



Finding the Right AML Investigators

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SUMMARY

Conducting complete, accurate and timely investigations is the cornerstone of AML compliance. However, most institutions are struggling to find and hire skilled and experienced people in a labor market where demand is so high. The paper discusses how to approach the development of a robust suspicious activity investigation program.

ABOUT THE AUTHOR

David Caruso, CEO of the Dominion Advisory Group, has more than 15 years of experience creating and implementing comprehensive Anti-Money Laundering (AML) programs. As CEO, David is responsible for providing strategic leadership and industry expertise to ensure clients receive the best possible solution for regulatory compliance issues.

Investigating and reporting suspicious activity: It is the one problem of AML compliance that if solved makes all other problems solvable. Yet if investigations were easy, regulatory enforcement actions would be rare, not common as they now are.

The core component of AML compliance is filing complete, accurate and timely Suspicious Activity Reports. Why after so many of the regulatory agencies have issued fines and penalties are institutions still deficient in this area?

The financial service industry has collectively spent hundreds of millions of dollars installing, tuning, testing, and supporting software systems designed to detect suspicious transaction activity. While some systems have better features than others, the one feature no software provides are skilled and experienced *people* to investigate and report suspicious activity.

People - the right ones, trained the right way, doing the right things everyday are the essential piece of the most important part of AML compliance – suspicious activity identification and reporting. Easily said, very difficult to get done.

While AML compliance has been part of the banking industry for decades, emphasis on adequately filing SARs evolved through three stages.

The first stage was in the mid 1990's when the Treasury Department replaced the criminal referral forms with the Suspicious Activity Report or SAR. Even then though many institutions went years without filing a SAR and those that did likely filed SARs for matters involving traditional fraud like check kiting or forgery.

The second stage was after 9/11 when, for obvious reasons, SARs began to pour into the Financial Crimes Enforcement Network (FinCEN). In 2002 and 2003 institutions, likely had a low threshold for what they considered suspicious, thus many hundreds of thousands of SARs were filed. It was also during this time that the regulatory agencies and their examination staff were learning the elements of the PATRIOT Act and trying to understand the torrent of new

regulations raining down from Treasury.

The third and current stage of SAR filing can be characterized as the post Riggs stage where the failure to file SARs is the most significant BSA failure will lead to severe criticism and likely to the leveling of an informal or formal enforcement action. In the most egregious cases, civil money penalties are issued. How did we get here and what to do about it?

In 2004 it was revealed Riggs failed to identify suspicious activity related to the Saudi Embassy accounts, the accounts of leaders of the government of Equatorial Guinea and accounts of former Chilean President Augusto Pinochet. Several Congressional Committees were outraged that not only did Riggs fail to report on suspicious activity that had occurred in many cases for years, but the banking regulators were slow to act in either identifying the failures or once the failures were identified, Congress believed the remedies deployed by the regulators were seen as lacking the necessary severity. In July 2004, the Senate's Permanent Subcommittee on Investigations held hearings during which Riggs was chastised, but much more ominous for the industry, the regulators were lashed. It is not surprising that beginning in 2004 and continuing today, the emphasis banking regulators place upon suspicious activity identification is the central focus of BSA examinations.

For years the largest banks have had established fraud investigation departments. These banks their departments were and still are, led by and staffed with former law enforcement agents. Former FBI and Secret Service Agents were usually able to find new homes in banking (the author is one).

However, because the BSA is a compliance regulation the responsibility for adherence was placed upon a compliance department, which rarely reported to the same executive as the fraud department. As a result, when the BSA compliance requirements around suspicious activity identification grew, the compliance department naturally believed this, along with the traditional policy and procedures requirements of the BSA, was its purview. So, in most cases institutions opted, (purposely or by default) to have a new group of staff investigate potential money laundering and terrorist financing.

Most of these groups report into a compliance chief. Like the creation and operation of large fraud departments, the country's largest banks have sought out and in most cases hired former law enforcement agents to manage and staff senior positions in units established to detect and investigate potential money laundering and terrorist financing. While former law enforcement agents almost always lack experience in the BSA regulation and examination process, they are well versed in the elements of investigation, case documentation and case management – all essential components of a good suspicious activity reporting program.

For those institutions other the top three or four largest, the most substantial challenge they face is finding, hiring and retaining skilled and experienced people to analyze, investigate, and report suspicious activity. Unfortunately many institutions are unaware of this challenge until informed by a regulatory examiner of a program deficiency. By then it is too late and the quest for talent in the open market will often fail to find the type of experienced people needed.

Not surprisingly salaries for qualified, and in many cases relatively inexperienced investigators, are growing significantly. Salaries for senior investigators at mid size institutions are topping \$100,000. Salaries for Directors of suspicious activity identification

and reporting departments exceed \$200,000. A good transaction monitoring analyst is being paid \$75,000 or more a year.

Several years ago institutions were able to fill their investigator ranks by poaching from fellow institutions, an option that now is not likely to work. Good investigators are well paid by their current employers and when these employers hear of competition in the market they often respond with on-the-spot salary increases for the best people.

Turning to retiring law enforcement can be helpful, but by no means is it the solution it once was. For one, many in law enforcement who are retiring are doing just that – retiring. The prospect of working 50 – 60 hours a week analyzing customer transactions is not necessarily the way they pictured retirement. In addition, most retiring law enforcement, if they work in a large city where they would likely have gained their experience in money laundering and financial crimes, are paid near or over \$100,000 a year and may expect a salary equal or near equal to that. There are only so many six figure investigator positions available. Also, the transition from 25 plus years in government can often be challenging. While most former agents eventually do well in the financial service sector it takes time for them to become acclimated to the highly automated environment in today's AML departments.

AML compliance groups are very focused on production. That is, how quickly can they investigate, document and determine the outcome of an investigation and move on to the next one. The volume of work generated by transaction monitoring systems and the expectations of auditors and regulatory examiners is such that cases must be accurate and complete, but they also must be *timely*. Even for institutions with sound detection and investigation processes, the "30 day requirement" to file a SAR is a constant burden. While recently regulators have issued guidance enabling some leeway on the interpretation of the 30 day requirement, every examiner has his or her point in time where they become concerned if an institution appears unable to keep up with its monitoring and investigations work load.

Another burden facing institutions is keeping AML investigators versed on emerging regulatory concerns and priorities. For example, in the last year there has been a spate of unfortunate matters involving the use of foreign and domestic shell companies to launder money. Experienced law enforcement agents will tell you that while not all shell companies are nefarious (most are not), all good money laundering schemes use shell companies. So now AML investigators have to understand what it is about shell companies that make them so attractive to criminals. What are the signs of a shell company? What are the attributes of ownership or activity that make it suspicious? How does one go about identifying beneficial owners? All question being asked now by regulators amongst themselves and soon to be questions asked by regulators of institutions.

Many institutions encourage their staff to study and become certified in a field related to AML compliance. There are several certification programs available that in name would lead one to believe that those certified are highly skilled and experienced in AML compliance. These programs are beneficial to the industry in that they provide a good background and foundation on the laws, regulation and guidance for general AML compliance. But institutions who believe being certified in laws, regulation and guidance makes someone a good investigator should revisit that conclusion.

So what to do in an environment where it's expensive, if even possible, to hire away good

investigative talent, and/or it's risky to hire someone who may have a strong background in investigations, but not understand banking and nuances of regulatory prerogatives? The simple answer is to train existing staff or hire staff with potential to become strong investigators and train them. Simple answer, hard to do.

An investigation is a series of complex thoughts, data and events strung together to tell a story. Even the most seemingly simple structuring case requires analysis and associative memory use. And therein lies the key to good investigations – teaching people how to review events; separate the meaningful from the less than meaningful; draw upon their own experiences and the experiences they have witnessed in the course of their personal and professional life; decipher patterns; spot anomalies; recall related events or cases; process all of this; draw a conclusion; and support that conclusion with evidence and a well written report. In other words, investigation is a skill – the skill is to see things and spot things that are indicative of potential wrongdoing. Just like a structural engineer needs to spot things that may make a building unsafe, or a software developer needs to spot source code that will cause a program to seize up, or a paramedic needs to look at an accident victim's pupils to spot the onset of shock, an investigator needs to spot events, that when put together with other facts, circumstances and recollections, make something suspicious.

Like an engineer, a software developer or a paramedic, an investigator needs a certain amount of study in the principles of the field. In the case of an AML investigator it's the knowledge of FinCEN regulations and guidance. But like an engineer, a software developer, and a paramedic, an investigator only gets better through experience.

By conducting investigation after investigation an investigator learns the nuances of how a small cash intense business may be structuring to avoid CTR requirements and nothing else, compared to a business that portrays itself as cash intense but is not structuring *only* to avoid a CTR, but is also structuring because it is a front operation for organized crime that hopes to go unnoticed. Investigation after investigation enables an investigator to spot an anomaly among the beneficiary information of a wire transfer. Why, an investigator may ask, did this customer send 20 wires a month every month to businesses, but this one wire was to an individual? Maybe that is the clue that uncovers a corruption scheme. Maybe its not, but only an experienced investigator is going to spot it and resolve it.

But institutions may not have the time to wait for an inexperienced investigator to become experienced, or they may not want to risk hiring someone who appears to have strong potential only to turn out not to.

Other professions face similar challenges and they solve them through a different form of training – highly interactive simulation training. Think how pilots, new and experienced, learn new skills or sharpen existing ones – they are required to regularly participate in flight simulation training where they have to take off and land in foul weather, fly after losing power to an engine, and also just perform the routine duties of an airline pilot on a normal, uneventful flight. Investigators should learn the same way – simulated training conducted in an environment where mistakes and opportunities to learn don't become fodder for regulatory criticism.

ABOUT THE DOMINION ADVISORY GROUP

Dominion Advisory Group is the leading provider of comprehensive and sustainable anti-money laundering programs and critical investigations services for top domestic and international financial institutions, law firms, and other organizations. Dominion Advisory Group has 15 years of extensive experience in banking, compliance, law enforcement, regulatory oversight, technology, and consulting to help financial institutions and corporations navigate the complex regulatory environment and address the needs of regulators, customers, and the institution.

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