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When and Why did MSBs become targets?

- **1970 BSA**
- **1979 – Operation Greenback focusing on BSA Compliance at banks (drug money pouring into banks)**
- **1980 – 1990: Banks investigated, prosecuted, fined and compliance elevated**
 - **Drug money moves to secondary market – MSBs**
- **1990 – 2000: BSBs investigated, prosecuted, fined and compliance elevated**
- **Today drug money laundering exported to Mexico and other countries**

Bank Deposit 1981



Routine Deposit Miami Banks 1980s



\$207 million in house in Mexico



Regulatory Evolution for MSBs

- **1994** -Congress mandates Money Services Businesses Regulations
- **1997**- FinCEN Proposal of 3 BSA regulations
- **1999**- FinCEN issues BSA Final Rule requiring registration for 200,000 MSBs (delayed until 2001)
- **2001** (9/11) –Patriot Act –Underground MSBs required to register and all MSBs required to have AML Programs
- **2002** – MSBs required to file SARs
- **2004**- MSBs Guidance in how to deal with Foreign Agents and Counterparties

Banking MSBs

1. KY-MSB
2. AML requirements for MSBs and their agents
3. The on boarding process
 - Have it structured
4. Treating all MSBs the same
 - Not the best way of doing things
5. Monitoring
 - Understanding how the MSB works
 - Understanding the different MSB platforms

Money Services Businesses

A business is an MSB requiring MSB registration with FinCEN if it conducts more than \$1,000 cash activity with one person in one or more transactions on the same day in one or more of the following services:

- Money orders and/or Traveler's checks
- Check cashing and/or Payday Lending
- Currency dealer/currency exchanger
- Stored value cards OR
- Money transfer services **in any dollar amount**

Why people use MSBs

- Convenient
- Culture
- Do not have bank accounts
- Extended hours of operation
- Quick money transfers and check cashing
- Cost effective
- No need for an account

Example: Money Flow in Money Transmitter Transaction with Agent



MSBs and Agents

Agent looks to MSB licensee (e.g., money transmitter) for support but agent remains obligated to comply with BSA/AML laws and regulations

1. Four pillars (103.125 – 4 point AML Program)
 - Policy and procedures > Risk Based
 - BSA officer > Competency
 - Training > Activity specific
 - Audit or Program Review
2. Reporting unusual or suspicious activity
3. Filing CTRs
4. Records Retention

BSA Regulations include MSBs as Financial Institutions

31 CFR 103(n)(3)

BSA Coverage of MSBs

Required Reports:

- Currency Transaction Reports (CTRs)
- Suspicious Activity Reports (SARs)
- Agent List (January each year)
- FBAR
- MSB Registration

BSA Coverage of MSBs

- FinCEN Registration
- 5 year record retention
 - Receipts, handbooks, training material, etc.
- Identification required at certain levels
 - Money Transmitters - Verify I.D. for transactions over \$3,000 in one day
 - Other MSBs – Verify I.D. for transactions over \$1,000 in one day
 - The Company can implement stricter thresholds for certain transactions

AML Program Requirements for MSBs

USA Patriot Act § 352 and 31CFR. § 103.125

- MSBs are required to develop, implement, and maintain an effective AML program reasonably designed to **prevent the business from being used to facilitate money laundering**
- The program must be **commensurate** with the risks posed by the **location, size, nature, and volume** of the financial services provided by the MSB and **shall be in writing**

AML Program Requirements for MSBs

USA Patriot Act § 352 and 31CFR. § 103.125

AML Program for MSBs that utilize foreign agents or counter parties, must include risk-based policies, procedures, and controls designed to identify and minimize money laundering risks associated with foreign agents and counter parties that **facilitate the flow of funds into and out of the United States**

AML Program Requirements for MSBs

USA Patriot Act § 352 and 31CFR. § 103.125

- Adopt written anti-money laundering policies and procedures
- Designate knowledgeable compliance officer
- Implement on-going training program for appropriate personnel
- Conduct independent review of the anti-money laundering compliance program of the company

Written Policies, Procedures and Controls

- Must be Customized to line of business
- Must include all activity conducted
- Must be implementable
- Must address:
 - Monitoring
 - OFAC
 - Risk Assessment
 - CTR and SAR Filings
 - Regulatory and Law Enforcement Requests
 - Employee Training
 - Monetary Instrument Log
 - Agency Relationships

Independent Review

FinCEN Guidance FIN-2006-G012

9/22/2006

Scope and frequency of Review should depend
on the Risk Assessment

Follow up to findings

Independent Review

Is it truly independent

Qualifications of reviewers

Detail of the written report

Independent Review Coverage

- Overall integrity and effectiveness of the AML Program including Policies, Procedures and Processes
- BSA/AML Risk Assessment
- BSA reporting and recordkeeping requirements
- Internal adherence to the MSB's BSA/AML policies, procedures and processes
- Transaction testing
- Adequacy of training
- Accuracy and integrity of MIS applications to AML Program
- Agent oversight

MSB Guidance on Foreign Agents or Counterparties

- Foreign agents present higher money-laundering risks than domestic agents
 - Foreign agents are not subject to BSA regulatory regime
- AML program of MSBs using foreign agents must include risk-based policies, procedures and controls designed to identify and minimize AML and TF risks

MSB Guidance on Foreign Agents or Counterparties

FinCEN Guidance also **requires** MSBs' anti-money laundering program be capable of detecting the abuse of products and services offered through the foreign agent and foreign counterparties **by establishing procedures for:**

- Conducting due diligence on foreign agents and counterparties;
- Risk-based monitoring of foreign agents and counterparties; and
- Taking corrective action or terminating relationships, as appropriate.

Casa de Cambio Owner ?



OFAC Compliance

MSBs must establish and maintain an effective OFAC compliance program.

- written policies and procedures for filtering transactions for possible OFAC violations,
- designating an individual responsible for day-to-day compliance
- procedures for maintaining *current* lists of blocked countries, entities, and individuals.

Banker's Check List for MSBs:

1. Articles of incorporation
2. List of authorized signers
3. List of owners
4. IDs
5. Copies of recent financial statements/business tax return
6. Name and contact info for Compliance Officer
7. Copy of BSA Compliance Program
8. Copy of most recent AML review
9. Copy of current FinCEN registration



Check List for MSBs: Add'l documents for licensed money remitters

1. Unexpired state issued money remitters license
2. Current list of agents by state
3. Current list of foreign paying agents
4. Sample agent agreement
5. Sample agreement with foreign paying agent for each country

Check List for MSBs: Additional documentation

- 1. For agents of money remitters:** copy of agent agreements
- 2. For check cashers:** copy of current state issued check casher license
- 3. For currency exchanges:** copy of agent agreements and state issued license where required

BSA – AML Examination Manual for MSBs

Risk Assessment

- Location and size of the MSB
- Nature and volume of financial services offered
- Products, services, customers and geographical coverage

BSA – AML Examination Manual for MSBs

MSBs are not required by regulation to adopt a written risk assessment, but management is encouraged to adopt a written risk assessment to support its policies and procedures

BSA – AML Examination Manual for MSBs

The risk assessment process allows for MSBs to identify soft spots in their formal AML and Compliance Policies and Procedures.

BSA – AML Examination Manual for MSBs

Internal controls must be based on the company's risk assessment which are designed to detect, deter and prevent money laundering and terrorist financing

Changes in Products or Services

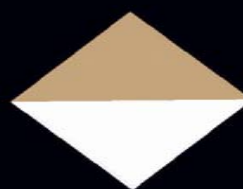
Activities determine the applicable rules

- Agent of money transmitter
- Begin cashing checks/selling monetary instruments or stored value
 - New license (state law)
 - Reevaluate sufficiency of the old “Four Pillars”
 - With particular attention to cross-platform weaknesses in ability to detect and report unusual or suspicious activity

Ongoing Due Diligence of MSBs

“A bank is not routinely expected to perform further due diligence (such as reviewing information about an MSB’s BSA/AML program) beyond the minimum due diligence expectations. Unless indicated by the risk assessment of the MSB, banks are not expected to routinely review an MSB’s BSA/AML program.”

Source: 2008 FFIEC BSA/AML Examination Manual



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