



ABA Professional Development

ABA/ABA Money Laundering Enforcement Conference


November 13-15, 2011
Washington, DC




Defending Liberty Pursuing Justice



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American Bar Association
ABA Professional Development




SESSION 3C

Keeping the Board Out of Trouble: Effective Governance and Oversight


Monday, November 14, 2011



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Our Objectives

- ❑ Discuss how you should assist the Board of Directors in their oversight of your compliance program, including reporting, training, and helping them help you.
- ❑ Discuss how you can improve and leverage your compliance monitoring program, including resolution of events, as a foundation for developing metrics to use in reporting to the board and executive management.
- ❑ Discuss liability issues stemming from ineffective reporting and AML control failures as well as a review of the role of the board in SAR reporting.



Agenda

- ❑ What you must do
 - Training the Board
 - Role of the Board in SAR reporting
- ❑ What you should do
 - Compliance monitoring program and BSA/AML
 - Best practices in Board reporting
- ❑ Liability issues arising from ineffective monitoring and reporting
- ❑ Practices to avoid
- ❑ Questions to consider



What the Board *must* do

- Board must approve a BSA/AML and OFAC compliance program
- Appoint the BSA Officer
- Receive notice of SAR filings (what does this mean? What should it not entail?)
- Receive reports of Audit Committee, including results of independent review



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What you *should* do

- Train the BOD
- BOD should review the Risk Assessments
- BOD should receive results of testing program, audits, and effectiveness of training



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Training the BOD

- When Congress passed the USA PATRIOT Act in 2002, it amended section 5318(h)(1) of the existing Bank Secrecy Act (BSA). The amended BSA, targets "terrorist financing" and related anti-money laundering (AML) activity.
- This requires financial and securities institutions and money services businesses to "establish an anti-money laundering program" that includes "an ongoing training program."



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Training the Board

- How often?
- On what?
- Is the Audit/Risk Management Committee enough?



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From FFIEC Exam Manual

“The board of directors, acting through senior management, is ultimately responsible for ensuring that the bank maintains an effective BSA/AML internal control structure, including suspicious activity monitoring and reporting.

The board of directors and management should create a *culture of compliance* to ensure staff adherence to the bank’s BSA/AML policies, procedures, and processes. Internal controls are the bank’s policies, procedures, and processes designed to limit and control risks and to achieve compliance with the BSA. **The level of sophistication of the internal controls should be commensurate with the size, structure, risks, and complexity of the bank.** Large complex banks are more likely to implement departmental internal controls for BSA/AML compliance. Departmental internal controls typically address risks and compliance requirements unique to a particular line of business or department and are part of a comprehensive BSA/AML compliance program.”



What does the Board need to Perform their Legal Function?

Training, in order to understand:

- SARs
- Examiner comments, suggestions
- Audit findings, trends
- Risk assessments
- Staffing
- Resources
- Your concerns



Guidance from OTS 2006

Q: How often do you recommend the board of directors receive BSA training? Guidance found on Pages 32-33 of the **2006 BSA/AML Examination Manual** states:

A: The board of directors and senior management should be informed of changes and new developments in the BSA, its implementing regulations and directives, and the federal banking agencies' regulations.



Guidance from OTS 2006

Q: Is it sufficient to train just the audit committee of the board of directors?

A: No, it is not sufficient to just train an audit committee of the board of directors. BSA training should encompass all board of directors. While board members may not require the same degree of training as front-line operations personnel, they need sufficient training to provide a general understanding of BSA regulatory requirements in order to provide effective compliance oversight, approve policy, and ensure adequate resources.



BOD Training

- Must sufficiently inform directors and enable them to perform their function at bank.
- Must discuss consequences of non-compliance, including legal and compliance exposure



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What works in BOD Training?

- Enforcement actions as case studies
- Visitors (HIFCA, ICE, FBI, examiners)
- Links to bank policies and procedures and Risk Assessments
- Be brief
- Document the Board's training



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What does not work?

- Computer-based training (CBT)
- Long presentations
- Jargon
- Irrelevant cases



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The Board and SAR Details

- What should be provided and said to BOD?
Which part of BOD (Audit?)?
- Frequency?
- Names of suspects or just patterns?



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Reporting SARs to the BOD

- Regular reports of significant SARs, trends and surprises
- Provide detail of internal (employee) investigations
- Provide detail for Audit Committee; summary data for the full BOD
- Consider attorney-client privilege and need for extreme discretion



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Compliance Monitoring and the BOD

- Robust program of compliance monitoring will enhance reputation with regulators, maintain confidence, prevent surprises
- Short-term challenge is fixing the leaks
- Long-term challenge is maintaining momentum, ensuring access to resources
- Practice aggressive self-reporting when issues arise



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Compliance Monitoring

- What is it?
- Where is it? Who performs it?
- How do you know if it is working well?



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Board and Compliance Monitoring

- Must be educated consumers of internal test results
- Your champions to other directors and executive management



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How to keep the Board informed?

- Use of Management Reports
 - ❖ Creates a standardized methodology to report *Compliance Key Risk Indicators* (low/medium/high)
 - ❖ Allows to monitor and analyze business performance
 - ❖ Provides alignment, visibility, and collaboration across the Corporation
- Examples
 - ❖ Enterprise Risk Management Dashboard and Scorecard



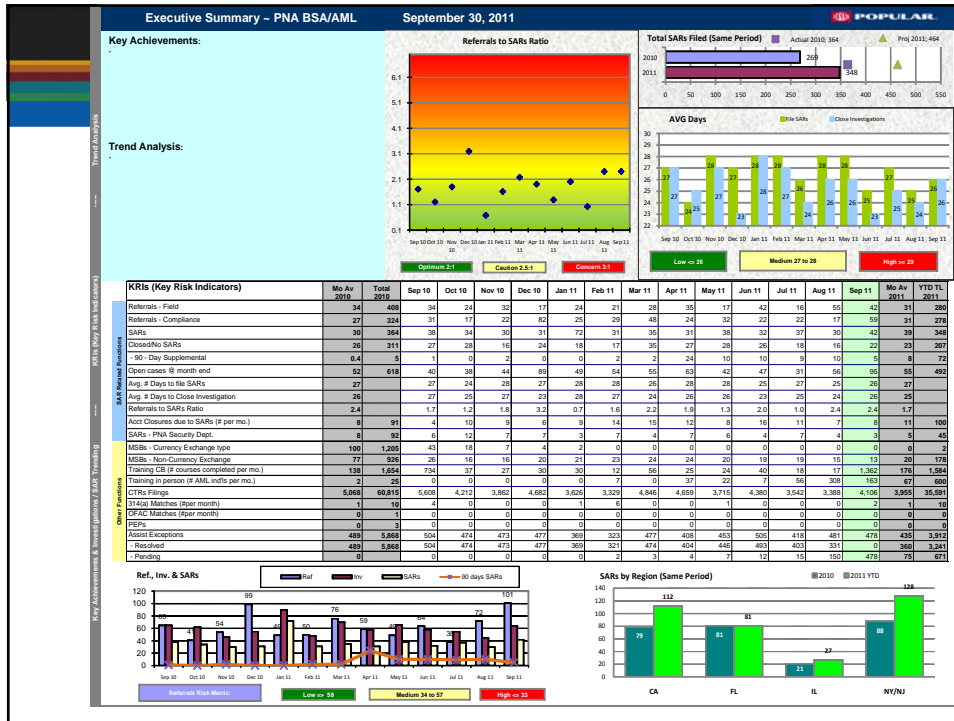
Management Reports

- | | |
|---|--|
| <ul style="list-style-type: none"> <input type="checkbox"/> Monthly basis <input type="checkbox"/> Key Risk Indicators <ul style="list-style-type: none"> ❖ Metrics vary each month based on each Compliance Area Dashboard | <ul style="list-style-type: none"> <input type="checkbox"/> Quarterly basis <input type="checkbox"/> Key Risk Indicators <ul style="list-style-type: none"> ❖ Results Oriented Metrics ❖ Efficacy Oriented Metrics <input type="checkbox"/> Provides for judgment's overrides or adjustments <input type="checkbox"/> Forecast next quarter <input type="checkbox"/> Identifies Top and Emerging risks <input type="checkbox"/> Defines Risk Action plans |
|---|--|

Dashboard

Scorecard





Popular Inc. Compliance Risk					3rd QTR 2011																																	
Risk Management Scorecard Report																																						
Quarterly Report					Quarterly Rationale																																	
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th>Popular Entities</th> <th>PR</th> <th>PNA</th> <th>Evertec Venezuela</th> <th>Popular</th> </tr> <tr> <td>3rd quarter 2011</td> <td style="text-align: center;">1.10</td> <td style="text-align: center;">1.40</td> <td style="text-align: center;">1.00</td> <td style="text-align: center;">1.10</td> </tr> <tr> <td>Adjustments</td> <td style="text-align: center;">Low to Medium</td> <td style="text-align: center;">Medium</td> <td style="text-align: center;">Medium to High</td> <td style="text-align: center;">Medium</td> </tr> </table>					Popular Entities	PR	PNA	Evertec Venezuela	Popular	3rd quarter 2011	1.10	1.40	1.00	1.10	Adjustments	Low to Medium	Medium	Medium to High	Medium	<p>PR - explain quarterly rationale</p> <p>PA - explain quarterly rationale</p> <p>PM - explain quarterly rationale</p> <p>PS - explain quarterly rationale</p>																		
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<p>Action Items</p> <p>PS - explain proposed action plan for mitigating risk.</p> <p>BPNA - explain proposed action plan for mitigating risk.</p> <p>Evertec-V - explain proposed action plan for mitigating risk.</p> <p>BPBR & PA - explain proposed action plan for mitigating risk.</p>					<p>Popular - Aggregation of results</p>																																	
Next Quarter Projections																																						
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Liability Issues

- Board must understand their personal and corporate liability
- Penalties include....



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Avoid

- (Obviously) Discussions of deceiving or misleading examiners
- Excessive focus on reactive compliance
- Circulating names of SAR targets
- And for foreign banks, consider BOD resolutions instead of delegated authority per Reg K



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Final Thoughts

- Your time and the Board's is short; use it well. In other words, if you are not helping advance the compliance culture, get out of the way!
- You will always benefit from transparency and close cooperation with examiners and law enforcement (i.e., run to FinCEN if you find serious issues. Never game it.)
- Your reputation is your greatest asset; guard it. (Don't distort, lie or exaggerate)



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Questions?



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