

# Using BSA/AML Enforcement Actions to Protect Your Institution: Part II

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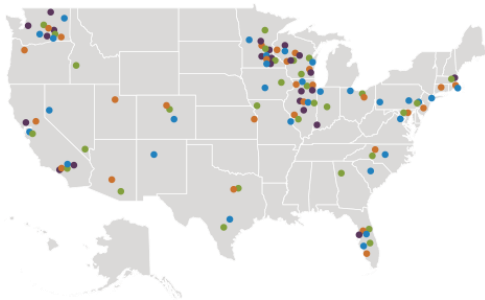
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# Speaker Introduction

- David Zavatti is a senior regulatory compliance analyst in CLA's financial institutions team. Through both onsite reviews and work done remotely, David assists clients with establishing and improving compliance management of all key areas. He accomplishes this through ongoing compliance consulting services, targeted compliance testing, BSA/OFAC/AML independent testing, and training for credit union staff.



# Agenda

## Part I

- Risk Assessment
- Compliance Program
- BSA Officer
- Staffing and Program Continuity
- Training
- Independent Testing
- Job Descriptions
- Recordkeeping and Documentation

## Part II

- Monitoring Systems
- Risk Rating
- SARs
- CTRs
- Corporate Culture
- Law Enforcement Requests



# Definition – Bank

## **FFIEC Manual (footnote 3)**

Under the BSA, as implemented by 31 CFR 1010.100 (formerly 31 CFR 103.11), the term “bank” includes each agent, agency, branch, or office within the United States of commercial banks, savings and loan associations, thrift institutions, credit unions, and foreign banks. The term “bank” is used throughout the manual generically to refer to the financial institution being examined.



# Monitoring Systems – Objectives

FFIEC Manual (pp.29-30)

*Internal controls should:*

- *Identify reportable transactions and accurately file all required reports including SARs, CTRs, and CTR exemptions. (Banks should consider centralizing the review and report-filing functions within the banking organization.)*
- *Provide sufficient controls and systems for filing CTRs and CTR exemptions.*
- *Provide sufficient controls and monitoring systems for timely detection and reporting of suspicious activity.*

➤ **Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (pp.5-6)**

Although Gibraltar used a software system to monitor its accounts for unusual activity going through the Bank, the system and procedures were so flawed, that Gibraltar systematically failed to identify and timely report transactions through numerous accounts that exhibited indicia of money laundering or other suspicious activity... Because of the incomplete and inaccurate information, when the Bank's automated transaction monitoring system generated alerts on certain customers, analysts in the BSA department could not determine effectively when a change in those customers' activities should have resulted in a change to those customers' risk ratings.





# Monitoring Systems – Objectives (cont'd)

➤ **Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.6)**

The Bank's process for filing currency transaction reports only captured transactions conducted by Bank customers processed through existing accounts. Transactions processed using the aforementioned transaction code would bypass this system and prevent such transactions from appearing on the Bank's LCTR, which was the sole report used by the Bank to file currency transaction reports.

➤ **Beach Bank (FinCEN CMP 2006-9) (p.3)**

...failed to adequately monitor accounts the Bank had identified as high risk, despite the Bank's stated policy of 100 percent monitoring of high risk accounts.

➤ **Garden Savings FCU (NCUA ConOrd) (p.3)**

Ordered to "develop, implement and maintain risk-based internal controls and appropriate transaction activity monitoring tools...Ensure monitoring tools include monetary instrument sales and redemptions, incoming and outgoing wire transfers, ATM transactions..."



# Monitoring – Manual Review

## FFIEC Manual (p.64)

*A transaction monitoring system, sometimes referred to as a manual transaction monitoring system, typically targets specific types of transactions (e.g., those involving large amounts of cash, those to or from foreign geographies) and includes a manual review of various reports generated by the bank's MIS or vendor systems in order to identify unusual activity.*

### ➤ The Foster Bank (FinCEN CMP 2006-8) (p.3)

Although Bank utilized a large currency transaction log to identify transactions that appeared to be structured...the transaction log did not allow Bank management to evaluate customer activity in the aggregate, over a period of multiple days, to adequately assess whether structuring was taking place.

### ➤ HSBC Bank USA (FinCEN CMP 2012-02) (p.9)

The Bank's transaction monitoring procedures relied heavily on manual transaction reviews. Despite such reliance, the Bank's department responsible for investigating suspicious activity alerts was severely understaffed, resulting in thousands of unprocessed ("backlogged") alerts...Furthermore, staff often cleared alerts without adequate review.

# Monitoring – Manual Review (cont'd)

➤ **Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.4)**

The Bank's SAR monitoring program was one-dimensional and only included weekly reviews of the LCTR without any regard toward other types of transactions for suspicious or unusual activity... The Bank's suspicious activity monitoring process was primitive and relied solely on verbalizing and/or documenting observed singular events of unusual customer activity by front-line personnel without any enterprise-wide systems in place...

➤ **Dover NJ Spanish-American FCU (NCUA C&D 07-0203-II ) (p.3)**

Ordered to...develop and implement internal controls and additional transaction activity monitoring tools to ensure all reportable transactions are promptly identified, researched, and reported. Ensure monitoring tools include monetary instrument sales and redemptions, incoming wire transfers, automated teller machine transactions, and any other operational areas identified in your BSA/AML risk assessment that require monitoring.

➤ **Liberty Bank (FinCEN CMB 2006-5) (p.3)**

Bank's process for monitoring transaction activity was informal, decentralized and lacked documentation to track and monitor customer activity.



# Monitoring – Manual Review (cont'd)

## ➤ Metropolitan Bank & Trust Company (FinCEN CMP 2006-2) (p.3)

Monitoring reports primarily focused on transactions over \$10,000 during a four week period, including funds transfers from a single originator to multiple beneficiaries or from multiple originators to a single beneficiary. Cash transaction reports for transactions between \$3,000 and \$10,000 were not reviewed on a consistent basis. Furthermore, the method of payment (e.g. cash, personal checks, money orders, traveler's checks) used to initiate remittance transactions was not taken into consideration when monitoring for, or investigating, suspicious activity.

## ➤ Doha Bank (NY Branch) (FinCEN CMP 2009-1) (p.3)

Furthermore, the wire transfer monitoring process reviewed only single transactions, with no consideration of multiple transactions, involving the same parties, over periods of time.

## ➤ Bank of Mingo (FinCEN CMP 2015-08) (p.9)

The BSA Officer monitored such activity through handwritten teller logs. This practice was an inadequate control given the volume of cash activity going through the bank and allowed a high volume of structured transactions to go undetected and, therefore, unreported.



# Monitoring – Staff Reporting

## FFIEC Manual (p.62)

*Banks should implement appropriate training, policies, and procedures to ensure that personnel adhere to the internal processes for identification and referral of potentially suspicious activity. Banks should be aware of all methods of identification and should ensure that their suspicious activity monitoring system includes processes to facilitate the transfer of internal referrals to appropriate personnel for further research.*

### ➤ AmSouth Bank (FinCEN CMP 2004-2) (p.6)

Even when personnel at the various business units had knowledge of suspicious activity in certain accounts, the Bank's lack of training and/or referral procedures often prevented this information from being brought to the attention of the persons responsible for suspicious activity reporting. In some instances, Bank personnel incorrectly believed that reporting was not required because there was no loss to AmSouth.



# Surveillance Software – Utilization

## FFIEC Manual (p.66):

*The authority to establish or change expected activity profiles should be clearly defined through policies and procedures. Controls should ensure limited access to the monitoring systems, and changes should generally require the approval of the BSA compliance officer or senior management. Management should document and be able to explain filtering criteria, thresholds used, and how both are appropriate for the bank's risks.*

### ➤ Ocean Bank (FinCEN CMP 2011-7) (p.5)

- By the end of 2006, a backlog of over 100,000 alerts had been generated by the Bank's monitoring system. The overwhelming majority of these alerts were subsequently cleared by Bank staff that was ill-trained, inexperienced in reporting suspicious activity and without proper review.
- The implementation and oversight of an automated monitoring system continued to suffer from inadequacies for years.

### ➤ Metropolitan Bank & Trust Company (FinCEN CMP 2006-2) (p.3)

Metrobank purchased transaction monitoring software in 2003. However, after two years, Metrobank was not fully utilizing the system and had not implemented it into monitoring processes to facilitate compliance with the Bank Secrecy Act. Instead, Metrobank continued to rely on ineffective manual controls.



# Surveillance Software – Utilization (cont'd)

## ➤ US Bank (FinCEN CMP 2018-01) (p.5)

- From at least 2009 until July 2014, U.S. Bank configured this automated transaction monitoring system to generate a certain number of alerts each month.
- Out of the 22 scenario-based queries U.S. Bank set-up for alert generation, the Bank set caps on the six largest alert generators and retained those caps even when below-threshold testing demonstrated significant missed SAR reporting.
- As a result of the alert limits, the transaction monitoring systems did not generate alerts for many of the transactions that an appropriate risk-based approach would have flagged as potentially suspicious

## ➤ First Bank of Delaware (FinCEN CMP 2012-01) (p.8)

The Bank's automated system allowed for stratification and evaluation of customer risk ratings, but these functions were not adequately utilized.



# Surveillance Software – Filtering

## FFIEC Manual (p.66):

*System filtering criteria should be developed through a review of specific higher-risk products and services, customers and entities, and geographies. System filtering criteria, including specific profiles and rules, should be based on what is reasonable and expected for each type of account.*

### ➤ First Bank of Delaware (FinCEN CMP 2012-01) (p.8)

The Bank's software system merely identified customer deviations from a peer group average and did not compare a customer's actual ongoing activity to the customer's transaction history for inexplicable deviations or spikes. The detection system did not allow for report analysis by name, address, or phone number fields.

### ➤ Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (pp.5-6)

Gibraltar's automated monitoring system deficiencies resulted in its generation of an unmanageable number of alerts that included large numbers of false positives...The problems associated with the system were due to Gibraltar's failure to adequately tailor the parameters and thresholds of the alerts...

### ➤ US Bank (FinCEN CMP 2018-1) (pp.7-9)

Bank maintained its alert caps because the practice permitted the Bank to devote fewer employees and resources to its AML program...





# Surveillance Software – Refining

## FFIEC Manual (p.66):

*Once established, the bank should review and test system capabilities and thresholds on a periodic basis. This review should focus on specific parameters or filters in order to ensure that intended information is accurately captured and that the parameter or filter is appropriate for the bank's particular risk profile...Management should also periodically review and test the filtering criteria and thresholds established to ensure that they are still effective.*

### ➤ Ocean Bank (FinCEN CMP 2011-7) (p.5)

- The automated monitoring system was ineffective in detecting suspicious activity as appropriate parameters were not established relative to customer risk and anticipated account activity.
- The Bank failed to document or explain account filtering criteria or thresholds, and how both were appropriate for the Bank's risks.
- The Bank failed to periodically review and update the filtering criteria and thresholds thus rendering them ineffective.

### ➤ Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (pp5-6)

Gibraltar's failure to accurately set, validate, and test the automated monitoring system left Gibraltar overwhelmed by the large volume of alerts, many of which yielded false positive results.



# Surveillance Software – Refining (cont'd)

➤ **Cadence Bank (OCC ConOrd) (pp.10-11)**

Ordered “develop written policies and procedures for the appropriate identification and monitoring of transactions for suspicious activity” ...The policies and procedures were required to address/provide for:

- the application of appropriate thresholds for monitoring, both manually and using automated systems, all types of transactions, accounts, customers, products, services, and geographic areas that pose a risk of suspicious activity under the BSA.
- effective thresholds for filtering accounts and customers for further monitoring, review, and analyses; and
- periodic testing and monitoring of thresholds for their appropriateness to the Bank’s customer base, products, services.



# Surveillance Software – Validation

## FFIEC Manual (p.66):

*In addition, the monitoring system's programming methodology and effectiveness should be independently validated to ensure that the models are detecting potentially suspicious activity.*

- **US Bank (FinCEN CMP 2018-01) (p.4)**  
...failed to have its automated transaction monitoring system validated by a suitably independent individual (or entity), notwithstanding an express regulatory recommendation.
- **HSBC Bank USA (FinCEN CMP 2012-02) (p.9)**  
...did not acquire an automated system equal to the needs of the Bank...until April 2011...It took another year for HBUS to validate the system for effective detection of suspicious activity.
- **Ocean Bank (FinCEN CMP 2011-7) (p.5)**  
The monitoring system's programming, methodology, and effectiveness were not independently validated until 2009, to ensure that the models were detecting potentially suspicious activity.
- **Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (pp5-6)**  
Gibraltar did not validate or independently test the system's parameters and thresholds to reduce the number of false positive alerts the system generated.

# Risk Rating – Initial

## FFIEC Manual (p.57)

*...the bank should obtain information at account opening sufficient to develop an understanding of normal and expected activity for the customer's occupation or business operations... This information should allow the bank to determine the customer's risk profile at account opening.*

### ➤ HSBC Bank USA (FinCEN CMP 2012-02) (p.6)

The Bank's risk rating methodologies were not designed to evaluate customers based on specific customer information and balanced consideration of all relevant factors, including country/jurisdictional risk, products and services provided, expected transaction volume, and nature of customer profiles.

### ➤ Metropolitan Bank & Trust (NY Branch) (FinCEN CMP 2006-2) (p.3)

Bank failed to collect sufficient information to develop a transaction profile for each customer, and did not designate customers into the four risk designations identified in the written policies and procedures.

### ➤ Bank of Mingo (FinCEN CMP 2015-08) (p.5)

Mingo did not risk rate its customers during the account opening process or classify their respective accounts... Because Mingo failed to properly designate these customers and their accounts as high-risk, it could not adequately monitor them and therefore failed to detect the unusual currency transactions or suspicious activities in which the customers engaged.



# Risk Rating – Ongoing

## FFIEC Manual (pp.57-58)

*If there is indication of a potential change in the customer's risk profile (e.g., expected account activity, change in employment or business operations), management should reassess the customer risk rating and follow established bank policies and procedures for maintaining or changing customer risk ratings... As due diligence is an ongoing process, a bank should take measures to ensure account profiles are current and monitoring should be risk-based.*

### ➤ Garden Savings FCU (NCUA C&D 07-0502-II) (p.4)

Ordered to establish written high-risk member policies and procedures...to:

- a) identify all high-risk members,
- b) conduct a documented risk assessment of each high-risk member,
- c) assess the potential risks posed by each relationship,
- d) conduct appropriate, enhanced and ongoing due diligence or high-risk accounts as necessary,
- e) ensure high-risk accounts are appropriately monitored for suspicious activity...



# Risk Rating – Ongoing (cont'd)

## ➤ First Bank of Delaware (FinCEN CMP 2012-01) (p.6)

Bank completed an initial risk assessment of its check casher business line in 2009, but subsequently did not undertake necessary risk reviews despite subsequent rapid growth of the business line.

## ➤ Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (p.9)

...Gibraltar's customer risk profiles were generally incomplete, stale, and lacking in sufficient analysis and validation...Gibraltar was unable to accurately risk rate such accounts either at account opening or when updating its account risk ratings. Further, when updating its account risk ratings, rather than soliciting updated and more accurate information from customers to conduct a comprehensive assessment, Gibraltar would simply review its account risk ratings based on average account activity that the Bank did not validate with the customer's expected activity...The methodology did not consider the volume of customer activity by transaction type (e.g., cash activity, wire activity, and ACH activity).

## ➤ Borinquen FCU (NCUA C&D 11-0022-RS) (p.4)

Ordered to maintain "a list of high risk and moderate risk members and ensure the activity of high risk and moderate risk members are reviewed and analyzed periodically; monitor business accounts based on the initial risk assessment of the business account activity...



# SARs – Managing Alerts

## FFIEC Manual (p.67)

*Alert management focuses on processes used to investigate and evaluate identified unusual activity... Banks should have policies, procedures, and processes in place for referring unusual activity from all areas of the bank or business lines to the personnel or department responsible for evaluating unusual activity. Within those procedures, management should establish a clear and defined escalation process from the point of initial detection to disposition...*

### ➤ First National Community Bank (FinCEN CMP 2015-03) (pp.3-4)

- failed to identify red flags and consequently failed to timely report suspicious activities in accounts controlled by its then board member and former state judge...
- The unreported suspicious transactions that flowed through FNCB accounts displayed red flags that should have alerted FNCB to potential illicit activity and caused it to file SARs.
- Despite the fact that many transactions conducted by [the related accounts] involved multiple large, round-dollar transactions that often occurred on the same day, FNCB failed to review these transactions and, as a result, failed to identify or act on significant red flags.



# SARs – Managing Alerts (cont'd)

## ➤ Pacific National Bank (FinCEN CMP 2011-5) (pp.4-5)

The Bank's processes for reviewing potential suspicious activity detected by monitoring systems frequently experienced long delays. From January 2007 through July 2010, Pacific filed 421 initial suspicious activity reports...Many of those reports were filed late, suffering from lengthy delays between the time of the underlying activity and the time when Pacific submitted the suspicious activity reports.

## ➤ The Foster Bank (FinCEN CMP 2006-8) (p.3)

- Customer files did not contain sufficient information to justify the volume, nature and legitimacy of transactions at the Bank.
- Bank management failed to engage in adequate due diligence and transaction monitoring to determine the propriety, or potential impropriety, of the large number of currency and funds transfer transactions conducted at the Bank.
- Similarly, Foster failed to maintain sufficient documentation to ascertain whether its customers' significant funds transfer activities were reasonable for the customers' stated businesses.

## ➤ Saddle River Valley Bank (FinCEN CMP 2013-02) (p.5)

Instead, SRVB largely monitored wires manually. This limited SRVB's ability to identify patterns and trends. As a result, SRVB failed to timely file approximately 190 SARs...





# SARs – Managing Alerts (cont'd)

➤ **Riggs Bank (FinCEN CMP 2004-01) (p.4)**

Riggs also lacked effective monitoring for compliance by the BSA officer. Day-to-day oversight and monitoring of high-risk transactions, high-risk customers, and high-risk geographies were minimal. Strategies and alternative measures to ensure ongoing BSA/AML monitoring for suspicious transactions were not adequately developed and applied. In addition, the person(s) responsible for BSA compliance at Riggs failed to adequately monitor, identify, investigate, analyze, and report suspicious activity...

➤ **ABN AMRO (NY Branch) (FinCEN CMP 2005-5) (p.5)**

...failed to investigate numerous alerts generated by the automated monitoring system of transactions bearing indicia of suspicious activity...[the NY Branch] assigned the task of reviewing and investigating the alerts or reports to only three individuals – staffing clearly inadequate in light of both the volume of alerts or reports, and the other functions these individuals performed...

# SARs – Filing Decisions

## FFIEC Manual (p.68)

*The decision maker, whether an individual or committee, should have the authority to make the final SAR filing decision...Banks should document SAR decisions, including the specific reason for filing or not filing a SAR. Thorough documentation provides a record of the SAR decision-making process, including final decisions not to file a SAR.*

### ➤ Lone Star National Bank (OCC ConOrd 2012-160) (p.6)

The Bank shall review and revise...the Bank's written program establishing a system of internal controls and processes to ensure compliance with the requirements to file SARs:

- procedures to ensure that the Bank's decision on whether to file a SAR for a particular customer (or related entity) is appropriately supported and documented.

### ➤ The Foster Bank (FinCEN CMP 2006-8) (pp.4-5)

Foster had information about its customers and their transactions that caused it to "know, suspect, or have reason to suspect" that many transactions were reportable suspicious transactions, yet the Bank failed to timely report these transactions due to inadequate systems and controls to identify, analyze and report suspicious activity...Foster failed to file at least twelve suspicious activity reports for transactions that it "knew, suspected, or had reason to suspect" were reportable as suspicious under the BSA.



# SARs – Timing

## FFIEC Manual (p.70)

*The SAR rules require that a SAR be electronically filed through the BSA E-Filing System no later than 30 calendar days from the date of the initial detection of facts that may constitute a basis for filing a SAR...The phrase “initial detection” should not be interpreted as meaning the moment a transaction is highlighted for review.*

### ➤ Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.7)

The Bank lacked adequate policies, procedures and controls necessary to monitor for, detect and timely report suspicious activity, as required by the BSA. As a result, the Bank failed to timely file 67 percent (76 of 113) of the suspicious activity reports filed by the Bank between January 1, 2006, and January 31, 2009, totaling over \$16 million.

### ➤ Union Bank of California (FinCEN CMP 2007-02) (p.4)

Bank failed to adequately monitor high risk customers and transactions for suspicious activity. Bank filed over one thousand [1,000] late suspicious activity reports, involving total dollar amounts in excess of \$1 billion.



# SARs – Timing (cont'd)

## ➤ BankAtlantic (FinCEN CMP 2006-3) (pp.7-8)

- ...failed to timely file a substantial number of SARs...The absence of effective internal controls, training, designated personnel and independent testing at Bank resulted in numerous violations of the requirement to timely report suspicious activity.
- After responding to supervisory authorities, a sharp increase in the Bank's suspicious activity report filings was noted...the average number of SAR filings...rose to 114 per month [for 2005/3Q], in contrast to 11 per month (for 2004/1Q]. For the 22 month period between 1/1/04 and 10/31/15, Bank filed 1,124 SARs.
- Based on analysis by FinCEN, 369 of these SARs were filed on a delinquent basis.

## ➤ Gibraltar Private Bank and Trust Co (FinCEN CMP 2016-01) (p.13)

Gibraltar also filed late SARs on entities and customers unrelated to [the single customer]. These late SARs documented potential mortgage fraud, embezzlement, suspicious wire transfers, corruption, and structuring involving customers unrelated...

## ➤ Pacific National Bank (FinCEN CMP 2011-5) (pp.4-5)

Forty-eight reports were filed 8 to 12 months after conclusion of the activity described on the form, and an additional 43 reports were filed more than 12 months late. These 91 reports...involved multiple transactions that occurred over a long period of time.



# SARs – Quality

## FFIEC Manual (pp.69-72)

*Appropriate policies, procedures, and processes should be in place to ensure SARs are filed in a timely manner, are complete and accurate, and that the narrative provides a sufficient description of the activity reported as well as the basis for filing... By their nature, SAR narratives are subjective, and examiners generally should not criticize the bank's interpretation of the facts. Nevertheless, banks should ensure that SAR narratives are complete, thoroughly describe the extent and nature of the suspicious activity, and are included within the SAR.*

### ➤ **Pacific National Bank (FinCEN CMP 2011-5) (p.5)**

Pacific filed incomplete suspicious activity reports in direct contradiction to the instructions...Since January 2007, Pacific filed a number of suspicious activity reports with blank or incorrectly completed fields...the Bank's incomplete suspicious activity reports failed to provide law enforcement with important information, and impaired further analysis and investigation of the activity by government authorities.

### ➤ **Liberty Bank (FinCEN CMB 2006-5) (p.4)**

...the utility of many suspicious activity reports filed...suffered from a failure to provide adequate narrative descriptions, with little or no description of the transactions at issue...



# SARs – Quality (cont'd)

## ➤ Great Eastern Bank of Florida (FinCEN CMP 2002-02) (pp.4-6)

- For at least 14 other customer transactions, Great Eastern filed SARs, but in these SARs the Bank failed to include required information about the suspicious activity that it had in its files at the time it filed the SAR.
- filed a SAR which merely stated that a customer made a \$71,250 deposit to an account that had minimal activity prior to that time. The report did not adequately describe the alleged suspicious activity and, therefore, the SAR failed to include important required information that was readily available to Great Eastern – that is, why it was filing the SAR.
- filed a SAR that simply reported a \$50,000 deposit of money orders. The SAR did not describe the monetary instruments by denomination, issuer, or place of origin as explicitly required by the instructions to the SAR form.

## ➤ The Foster Bank (FinCEN CMP 2006-8) (p.5)

The Bank filed several suspicious activity reports that failed to include all relevant information available to the Bank at the time it filed...Foster filed a suspicious activity report on another customer that failed to disclose important information to explain the suspicious activity.



# SARs – Quality (cont'd)

➤ **Riggs Bank (FinCEN CMP 2004-01) (p.6)**

Riggs belatedly filed SARs on these transactions. However, most of these SARs were deficient because the narrative descriptions of the transactions were sparse and conclusory. Rather than providing specific information on the type, timing, and amount of activity observed in each account, Riggs simply stated that there was an appearance of structuring.

➤ **Union Bank of California (FinCEN CMP 2007-02) (p.4)**

In addition to late filings, Bank filed incomplete suspicious activity reports in direct contradiction to the instructions...disclosed over 1,000 instances where reporting fields on suspicious activity report forms were left blank or incorrectly completed. The bank's incomplete suspicious activity reports failed to provide law enforcement with important information and impaired further analysis and investigation of the activity by law enforcement.

➤ **ABN AMRO (NY Branch) (FinCEN CMP 2005-5) (p.7)**

...filed incomplete or inaccurate suspicious activity reports. Numerous suspicious activity reports characterized transactions as terrorist financing without sufficient cause...or contained little or no description of the transactions at issue...



# CTRs – Reportable Transactions

## FFIEC Manual (p.82)

*Banks are strongly encouraged to develop systems necessary to aggregate currency transactions throughout the bank. Management should ensure that an adequate system is implemented that appropriately reports currency transactions subject to the BSA requirement.*

### ➤ Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.6)

Bank management failed to take the necessary steps to correct these deficiencies until April 2009. As a result of this complete breakdown in the reliability of the LCTR, the Bank systematically failed to file a substantial number of currency transaction reports and filed incorrect and incomplete currency transaction reports over an extended period of time, including the failure to file 135 currency transaction reports related to one customer...As a result of these coding deficiencies and processing system errors, Pamrapo failed to aggregate multiple transactions amounting to over \$10,000 for a customer in a single business day... Due to the magnitude and long-standing nature of the coding problems, the Bank was not able to determine the volume, dollar amount, and overall number of reporting failures for back filing purposes.

### ➤ Bank of Mingo (FinCEN CMP 2015-08) (p.2):

Mingo was aware of the Branch Manager's structuring scheme, yet failed to file the requisite CTRs and suspicious activity reports related to the high volume of unusual cash transactions conducted by the corporate customer...





# CTRs – Timing

## FFIEC Manual (p.82)

*A completed BCTR must be electronically filed with FinCEN within 15 calendar days after the date of the transaction.*

### ➤ Ocean Bank (FinCEN CMP 2011-7) (p.9)

In 2007, an internal review conducted by the Bank's BSA Compliance Department revealed instances where – during a four month period that same year – currency transaction reports ("CTRs") were not filed. The Bank subsequently conducted a review and:

- filed 29 CTRs which had not previously been filed,
- amended 24 previously filed CTRs, and
- discovered 54 CTRs which were erroneously generated by the system and reported in error.

### ➤ Bank of Mingo (FinCEN CMP 2015-08) (p.8):

From 2007 to 2013, Mingo failed to file 619 CTRs, in violation of the BSA and its implementing regulations. Of those, 438 CTRs were related to one particular corporate customer.



# CTRs – Quality

## FFIEC Manual (p.82)

*Certain fields in the BCTR are marked as “critical” for technical filing purposes...For these items, the bank must either provide the requested information or check the “unknown” box that is provided with each critical field. Banks should provide the most complete filing information available consistent with existing regulatory expectations, regardless of whether or not the individual fields are deemed critical for technical filing purposes.*

### ➤ **Riggs Bank (FinCEN CMP 2004-01) (p.7)**

The CTRs filed by Riggs on two markets did not contain the accurate legal names of those businesses.

### ➤ **US Bank (FinCEN CMP 2018-01) (p.13-14)**

From July 7, 2014 through May 27, 2015, U.S. Bank filed approximately 5,000 CTRs with incomplete and inaccurate information...Specifically, in filling out CTRs, the Bank failed to accurately identify the name of the entity on whose behalf the transaction was conducted...

# Corporate Culture – Management

FFIEC Manual (p.158):

*The board should ensure that senior management is fully capable, qualified, and properly motivated to manage the BSA/AML compliance risks arising from the organization's business activities in a manner that is consistent with the board's expectations. The board should ensure that the BSA/AML compliance function has an appropriately prominent status within the organization... Senior management is responsible for communicating and reinforcing the BSA/AML compliance culture established by the board, and implementing and enforcing the board-approved BSA/AML compliance program*

➤ **Riggs Bank (FinCEN CMP 2004-01) (p.3)**

On two occasions, although Riggs' management said that the institution had discontinued PUPID transactions, Riggs allowed the transactions to continue.

➤ **Merchants Bank of California (FinCEN CMP 2017-02) (p. 4)**

Merchant's leadership impeded BSA analysts and other employees investigating activity on transactions associated with accounts that were affiliated with Bank executives, and the activity in these accounts went unreported for many years...Employees who attempted to report suspicious activity in these accounts were threatened with possible dismissal or retaliation.



# Corporate Culture – Management (cont'd)

➤ **BankAtlantic (FinCEN CMP 2006-3) (p.3)**

...it was not until Federal authorities requested extensive information in early 2004 related to Bank's AML program that the Bank's management began to implement measures to adequately assess the quality of its compliance with the BSA.

➤ **Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.5)**

Despite being told repeatedly that the Bank's BSA training was deficient, Bank management failed to implement an adequate BSA training program over a period of years.

➤ **Rabobank (OCC CMP 2018-008) (p.2-3)**

...during the OCC's BSA/AML examination of the Bank that commenced in November 2012, the Bank concealed from the OCC documents requested by OCC officials and examiners that were relevant to the OCC's evaluation of the Bank's BSA/AML compliance program...Former senior officers of the Bank participated in efforts to preclude the OCC from obtaining the requested information.

➤ **Bethex FCU (NCUA CMP 2016-06) (p.7)**

For over two years, Bethex's leadership allowed significant AML compliance concerns to persist without taking sufficient steps to address the deficiencies.



# Corporate Culture – Management (cont'd)

## ➤ Merchants Bank of California (FinCEN CMP 2017-02) (p. 9)

Merchant's interest in revenue compromised efforts to effectively manage and mitigate its deficiencies...

## ➤ Saddle River Valley Bank (p.5)

SRVB focused on revenue generation from the CDC [i.e., casas de cambio] accounts, rather than...

## ➤ US Bank (FinCEN CMP 2018-1) (pp.7-9)

- In 2012, when the Bank hired new officials to oversee its AML program, their predecessors, including the CCO, discouraged them from removing the alert caps or disclosing them by representing to the new officials that its regulators were fully aware of the Bank's monitoring practices and had at least tacitly approved them.
- In 2013 memo, the AMLO described U.S. Bank's AML program as an effort to use "smoke and mirrors" to "pull the wool over the eyes" of the OCC. However, the CCO reviewed a draft and removed references to alert caps from the presentation, added positive information about the Bank's AML program, and otherwise altered the presentation to depict a more favorable image of the Bank's AML program.
- The new AMLO emailed the CCO with concerns about monitoring in connection with the above-referenced money transmitter. In response, the CCO dismissed the new AMLO's concerns and chastised him for recording them in an email.



# Corporate Culture – Communication

FFIEC Manual (p.32):

The line of communication should allow the BSA compliance officer to regularly apprise the board of directors and senior management of ongoing compliance with the BSA.

➤ **State Street Bank (FRB Agreement 15-015-WA) (p.3)**

Ordered to submit an acceptable firm-wide compliance risk management program that included, among other things...Measures to improve the information reported to the board of directors and its designated compliance committee regarding BSA/AML compliance...

➤ **East-West Bank (FRB Agreement 15-030-WA) (p.2)**

Ordered to submit an acceptable plan that included, at a minimum:

- the establishment of a BSA/AML and OFAC compliance committee,
- clearly defined roles and responsibilities for senior management to oversee compliance with the BSA/AML Requirements and the OFAC Regulations;
- measures to improve the information reported to the board of directors and its designated compliance committee regarding compliance with BSA/AML Requirements and OFAC Regulations.



# Corporate Culture – Communication (cont'd)

## ➤ Wachovia Bank (FinCEN CMP 2010-1) (p.11)

The Bank also suffered from an apparent lack of effective communication between audit, compliance, and management...Management repeatedly failed to adequately respond to adverse findings and follow the recommendations of both internal and external auditors relative to its foreign correspondent relationships.

## ➤ AmSouth Bank (FinCEN CMP 2004-2) (p.2)

The result was a fragmented program in which areas of the Bank had information on suspicious activity that was never communicated to those responsible for BSA compliance.

## ➤ AmSouth Bank (FinCEN CMP 2004-2) (p.4)

Reporting to management for the purposes of monitoring and oversight of compliance activities was materially deficient...Lacked written procedures for the preparation of reports to senior management and the security director.

## ➤ Liberty Bank (FinCEN CMB 2006-5) (p.2)

Bank's policies and procedures did not clearly delineate responsibility for detecting, evaluating and reporting suspicious activity, or provide guidance and instruction on the decision and approval process for suspicious activity reporting.



# Corporate Culture – Organization

FFIEC Manual (p.62 and pp.156-158)

*Policies, procedures, and processes should describe the steps the bank takes to address each component and indicate the person(s) or departments responsible for identifying or producing an alert of unusual activity, managing the alert, deciding whether to file, SAR completion and filing, and monitoring and SAR filing on continuing activity...a banking organization has discretion as to how to structure and manage its BSA/AML compliance...*

➤ **Wachovia Bank (FinCEN CMP 2010-1) (p.3)**

The authority to establish or amend expected activity profiles was not clearly defined and failed to require approval of the BSA officer or senior management.

➤ **Merchants Bank of California (FinCEN CMP 2017-02) (p. 9)**

The BSA department had relied on other departments within the Bank to make determinations on acceptable risks often without clear guidance from the BSA department. For those BSA responsibilities for which other departments did have specific guidelines, including the collection of customer information, there was no accountability when those departments failed to abide by the AML program. At Merchants, BSA duties were shared among other departments at the Bank, including those associated with specific business lines, where its staff lacked BSA knowledge and experience.





# Corporate Culture – Organization (cont'd)

➤ **AmSouth Bank (FinCEN CMP 2004-2) (p.3)**

Many of the departments within AmSouth lacked adequate procedures and guidance regarding the delivery of information to appropriate personnel for suspicious activity determinations.

➤ **Discover Financial Services (FRB Written Agreement 15-013-WA/RB-HC) (p.4)**

Ordered to submit an acceptable written plan that included:

- the duties and responsibilities of compliance personnel for each business line and legal entity regarding BSA/AML and OFAC compliance functions, including the reporting lines within DFS, and between DFS and its business lines and legal entities;
- the structure of DFS's firm wide BSA/AML compliance program, including reporting lines within DFS and from each of DFS's business lines and legal entities to the chief BSA/AML compliance officer;
- communication of BSA/AML roles and responsibilities across the organization...



# Corporate Culture – Oversight

## FFIEC Manual (p.33 and p.158)

*Without a general understanding of the BSA, the board of directors cannot adequately provide BSA/AML oversight; approve BSA/AML policies, procedures, and processes; or provide sufficient BSA/AML resources...The board also should ensure that senior management has established appropriate incentives to integrate BSA/AML compliance objectives into management goals and compensation structure across the organization, and that corrective actions, including disciplinary measures, if appropriate, are taken when serious BSA/AML compliance failures are identified.*

### ➤ **BankAtlantic (FinCEN CMP 2006-3) (p.6)**

Despite repeated audit recommendations, Bank did not begin to effectively respond until the early part of 2004, after receiving inquiries about the Bank's AML program from Federal authorities.

### ➤ **AmSouth Bank (FinCEN CMP 2004-2) (p.2)**

- AmSouth's program lacked adequate board and management oversight, lacked fully implemented policies and procedures across the Bank...lacked adequate training to ensure compliance, and had a materially deficient internal audit process that failed to detect these inadequacies.



# Corporate Culture – Oversight (cont'd)

➤ **AmSouth Bank (FinCEN CMP 2004-2) (p.6)**

The lack of management oversight and review of the program exacerbated these problems.

➤ **Wachovia Bank (FinCEN CMP 2010-1) (p.13)**

However, poor management oversight and operating procedures over the integration of currency reporting systems after the merger, including annual reviews in accordance with 31 CFR § 103.22(d)(4), resulted in thousands of violations...

➤ **East-West Bank (FRB Agreement 15-030-WA) (p.6)**

Order to submit an acceptable plan that included “measures to ensure escalation to, and documented oversight by, senior management of significant matters...”

➤ **Pacific National Bank (FinCEN CMP 2011-5) (p.4)**

In cases where adverse audit findings arose, Pacific continually failed to implement timely and effective corrective actions, at a level necessary to assure effective day-to-day compliance with Bank Secrecy Act suspicious activity reporting requirements.



# Law Enforcement Requests – Integration

## FFIEC Manual (p.62)

*Banks should establish policies, procedures, and processes for identifying subjects of law enforcement requests, monitoring the transaction activity of those subjects when appropriate, identifying unusual or potentially suspicious activity related to those subjects, and filing, as appropriate, SARs related to those subjects.*

### ➤ BankAtlantic (FinCEN CMP 006-03) (p.3)

...had no procedures or controls to ensure a comprehensive review of subpoenaed accounts for potential money laundering...The individual responsible for responding to subpoenas received by [Bank] had no direct supervision to assure compliance with the BSA in regard to the receipt of subpoenas.

### ➤ Riggs Bank (FinCEN CMP 2004-1) (p.3)

...did not have procedures or internal controls to ensure that subpoenas and other government requests regarding accountholders were referred to the division responsible for investigating potential suspicious activity.

### ➤ Pamrapo Savings Bank (FinCEN CMP 2010-3) (p.4)

had no procedures in place to evaluate information concerning transactions and accounts subject to a subpoena...



# Law Enforcement Requests – 314(a)

➤ **AmSouth Bank (FinCEN CMP 2004-2)(p.3)**

...systems used at the Bank's branches for recording monetary instruments sold to non-accountholders were not fully integrated with the Bank's system for responding to request sent by FinCEN under Section 314(a) of the Patriot Act...Bank could not determine whether the scope of its Section 314(a) searches was adequate for monetary instrument transactions.

➤ **HSBC Bank USA (FinCEN CMP 2012-02) (p.9)**

HBUS did not adequately integrate subpoenas and Section 314(a) information sharing requests into automated transaction monitoring to identify and report potential suspicious activity associated with these inquiries, as appropriate and practical.

➤ **Liberty Bank (FinCEN CMB 2006-5) (p.3)**

[AML program] "lacked internal controls and procedures to respond to information sharing requests from FinCEN under section 314(a) of the USA Patriot Act. The scope of the Bank's section 314(a) searches was inadequate because relevant records of activities conducted with the Bank were not searched, including wire transfers and sale of monetary instruments.



# Recommendations

## A. Monitoring Systems

- DO: Train your eyes to identify suspicious activities that don't fit in the typical cash structuring pattern (e.g., 3 x \$9,000 over 5-day period)
- DON'T: Purchase and install an AML software – using the default settings – and then sit back and become a passive participant in monitoring activities

## B. Risk Rating

- DO: Incorporate/describe risk rating processes (initial and ongoing) in your policies or procedures and provide training on the processes to all applicable staff
- DON'T: Fill out a risk rating sheet at account opening and then bury it somewhere to never be used again

## C. SARs

- DO: Document decisions justifying why a SAR was not filed
- DON'T: Write narratives that are quick and easy to write but offer little value to law enforcement

## D. CTRs

- DO: Develop a system (perhaps using more than one type of report and using more than one type of transaction code) that assures timely detection of reportable transactions
- DON'T: Complete CTRs using intuition – when in doubt, refer to FinCEN's instruction guide and the CTR FAQs on its website



# Recommendations (cont'd)

## E. Corporate Culture

- DO: Strive to improve and document communication to and from the board, to and from senior management, to and from other departments
- DON'T: Continue working as a BSA Officer where senior management does not support your or, worse, where senior management expects you overlook certain accounts or activities

## F. Law Enforcement Requests

- DO: Integrate subpoena reviews (i.e., per RTFPA) with BSA-AML analysis
- DON'T: Overlook types of transactions conducted by non-account holders when conducting 314(a) searches





# Questions

WEALTH ADVISORY | OUTSOURCING | AUDIT, TAX, AND CONSULTING

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# Thank you!

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