutions” that fail to check the List may violate Bank Secrecy Act:

– Civil penalties:

- \$25,000 to \$100,000 fine

– Criminal penalties:

- For a person – fine of up to \$500,000 and/or up to 10 years in jail
- For a business – fine of up to \$1 million



THE COMPLIANCE OFFICER

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QUESTIONS?



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