

The SAR Activity Review Report: Lessons for the FCPA Compliance Practitioner

Yesterday my colleague Howard Sklar and I recorded Episode 3 in our This Week in the FCPA series, check out our video podcast. One of the items we discussed was the release of BSA Advisory Group's recent publication "*The SAR Activity Review, Trends Tips & Issues*" Issue 19, *In focus: Foreign Corruption*. The publication is part of the continuing dialogue among financial institutions, law enforcement officials and regulatory agencies regarding Suspicious Activity Reports (SARs) and other BSA reporting requirements and, as indicated by the title, this issue focuses on foreign corruption. It is an excellent resource for the Foreign Corrupt Practices Act (FCPA) compliance practitioner to use regarding *best practice* tools for due diligence.

After a lengthy statistical review of the use of SARs and other tools the publication lists some of the specific steps a financial institution should use to combat foreign corruption. Broadly speaking, they are:

- Requiring banks to apply enhanced due diligence to bank accounts and transactions by Politically Exposed Persons (PEPs);
- Attuning financial institutions to assess and evaluate risk so that it can be more carefully managed; and
- Promoting transparency in all transactions.

Any of this sounding familiar?

The need for enhanced due diligence is so banks know when they are dealing with a foreign governmental official. This due diligence must include procedures "reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption." The publication provides the following list of inquiries which should be made.

- Identify the stakeholder and any beneficial owners;
- From this identification, determine the PEP status;
- Obtain employment information and evaluate for industry and sector risk of corruption;
- Review the stakeholder's country of residence and evaluate for level of corruption;
- Check references;
- Obtain information on immediate family members to determine PEP status; and
- Make reasonable efforts to review public sources of information.

Although not couched in terms of the compliance lingo "Red Flag", the report makes it clear that simply identifying a stakeholder as a PEP does not disqualify the candidate. It means that additional investigation must be performed. Therefore, if a PEP comes up in your FCPA compliance program due diligence investigation, as an owner of a Foreign Business Partner, additional investigation must be performed to determine the relationship of this governmental official, the transaction at issue, and any potentials for conflicts-of-interest or self-dealing.

The promotion of transparency requires actual knowledge of the parties who are involved in all transactions. In addition to identifying those owners and any beneficial parties as indicated above, care should be taken to identify any shell companies which a PEP might have ownership or interest in. The report terms this as “Corporate Transparency.” This is a critical analysis which companies should take as part of their overall due diligence effort.

The publication is a very useful tool and provides several case studies of how the SAR and related information are used. These case studies are written by financial institution representatives and law enforcement officials. They all provide very useful information for the FCPA compliance practitioner on how the financial industry is combating foreign government corruption and the application of those tools to a FCPA compliance program.

This publication also brings up the idea of “compliance convergence.” Howard Sklar has discussed this term in a wide range of issues but I define it as merging of control programs, such as anti-bribery and anti-corruption, with anti-money laundering and export control. If a Company does not know with whom it is doing business, any of these three areas can put a company at risk for various forms of illegal conduct. US financial institutions are required to have very robust anti-money laundering compliance programs in place. From the publication discussed herein, it appears many industries and industrial sectors could learn many lessons from their compliance practices.

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